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HOUSE BILL NO. 1699

House Amendments in [] — February 4, 2013

A BILL to amend and reenact § 58.1-3506 of the Code of Virginia, relating to classification of tangible personal property; computer equipment and peripherals used in data centers.

Patron Prior to Engrossment—Delegate Comstock

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3506 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-3506. Other classifications of tangible personal property for taxation.**

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are not owned or operated by scheduled air carriers recognized under federal law, but not including any aircraft described in subdivision 4;

4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a new class of property. Such class of property shall not include any aircraft used for commercial purposes, including transportation and other services for a fee;

5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

6. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

7. Tangible personal property used in a research and development business;

8. Heavy construction machinery not used for business purposes, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers;

9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

10. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

11. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

13. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

14. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

15. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor

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59 vehicle, may be specially classified under this section, provided the volunteer rescue squad member or
60 volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the
61 commissioner of revenue, or other assessing officer, with a certification by the chief or head of the
62 volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department
63 who regularly responds to calls or regularly performs other duties for the rescue squad or fire
64 department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer
65 fire department member is identified. The certification shall be submitted by January 31 of each year to
66 the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other
67 assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on
68 the part of the member, to accept a certification after the January 31 deadline. In any county that
69 prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may
70 be certified and classified pursuant to this subsection when the vehicle certified as of the immediately
71 prior January date is transferred during the tax year;

72 16. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire
73 department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department
74 if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor
75 vehicle. One motor vehicle that is regularly used by each auxiliary volunteer fire department or rescue
76 squad member may be specially classified under this section. The auxiliary member shall furnish the
77 commissioner of revenue, or other assessing officer, with a certification by the chief or head of the
78 volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire
79 department who regularly performs duties for the rescue squad or fire department, and the motor vehicle
80 is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department
81 member and an auxiliary member are members of the same household, that household shall be allowed
82 no more than two special classifications under this subdivision or subdivision 15. The certification shall
83 be submitted by January 31 of each year to the commissioner of revenue or other assessing officer;
84 however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion,
85 and for good cause shown and without fault on the part of the member, to accept a certification after the
86 January 31 deadline;

87 17. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound
88 persons or provide transportation to senior or handicapped citizens in the community to carry out the
89 purposes of the nonprofit organization;

90 18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as
91 defined in § 46.2-1900, which are used for recreational purposes only, and privately owned trailers as
92 defined in § 46.2-100 which are designed and used for the transportation of horses except those trailers
93 described in subdivision A 11 of § 58.1-3505;

94 19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of,
95 one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as
96 certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written
97 statement to the commissioner of revenue or other assessing officer from the Department of Veterans
98 Services that the veteran has been so designated or classified by the Department of Veterans Services as
99 to meet the requirements of this section, and that his disability is service-connected. For purposes of this
100 section, a person is blind if he meets the provisions of § 46.2-100;

101 20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police
102 officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons
103 who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms
104 of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is
105 regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially
106 classified under this section. In order to qualify for such classification, any auxiliary police officer who
107 applies for such classification shall identify the vehicle for which this classification is sought, and shall
108 furnish the commissioner of revenue or other assessing officer with a certification from the governing
109 body that has appointed such auxiliary police officer or from the official who has appointed such
110 auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who
111 regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for
112 which the classification is sought is the vehicle that is regularly used for that purpose. The certification
113 shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer;
114 however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion,
115 and for good cause shown and without fault on the part of the member, to accept a certification after the
116 January 31 deadline;

117 21. Until the first to occur of June 30, 2019, or the date that a special improvements tax is no longer
118 levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created
119 pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in
120 manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District,

provided that such business personal property is put into service within the District on or after July 1, 1999;

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

24. Furniture, office, and maintenance equipment, exclusive of motor vehicles, that are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and that is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

25. Motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

26. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 18, except for subdivision A 17, of § 58.1-3503;

27. Programmable computer equipment and peripherals employed in a trade or business;

28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

31. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

32. Motor vehicles (i) owned by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve, volunteer, or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

33. Forest harvesting and silvicultural activity equipment;

34. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things;

35. Boats or watercraft weighing less than five tons, used for business purposes only;

36. Boats or watercraft weighing five tons or more, used for business purposes only;

37. Tangible personal property which is owned and operated by a service provider who is not a CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet service. For purposes of this subdivision, "wireless broadband Internet service" means a service that enables customers to access, through a wireless connection at an upload or download bit rate of more than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of services sold to customers;

182 38. Low-speed vehicles as defined in § 46.2-100;
183 39. Motor vehicles with a seating capacity of not less than 30 persons, including the driver;
184 40. Motor vehicles powered solely by electricity; and
185 41. Tangible personal property designed and used primarily for the purpose of manufacturing a
186 product from renewable energy as defined in § 56-576; and
187 42. *Computer equipment and peripherals used in a data center. [For purposes of this subdivision,*
188 *"data center" means a facility whose primary services are the storage, management, and processing of*
189 *digital data and is used to house (i) computer and network systems, including associated components*
190 *such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii)*
191 *systems for monitoring and managing infrastructure performance; (iii) equipment used for the*
192 *transformation, transmission, distribution, or management of at least one megawatt of capacity of*
193 *electrical power and cooling, including substations, uninterruptible power supply systems, all electrical*
194 *plant equipment, and associated air handlers; (iv) internet-related equipment and services; (v) data*
195 *communications connections; (vi) environmental controls; (vii) fire protection systems; and (viii) security*
196 *systems and services.]*
197 B. The governing body of any county, city or town may levy a tax on the property enumerated in
198 subsection A at different rates from the tax levied on other tangible personal property. The rates of tax
199 and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22
200 through 24, and 26 through 41 42 of subsection A, not exceed that applicable to the general class of
201 tangible personal property, (ii) for purposes of subdivisions A 7, A 9, A 21, and A 25, not exceed that
202 applicable to machinery and tools, and (iii) for purposes of subdivision A 10, equal that applicable to
203 real property. *If computer equipment and peripherals used in a data center [is included in multiple*
204 *classifications under subsection A, then the rate of tax shall be at the lowest rate assigned to such*
205 *classification could be included in classifications set forth in subdivision A 11, 26, 27, or 42, then the*
206 *computer equipment and peripherals used in a data center shall be taxed at the lowest rate available*
207 *under subdivision A 11, 26, 27, or 42] .*
208 C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is
209 defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed
210 for tangible personal property taxes by a county, city, or town receiving a payment from the
211 Commonwealth under Chapter 35.1 (§ 58.1-3523 *et seq.*) for providing tangible personal property tax
212 relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle
213 at a rate not to exceed the rates of tax and rates of assessment required under such chapter.