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HOUSE BILL NO. 2640

Offered January 10, 2019

A *BILL to amend and reenact § 58.1-3507 of the Code of Virginia, relating to machinery and tools tax; definition of original total capitalized cost.*

Patron—Byron

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3507 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in valuation, hearing.

A. Machinery and tools, except idle machinery and tools as defined in subsection D and machinery and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property. Idle machinery and tools are taxable as capital under § 58.1-1101.

B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest. In valuing machinery and tools, the commissioner of the revenue shall, upon the written request of the taxpayer, consider any bona fide, independent appraisal presented by the taxpayer.

Whenever the commissioner of the revenue proposes to change the means of valuing machinery and tools, such proposed change shall be published in a newspaper having general circulation in the affected locality at least 30 days before the proposed change would take effect and the citizens of the locality shall be allowed to submit written comments, during the 30-day period, to the commissioner of the revenue regarding the proposed change.

C. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in those businesses set forth in subsection A shall be taxed as tangible personal property by the county, city or town in accordance with the provisions of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in those businesses set forth in subsection A shall be included in and taxed as machinery and tools.

D. For purposes of this section:

"Idle machinery and tools" means machinery and tools that (i) (a) have been discontinued in use continuously for at least one year prior to any tax day or (b) on and after January 1, 2007, have been specifically identified in writing by the taxpayer to the commissioner of the revenue or other assessing official, on or before April 1 of such year, as machinery and tools that the taxpayer intends to withdraw from service not later than the next succeeding tax day and (ii) are not in use on the tax day and no reasonable prospect exists that such machinery and tools will be returned to use during the tax year.

"Original total capitalized cost" means:

1. *If the machinery and tools were acquired in a bona fide, arm's-length transaction, the cost of the machinery and tools when acquired by the current owner of the machinery and tools plus any amount incurred by such owner to extend the useful life of the machinery and tools. If the current owner acquired the machinery and tools from anyone other than a member of the current owner's affiliated group, as defined in § 58.1-3700.1, such acquisition shall be presumed to be a bona fide, arm's-length transaction unless the contrary is shown.*

2. *If the machinery and tools were not acquired in a bona fide, arm's-length transaction, the prior owner's original total capitalized cost. If the current owner acquired the machinery and tools from a member of the current owner's affiliated group, such acquisition shall be presumed not to be a bona fide, arm's-length transaction unless the contrary is shown.*

E. In the event that any machinery and tools taken out of use subsequent to January 1, 2007, are returned to use after having been previously classified as idle machinery and tools pursuant to clause (i) (b) of subsection D, the taxpayer shall identify such machinery and tools to the commissioner of the revenue or other assessing official in writing on or before the next return due date without extension, and such machinery and tools shall be subject to tax in accordance with the procedures provided in § 58.1-3903 in the same manner as if such machinery and tools had been in use on the tax day of the

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59 year in which such return to use occurs. Any interest otherwise payable pursuant to applicable law or
60 ordinance shall apply to taxes imposed pursuant to this subsection and paid after the due date, without
61 regard to the fault of the taxpayer or lack thereof. Notwithstanding the provisions of § 58.1-3903, if the
62 taxpayer has provided timely written notice of return to use in accordance with the provisions of this
63 subsection, no penalty shall be levied with respect to any tax liability arising as a result of the return to
64 use of machinery and tools classified as idle and actually idle prior to such return to use.

65 F. The Department of Taxation shall promulgate guidelines for the use of local governments in
66 applying the provisions of this section related to idle machinery and tools. In preparing such guidelines,
67 the Department shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et
68 seq.) for guidelines promulgated on or before January 1, 2008, but shall cooperate with and seek the
69 counsel of local officials and interested groups. After January 1, 2008, such guidelines shall be accorded
70 the weight of a regulation under § 58.1-205 and any amendments to such guidelines shall be subject to
71 the Administrative Process Act.

72 G. The Tax Commissioner shall have the authority to issue advisory written opinions in specific
73 cases to interpret the provisions of this section related to idle machinery and tools and the guidelines
74 issued pursuant to subsection F; however, the Tax Commissioner shall not be required to interpret any
75 local ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an
76 interpretation of any other tax law.