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SENATE BILL NO. 297

Offered January 10, 2018

Prefiled January 8, 2018

A *BILL to amend and reenact § 58.1-609.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-3108.1, relating to incentives for communications companies; provision of wireless broadband services.*

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-3108.1 as follows:

§ 3.2-3108.1. Grants for purchase of wireless and broadband service equipment.

A. Beginning July 1, 2019, the Commission shall make available at least \$10 million in each fiscal year from the Fund for grants in an amount equaling 30 percent of all expenditures made for the purchase and installation of wireless and broadband equipment used to provide communications services in rural areas in the Southwest and Southside regions of the Commonwealth. For purposes of awarding grants, "rural areas" means any locality with an average overall population density of less than or equal to 120 persons per square mile.

B. The Commission shall develop guidelines setting forth the general requirements of qualifying for a grant under this section, including a wireless and broadband service equipment grant application form. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 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

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59 tangible personal property used directly in the building, conversion or repair of the ships or vessels
60 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
61 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
62 exclusively or principally in interstate or foreign commerce.

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

65 6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal property
66 sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier
67 providing scheduled air service on a continuing basis to one or more Virginia airports at least one day
68 per week, for use or consumption by such airline directly in the rendition of its common carrier service.

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

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

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

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

79 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
80 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
81 photocopying of products for sale or resale.

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

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

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

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

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

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

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

122 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
123 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
124 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
125 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
126 of at least \$75 million in such exempt property, when such investment results in the creation of at least
127 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
128 investment was made in accordance with a memorandum of understanding with the Virginia Economic
129 Development Partnership Authority entered into or amended between January 1, 2008, and December
130 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
131 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The
132 exemption shall not apply to any computer software sold separately from the computer equipment, nor
133 shall it apply to general building improvements or fixtures.

134 18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software
135 purchased or leased for the processing, storage, retrieval, or communication of data, including but not
136 limited to servers, routers, connections, and other enabling hardware, including chillers and backup
137 generators used or to be used in the operation of the equipment exempted in this paragraph, provided
138 that such computer equipment or enabling software is purchased or leased for use in a data center that
139 (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009,
140 of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs
141 by the data center operator and the tenants of the data center, collectively, associated with the operation
142 or maintenance of the data center provided that such jobs pay at least one and one-half times the
143 prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new
144 jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at
145 least 150 percent of the average statewide unemployment rate for such year as determined by the
146 Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies
147 to the data center operator and the tenants of the data center if they collectively meet the requirements
148 listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption,
149 including a data center operator on behalf of itself and its tenants, must enter into a memorandum of
150 understanding with the Virginia Economic Development Partnership Authority that at a minimum
151 provides the details for determining the amount of capital investment made and the number of new jobs
152 created, the timeline for achieving the capital investment and new job goals, the repayment obligations
153 should those goals not be achieved, and any conditions under which repayment by the qualifying data
154 center or data center tenant claiming the exemption may be required. In addition, the exemption shall
155 apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement,
156 or replace computer equipment or enabling software purchased or leased in the initial investment. The
157 exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title
158 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building
159 improvements or other fixtures.

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

166 20. *Tangible personal property sold or leased to a telecommunications company, as defined in §*
167 *58.1-400.1, for use or consumption by such company directly in the rendition of its public service, as*
168 *follows:*

- 169 a. *From January 1, 2019, through June 30, 2019, 25 percent of the purchase price;*
170 b. *From July 1, 2019, through June 30, 2020, 50 percent of the purchase price;*
171 c. *From July 1, 2020, through June 30, 2021, 75 percent of the purchase price;*
172 d. *From July 1, 2021, and thereafter, 100 percent of the purchase price.*