

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 789

*An Act to amend and reenact §§ 58.1-439.7, 58.1-609.3, and 58.1-3507 of the Code of Virginia, relating to advanced recycling; incentives in income tax, sales tax, and machinery and tools tax.*

[S 590]

Approved April 7, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-439.7, 58.1-609.3, and 58.1-3507 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-439.7. Tax credit for purchase of machinery and equipment used for advanced recycling and processing recyclable materials.**

A. 1. For taxable years beginning on and after January 1, 1999, but before January 1, 2020 2025, a taxpayer shall be allowed a credit against the tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, in an amount equal to 20 percent of the purchase price paid during the taxable year for (i) machinery and equipment used predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound, or produce items of tangible personal property from recyclable materials, within the Commonwealth, for sale and (ii) *machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling*. For purposes of determining "purchase price paid" under this section, the taxpayer may use the original total capitalized cost of such machinery and equipment, less capitalized interest. *For purposes of this section, "advanced recycling" means the operation of a single-stream or multi-stream recycling plant that converts waste materials into new materials for resale by processing them and breaking them down into their raw constituents. "Advanced recycling" includes the operation of a materials recovery facility or materials reclamation facility that receives, separates, and prepares recyclable materials for sale to end-user manufacturers.*

2. The Department of Environmental Quality shall certify that such machinery and equipment are integral to the recycling process before the taxpayer shall be allowed the tax credit under this section. The taxpayer shall also submit purchase receipts and invoices as may be necessary to confirm the taxpayer's statement of purchase price paid, with the income tax return to verify the amount of purchase price paid for the recycling machinery and equipment.

3. No taxpayer shall be denied the credit under this section based solely on another person's use of the tangible personal property produced by the taxpayer, provided that the tangible personal property was sold by the taxpayer to an unaffiliated person in an arm's-length sale.

4. No credit shall be allowed under this section for machinery and equipment unless the machinery and equipment manufacture, process, compound, or produce items of tangible personal property from recyclable materials.

B. The total credit allowed under this section in any taxable year shall not exceed 40 percent of the Virginia income tax liability of such taxpayer.

C. Any tax credit not used for the taxable year in which the purchase price on recycling machinery and equipment was paid may be carried over for credit against the taxpayer's income taxes in the 10 succeeding taxable years until the total credit amount is used.

D. The Department of Taxation shall administer the tax credits under this section. Beginning with credits allowable for taxable year 2015, in no case shall the Department issue more than \$2 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. A taxpayer shall not be allowed to claim any tax credit unless it has applied to the Department of Environmental Quality for certification as described in subdivision A 2 and the Department of Environmental Quality has issued a written certification stating that the machinery and equipment purchased are integral to the recycling process. If the amount of tax credits approved under this section by the Department of Taxation for any taxable year exceeds \$2 million, the Department shall apportion the credits by dividing \$2 million by the total amount of tax credits so approved, to determine the percentage of otherwise allowed tax credits each taxpayer shall receive.

E. In the event a corporation converts to a partnership, limited liability company, or electing small business corporation (S corporation), such business entity shall be entitled to any unused credits of the corporation. Credits earned by a partnership, limited liability company, electing small business corporation (S corporation), or a predecessor corporation entitled to such credits, shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

**§ 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, 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 products.

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

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

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

12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their

use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware when part of a new investment of at least \$75 million in such exempt property, when such investment results in the creation of at least 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The 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 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.

20. *If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for processing, manufacturing, or conversion for resale where such materials either are recycled or recovered; and (iii) materials, including containers, labels, sacks, cans, boxes, drums, or bags used for packaging recycled or recovered material for shipment or resale.*

**§ 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, *or a business primarily engaged in advanced recycling, as defined in § 58.1-439.7*, 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. "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.

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

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

the weight of a regulation under § 58.1-205 and any amendments to such guidelines shall be subject to the Administrative Process Act.

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

**2. That the provisions of this act amending § 58.1-439.7 of the Code of Virginia shall apply to taxable years beginning on and after January 1, 2020, and that the provisions of this act amending § 58.1-3507 of the Code of Virginia shall apply to taxable years beginning on and after January 1, 2021.**