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**HOUSE BILL NO. 1738****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance  
on February 1, 2017)

(Patron Prior to Substitute—Delegate Anderson)

*A BILL to amend and reenact §§ 58.1-609.3 and 58.1-609.10 of the Code of Virginia, relating to retail sales and use tax; aviation parts and supplies.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-609.3 and 58.1-609.10 of the Code of Virginia are amended and reenacted as follows:****§ 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, or for machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire June 30, 2027.

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~~ *Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all 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

60 products.

61 9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any  
62 equipment that has not been certified to the Department of Taxation by a state certifying authority  
63 pursuant to such section.

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

66 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of  
67 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or  
68 photocopying of products for sale or resale.

69 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,  
70 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,  
71 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of  
72 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as  
73 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall  
74 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a  
75 usable condition consistent with commercial practices, and the gathering and transportation of raw  
76 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and  
77 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their  
78 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or  
79 in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

109 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers  
110 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter  
111 ending November 2007, for the processing, storage, retrieval, or communication of data, including but  
112 not limited to servers, routers, connections, and other enabling hardware when part of a new investment  
113 of at least \$75 million in such exempt property, when such investment results in the creation of at least  
114 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such  
115 investment was made in accordance with a memorandum of understanding with the Virginia Economic  
116 Development Partnership Authority entered into or amended between January 1, 2008, and December  
117 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to  
118 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The  
119 exemption shall not apply to any computer software sold separately from the computer equipment, nor  
120 shall it apply to general building improvements or fixtures.

121 18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software

purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center that (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009, of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption, including a data center operator on behalf of itself and its tenants, must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying data center or data center tenant claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

19. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to subdivision 1 or 2 of § 4.1-208, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing, or conversion into beer where such materials either enter into the production of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

**§ 58.1-609.10. Miscellaneous 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. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised,

183 edited, reformatted or copied documents, including but not limited to documents stored on or transmitted  
184 by electronic media, to its client or to third parties in the course of the professional's rendition of  
185 services to its clientele.

186 8. School lunches sold and served to pupils and employees of schools and subsidized by government;  
187 school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use  
188 by students attending a college or other institution of learning, when sold (i) by such institution of  
189 learning or (ii) by any other dealer, when such textbooks have been certified by a department or  
190 instructor of such institution of learning as required textbooks for students attending courses at such  
191 institution.

192 9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases,  
193 and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or  
194 other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed  
195 free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed  
196 physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and  
197 fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by  
198 a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his  
199 professional practice, regardless of whether such practice is organized as a sole proprietorship,  
200 partnership, or professional corporation, or any other type of corporation in which the shareholders and  
201 operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician  
202 assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for  
203 use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise  
204 exempt under this section; and samples of prescription drugs and medicines and their packaging  
205 distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and  
206 Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and  
207 drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of  
208 § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed  
209 to be the user or consumer of all such medicines and drugs.

210 10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances,  
211 catheters, urinary accessories, other durable medical equipment and devices, and related parts and  
212 supplies specifically designed for those products; and insulin and insulin syringes, and equipment,  
213 devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when  
214 such items or parts are purchased by or on behalf of an individual for use by such individual. Durable  
215 medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily  
216 used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or  
217 injury, and (iv) is appropriate for use in the home.

218 11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

219 12. Special equipment installed on a motor vehicle when purchased by a handicapped person to  
220 enable such person to operate the motor vehicle.

221 13. Special typewriters and computers and related parts and supplies specifically designed for those  
222 products used by handicapped persons to communicate when such equipment is prescribed by a licensed  
223 physician.

224 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,  
225 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and  
226 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and  
227 constituent elements and ingredients.

228 b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to  
229 regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision  
230 shall not apply to cosmetics.

231 15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt  
232 from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political  
233 subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

234 16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under  
235 § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant  
236 to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church  
237 membership while meeting together in a single location and (ii) in the libraries, offices, meeting or  
238 counseling rooms or other rooms in the public church buildings used in carrying out the work of the  
239 church and its related ministries, including kindergarten, elementary and secondary schools. The  
240 exemption for such churches shall also include baptistries; bulletins, programs, newspapers and  
241 newsletters that do not contain paid advertising and are used in carrying out the work of the church;  
242 gifts including food for distribution outside the public church building; food, disposable serving items,  
243 cleaning supplies and teaching materials used in the operation of camps or conference centers by the  
244 church or an organization composed of churches that are exempt under this subdivision and which are

used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

20. *Beginning July 1, 2018, and ending July 1, 2022, parts, engines, and supplies used for maintaining, repairing, or reconditioning aircraft or any aircraft's avionics system, engine, or component parts. This exemption shall not apply to tools and other equipment not attached to or that does not become a part of the aircraft. For purposes of this subdivision, "aircraft" shall include both manned and unmanned systems.*