

DEPARTMENT OF TAXATION

2018 Fiscal Impact Statement

1. **Patron** Todd E. Pillion

3. **Committee** House Finance

4. **Title** Intangible personal property; personal property used in manufacturing.

2. **Bill Number** HB 1557

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would clarify that, in order for tangible personal property used in manufacturing to be classified as intangible personal property, it must be used directly in manufacturing in the facility in which it is located.

Current law does not require that the property be used directly in manufacturing in order to be considered intangible, nor does it require that the property be in the locality in which manufacturing actually occurs.

The effective date is not specified.

6. Budget amendment necessary: No.

7. No Fiscal Impact. (See Line 8.)

8. Fiscal implications:

This bill may increase local property tax revenue in some localities. It would have no impact on state revenue.

9. Specific agency or political subdivisions affected:

Cities, counties and towns.

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Certain tangible personal property is classified as intangible property if it is used in a manufacturing business. Although this classification has the effect of exempting the property from local property tax, the Virginia Supreme Court has held that the law

classifies the property for state and local tax purposes and reserves it for state taxation. Until 1984, a state capital tax was imposed on such property. Therefore, the classification law is strictly construed against the state, instead of strictly construed against the taxpayer as with exemptions.

Accordingly, the Supreme Court has held in several cases that certain tangible personal property is classified as intangible if it is used directly or indirectly in manufacturing, in whole or in part, whether the property is owned by the manufacturer or a lessor, and regardless of where the manufacturing activity occurs. See *City of Winchester v. American Woodmark Corporation*, 250 Va. 451 (1995) and *City of Martinsville v. Tultex Corporation*, 238 Va. 59 (1989).

Proposal

This bill would overturn the holdings in *American Woodmark* and *Tultex* respecting the classification of certain tangible personal property as intangible property by requiring the property to be used directly in manufacturing and that the manufacturing activity occur in a facility in the same locality where the property is located.

Other Legislation

Senate Bill 879 is identical to this bill.

cc : Secretary of Finance

Date: 1/25/2018 JPJ
HB1557F161