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HOUSE BILL NO. 545

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 58.1-301, 58.1-609.3, and 58.1-3661 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 35 of Title 58.1 a section numbered 58.1-3508.4 and by adding a section numbered 59.1-547.1, relating to recycled materials; tax exemptions and incentives.

Patrons—Marshall, D.W. and Armstrong

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-301, 58.1-609.3, and 58.1-3661 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 35 of Title 58.1 a section numbered 58.1-3508.4 and by adding a section numbered 59.1-547.1 as follows:

§ 58.1-301. Conformity to Internal Revenue Code.

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on December 31, 2008, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code; and

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code.

However, the special depreciation allowance for certain property provided for under § 168(k) of the Internal Revenue Code shall be permitted for qualified items used in the production, processing, manufacturing, refining, retrieval, transportation or conversion of recycled building materials into articles of tangible personal property for resale.

§ 58.1-609.3. Commercial and industrial exemptions.

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

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

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

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

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

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

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

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

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

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

86 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
87 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
88 photocopying of products for sale or resale.

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

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

115 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a
116 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

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

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

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

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

17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware when part of a new investment of at least \$75 million in such exempt property, when such investment results in the creation of at least 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The exemption shall not apply to any computer software sold separately from the computer equipment, nor shall it apply to general building improvements or fixtures.

18. *Beginning July 1, 2010, and ending July 1, 2020, recycled building materials used in the production, processing, manufacturing, refining, retrieval, transportation or conversion of such materials into articles of tangible personal property for resale where such industrial materials either enter into production or become a component part of the finished product.*

§ 58.1-3508.4. *Separate classification of machinery and tools used directly in recycled building materials; certified recycling equipment, facilities or devices.*

Machinery and tools used directly in the production, processing, manufacturing, refining, retrieval, transportation or conversion of recycled building materials into articles of tangible personal property for resale shall constitute a classification for local taxation separate from other classifications of machinery and tools, as defined in § 58.1-3507. The governing body of any county, city, or town may levy a tax on such classification of property at a different rate from the tax levied on other machinery and tools. The rate of tax and the rate of assessment shall not exceed that applicable generally to machinery and tools.

§ 58.1-3661. Certified solar energy equipment, facilities or devices and certified recycling equipment, facilities or devices.

A. Certified solar energy equipment facilities or devices and certified recycling equipment, facilities, or devices, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real or personal property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation in the manner provided by subsection D.

B. As used in this section:

"Certified recycling equipment, facilities, or devices" means machinery and equipment which is certified by the Department of ~~Waste Management~~ *Environmental Quality* as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale recyclable items of tangible personal property at fixed locations in the Commonwealth. *Machinery and equipment used in the production, processing, manufacturing, refining, retrieval, transportation or conversion of recycled building materials into articles of tangible personal property for resale, where such industrial materials either enter into production or become a component part of the finished product, may constitute recycling equipment, facilities, or devices for purposes of this section, if certified as such by the Department of Environmental Quality.*

"Certified solar energy equipment, facilities or devices" means any property, including real or personal property, equipment, facilities, or devices, certified by the local certifying authority to be designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy such as petroleum products, natural gas, or electricity.

"Local certifying authority" means the local building departments or the Department of ~~Waste Management~~ *Environmental Quality*. The State Board of Housing and Community Development shall promulgate regulations setting forth criteria for certifiable solar energy equipment. The Department of ~~Waste Management~~ *Environmental Quality* shall promulgate regulations establishing criteria for recycling equipment, facilities, or devices.

C. Any person residing in a county, city or town which has adopted an ordinance pursuant to subsection A may proceed to have solar energy equipment, facilities or devices certified as exempt, wholly or partially, from taxation by applying to the local building department. If, after examination of such equipment, facility or device, the local building department determines that the unit primarily performs any of the functions set forth in subsection B and conforms to the requirements set by regulations of the Board of Housing and Community Development, such department shall approve and certify such application. The local department shall forthwith transmit to the local assessing officer those applications properly approved and certified by the local building department as meeting all requirements qualifying such equipment, facility or device for exemption from taxation. Any person aggrieved by a decision of the local building department may appeal such decision to the local board of building code appeals, which may affirm or reverse such decision.

D. Upon receipt of the certificate from the local building department or the Department of ~~Waste Management~~ *Environmental Quality* the local assessing officer shall, if such local ordinance is in effect, proceed to determine the value of such qualifying solar energy equipment, facilities or devices or certified recycling equipment, facilities, or devices. The exemption provided by this section shall be determined by applying the local tax rate to the value of such equipment, facilities or devices and subtracting such amount, wholly or partially, either (i) from the total real property tax due on the real property to which such equipment, facilities, or devices are attached or (ii) if such equipment, facilities, or devices are taxable as machinery and tools under § 58.1-3507, from the total machinery and tools tax due on such equipment, facilities, or devices, at the election of the taxpayer. This exemption shall be effective beginning in the next succeeding tax year, and shall be permitted for a term of not less than five years. In the event the locality assesses real estate pursuant to § 58.1-3292, the exemption shall be first effective when such real estate is first assessed, but not prior to the date of such application for exemption.

E. It shall be presumed for purposes of the administration of ordinances pursuant to this section, and for no other purposes, that the value of such qualifying solar energy equipment, facilities and devices is not less than the normal cost of purchasing and installing such equipment, facilities and devices.

§ 59.1-547.1. Recycling of building materials zone; job creation incentives.

A. A business firm that engages in the production, processing, manufacturing, refining, retrieval, transportation, or conversion of recycled building materials into articles of tangible personal property for resale, where such industrial materials either enter into production or become a component part of the finished product, shall be a qualified business firm for purposes of subsections B and C.

B. Local governments may provide for local incentives that address the economic conditions within their localities and that will help stimulate real property improvements and new job creation for a qualified business firm. Such local incentives include but are not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1. The extent and duration of such incentives shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. The locality may also provide for regulatory flexibility, including but not limited to: (a) special zoning districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other such other public incentives as determined by that locality to be desirable.

C. Any qualified business firm under this section shall be eligible for the following, provided the firm meets all relevant conditions and criteria for the respective grant or tax credit and, notwithstanding any other provision of law, shall not be prohibited from benefiting under all of the following: an enterprise zone job creation grant under § 59.1-547, an enterprise zone real property investment grant under § 59.1-548, and a major business facility job tax credit pursuant to § 58.1-439.