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HOUSE BILL NO. 2148

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 58.1-602 and 58.1-609.3 of the Code of Virginia, relating to commercial and industrial sales and use tax exemptions; railroad rolling stock.

Patrons—Fralin, Abbitt, Nixon, Poisson and Ware, O.

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-602 and 58.1-609.3 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-602. Definitions.**

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be

59 deemed used as part of the integrated process if its use contributes, before, during, or after production,
60 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by
61 law, such term shall not mean general maintenance or administration.

62 "Internet" means collectively, the myriad of computer and telecommunications facilities, which
63 comprise the interconnected world-wide network of computer networks.

64 "Internet service" means a service that enables users to access proprietary and other content,
65 information electronic mail, and the Internet as part of a package of services sold to end-user
66 subscribers.

67 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use
68 thereof by the lessee or renter for a consideration, without transfer of the title to such property.

69 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting
70 with the handling and storage of raw materials at the plant site and continuing through the last step of
71 production where the product is finished or completed for sale and conveyed to a warehouse at the
72 production site, and also includes equipment and supplies used for production line testing and quality
73 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and
74 magazine printing when such activities are performed by the publisher of any newspaper or magazine
75 for sale daily or regularly at average intervals not exceeding three months.

76 The determination whether any manufacturing, mining, processing, refining or conversion activity is
77 industrial in nature shall be made without regard to plant size, existence or size of finished product
78 inventory, degree of mechanization, amount of capital investment, number of employees or other factors
79 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be
80 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the
81 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

82 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment
83 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are
84 intended to become real property, primarily constructed at a location other than the permanent site, built
85 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the
86 Virginia Department of Housing and Community Development, and shipped with most permanent
87 components in place to the site of final assembly. For purposes of this chapter, a modular building shall
88 not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and
89 certified under the provisions of the National Manufactured Housing Construction and Safety Standards
90 Act of 1974 (42 U.S.C. § 5401 et seq.).

91 "Modular building manufacturer" means a person or corporation who owns or operates a
92 manufacturing facility and is engaged in the fabrication, construction and assembling of building
93 supplies and materials into modular buildings, as defined in this section, at a location other than at the
94 site where the modular building will be assembled on the permanent foundation and may or may not be
95 engaged in the process of affixing the modules to the foundation at the permanent site.

96 "Modular building retailer" means any person who purchases or acquires a modular building from a
97 modular building manufacturer, or from another person, for subsequent sale to a customer residing
98 within or outside of the Commonwealth, with or without installation of the modular building to the
99 foundation at the permanent site.

100 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
101 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
102 applicable motor vehicle sales and use taxes have been paid.

103 "Occasional sale" means a sale of tangible personal property not held or used by a seller in the
104 course of an activity for which he is required to hold a certificate of registration, including the sale or
105 exchange of all or substantially all the assets of any business and the reorganization or liquidation of
106 any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in
107 number, scope and character to constitute an activity requiring the holding of a certificate of registration.

108 "Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for
109 purposes of this chapter only, shall also include Internet service regardless of whether the provider of
110 such service is also a telephone common carrier.

111 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
112 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
113 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body
114 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term
115 shall mean the same as the singular.

116 "Prewritten program" means a computer program that is prepared, held or existing for general or
117 repeated sale or lease, including a computer program developed for in-house use and subsequently sold
118 or leased to unrelated third parties.

119 "Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of
120 every kind and description, and all other equipment determined by the Tax Commissioner to constitute

121 *railroad rolling stock.*

122 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in
123 the form of tangible personal property or services taxable under this chapter, and shall include any such
124 transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale
125 must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale
126 for resale which is not in strict compliance with such regulations shall be personally liable for payment
127 of the tax.

128 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
129 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
130 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
131 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
132 a consideration; (ii) sales of tangible personal property to persons for resale when because of the
133 operation of the business, or its very nature, or the lack of a place of business in which to display a
134 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
135 adequate records, or because such persons are minors or transients, or because such persons are engaged
136 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
137 lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated
138 charge made for automotive refinish repair materials that are permanently applied to or affixed to a
139 motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring
140 vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such
141 tangible personal property to such persons and may refuse to issue certificates of registration to such
142 persons.

143 The term "transient" shall not include a purchaser of camping memberships, time-shares,
144 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
145 real estate, however created or sold and whether registered with the Commonwealth or not. Further, a
146 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a
147 specific real estate project on an ongoing basis throughout its term shall not be deemed a transient;
148 provided, however, that the term or time period involved is for seven years or more.

149 The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal
150 property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i)
151 at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the
152 transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the
153 purchaser manufactures goods.

154 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,
155 use, consumption, or storage to be used or consumed in the Commonwealth.

156 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional
157 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any
158 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal
159 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and
160 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on
161 the premises of the person furnishing, preparing, or serving such tangible personal property. A
162 transaction whereby the possession of property is transferred but the seller retains title as security for the
163 payment of the price shall be deemed a sale.

164 "Sales price" means the total amount for which tangible personal property or services are sold,
165 including any services that are a part of the sale, valued in money, whether paid in money or otherwise,
166 and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,
167 without any deduction therefrom on account of the cost of the property sold, the cost of materials used,
168 labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any
169 cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from
170 credit extended on sales of tangible personal property under conditional sale contracts or other
171 conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local
172 property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity
173 added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory
174 gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such
175 mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles
176 are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used
177 articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the
178 new or used articles and the credit for the used articles.

179 "Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring,
180 lighting, equipment, and all other property used to reduce contamination or to control airflow,
181 temperature, humidity, vibration, or other environmental conditions required for the integrated process of

182 semiconductor manufacturing.

183 "Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii)
184 the related accessories, components, pedestals, bases, or foundations used in connection with the
185 operation of the equipment, without regard to the proximity to the equipment, the method of attachment,
186 or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other
187 property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or
188 maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control
189 testing of product, materials, equipment, or processes; or the measurement of equipment performance or
190 production parameters regardless of where or when the quality control, testing, or measuring activity
191 takes place, how the activity affects the operation of equipment, or whether the equipment and supplies
192 come into contact with the product.

193 "Storage" means any keeping or retention of tangible personal property for use, consumption or
194 distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of
195 business.

196 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
197 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
198 shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible
199 personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt
200 from all other state and local utility taxes, and (ii) manufactured signs.

201 "Use" means the exercise of any right or power over tangible personal property incident to the
202 ownership thereof, except that it does not include the sale at retail of that property in the regular course
203 of business. The term does not include the exercise of any right or power, including use, distribution, or
204 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the
205 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the
206 Commonwealth via mail or telephone. The term does not include any sale determined to be a gift
207 transaction, subject to tax under § 58.1-604.6.

208 "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein
209 defined.

210 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to
211 those activities which are an integral part of the production of a product, including all steps of an
212 integrated manufacturing or mining process, but not including ancillary activities such as general
213 maintenance or administration. When used in relation to mining, it shall refer to the activities specified
214 above, and in addition, any reclamation activity of the land previously mined by the mining company
215 required by state or federal law.

216 "Video programmer" means a person or entity that provides video programming to end-user
217 subscribers.

218 "Video programming" means video and/or information programming provided by or generally
219 considered comparable to programming provided by a cable operator including, but not limited to,
220 Internet service.

221 § 58.1-609.3. Commercial and industrial exemptions.

222 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606
223 shall not apply to the following:

224 1. Personal property purchased by a contractor which is used solely in another state or in a foreign
225 country, which could be purchased by such contractor for such use free from sales tax in such other
226 state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or
227 country.

228 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
229 tangible personal property for resale where such industrial materials either enter into the production of or
230 become a component part of the finished product; (ii) industrial materials that are coated upon or
231 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for
232 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or
233 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or
234 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging
235 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to
236 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or
237 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
238 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
239 manufacturing, refining, mining or converting products for sale or resale. The provisions of this
240 subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In
241 addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment,
242 or any other tangible personal property used by a public service corporation in the generation of electric
243 power, except for raw materials that are inputs to production of electricity, including fuel.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas production, including gas, natural gas, and coalbed methane gas.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, and ending July 1, 2011, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a

305 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

306 The exemptions provided by this subdivision shall not be denied by reason of a failure,
307 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion
308 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or
309 any components thereof.

310 14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal
311 property used primarily in the integrated process of designing, developing, manufacturing, or testing a
312 semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor
313 equipment without regard to whether the property is actually contained in or used in a cleanroom
314 environment, touches the product, is used before or after production, or is affixed to or incorporated into
315 real estate.

316 15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

317 16. *Railroad rolling stock when sold or leased by the manufacturer thereof.*