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SENATE BILL NO. 299

Offered January 10, 2018

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A BILL to amend and reenact §§ 58.1-609.3 and 58.1-609.12 of the Code of Virginia, relating to the Department of Taxation; reports on sales and use tax exemptions.

Patron—Norment

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.3 and 58.1-609.12 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. 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,

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59 and supplies and materials used directly in maintaining and preparing textile products for rental or
60 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile
61 products.

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

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

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

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

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

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

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

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

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

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

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

On and after July 1, 2018, any taxpayer that purchases tax-exempt computer equipment or enabling software pursuant to this subdivision shall submit to the Department a list of such purchases, including the purchase prices, made during the previous three taxable years. After the initial report by the taxpayer, such taxpayer shall submit a new report every three years.

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.

§ 58.1-609.12. Reports to General Assembly on sales and use tax exemptions.

A. 1. The Tax Commissioner shall determine the fiscal, economic and policy impact of each sales and use tax exemption set out in §§ ~~58.1-609.10 and 58.1-609.11~~ *this chapter* and report such findings to the ~~chairmen~~ Chairmen of the House and Senate Finance Committees and the ~~chairman~~ Chairman of the House Appropriations Committee no later than December 1 of each year. ~~Subgroups~~ *Except as set forth below, subgroups* of the exemptions shall be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner, ~~excluding the sales and use tax exemptions for nonprofit entities provided by § 58.1-609.11, which shall be reviewed and reported on annually.~~ When such reports have been completed for each subgroup of the sales and use tax exemptions, the Tax Commissioner shall repeat the process beginning with the subgroup of exemptions for which a report was made in ~~2007~~ 2018. No exemption shall be analyzed under the provisions of this section more frequently than once every five years, excluding the annual fiscal impact of the sales and use tax exemptions for nonprofit entities, which shall be studied each year.

2. *Notwithstanding the provisions of subdivision 1, the sales and use tax exemption for nonprofit entities provided by § 58.1-609.11 shall be reviewed and reported on annually, and the sales and use tax exemption for computer equipment or enabling software purchased for certain data centers provided by subdivision 18 of § 58.1-609.3 shall be reviewed and reported on every three years.*

B. When the Tax Commissioner investigates and analyzes the sales and use tax exemptions set out in § ~~58.1-609.10~~ *this chapter*, the following information shall be considered and included in the report:

1. Estimate of ~~foregone~~ *foregone* state and local revenues as a direct result of the exemption;
2. Beneficiaries of the exemption;
3. Direct or indirect local, state, or federal government assistance received by the persons or entities granted the exemption, to the extent such information is reasonably available;
4. The extent to which the comparable person, entity, property, service, or industry is exempt from

182 the retail sales and use tax in other states, particularly states contiguous to the Commonwealth;
183 5. Any external statutory, constitutional, or judicial mandates supporting the exemption;
184 6. Other Virginia taxes to which the person, entity, property, service, or industry is subject;
185 7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and
186 8. Other criteria, facts or circumstances that may be relevant to the exemption.
187 C. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.11, he
188 shall report on the extent to which the person, entity, property, service, or industry is exempt from the
189 retail sales and use tax in other states, particularly states contiguous to the Commonwealth.
190 D. For purposes of this section, the Department of Taxation and the Department of Agriculture and
191 Consumer Services shall be allowed to share information when necessary to supplement the information
192 required to be reported under this section.