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## SENATE BILL NO. 1425

Offered January 14, 2021

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia, relating to sales and use tax exemption for data centers.

Patrons—Ruff and Pillion; Delegate: Kilgore

Referred to Committee on Finance and Appropriations

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

**1. That § 58.1-609.3 of the Code of Virginia is 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, 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

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59 products.

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

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

65 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of  
66 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or  
67 photocopying of products for sale or resale.

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

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

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

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

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

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

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

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

120 18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software

121 purchased or leased for the processing, storage, retrieval, or communication of data, including but not  
 122 limited to servers, routers, connections, and other enabling hardware, including chillers and backup  
 123 generators used or to be used in the operation of the equipment exempted in this paragraph, provided  
 124 that such computer equipment or enabling software is purchased or leased for use in a data center,  
 125 *which includes any data center facilities located in the same locality as the data center that are under*  
 126 *common ownership or affiliation of the data center operator*, that (i) is located in a Virginia locality;;  
 127 (ii) results in a new capital investment on or after January 1, 2009, of at least \$150 million;; and (iii)  
 128 results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and  
 129 the tenants of the data center, collectively, associated with the operation or maintenance of the data  
 130 center provided that such jobs pay at least one and one-half times the prevailing average wage in that  
 131 locality. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located  
 132 in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average  
 133 statewide unemployment rate for such year as determined by the Virginia Economic Development  
 134 Partnership or is located in an enterprise zone. *If a data center operator qualifies for an exemption*  
 135 *under this subdivision and seeks to qualify for an exemption in a locality other than the one in which it*  
 136 *is located, such data center operator shall not be required to meet the job creation requirement of*  
 137 *clause (iii) for purposes of qualifying in the other locality but shall remain subject to the requirements*  
 138 *of clauses (i) and (ii).* This exemption applies to the data center operator and the tenants of the data  
 139 center if they collectively meet the requirements listed in this section. Prior to claiming such exemption,  
 140 any qualifying person claiming the exemption, including a data center operator on behalf of itself and its  
 141 tenants, must enter into a memorandum of understanding with the Virginia Economic Development  
 142 Partnership Authority that at a minimum provides the details for determining the amount of capital  
 143 investment made and the number of new jobs created, the timeline for achieving the capital investment  
 144 and new job goals, the repayment obligations should those goals not be achieved, and any conditions  
 145 under which repayment by the qualifying data center or data center tenant claiming the exemption may  
 146 be required. *Each memorandum of understanding shall provide for annual reporting of total*  
 147 *employment, total capital investment, total salaries, qualifying expenses, and total tax benefit. Such data*  
 148 *shall be aggregated and published annually by the Department of Taxation in consultation with the*  
 149 *Virginia Economic Development Partnership Authority.* In addition, the exemption shall apply to any  
 150 such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace  
 151 computer equipment or enabling software purchased or leased in the initial investment. The exemption  
 152 shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is  
 153 sold or leased separately from the computer equipment, nor shall it apply to general building  
 154 improvements or other fixtures.

155 19. (Effective until July 1, 2021) If the preponderance of their use is in the manufacture of beer by a  
 156 brewer licensed pursuant to subdivision 1 or 2 of § 4.1-208, (i) machinery, tools, and equipment, or  
 157 repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future  
 158 processing, manufacturing, or conversion into beer where such materials either enter into the production  
 159 of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans,  
 160 bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

161 19. (Effective July 1, 2021) If the preponderance of their use is in the manufacture of beer by a  
 162 brewer licensed pursuant to subdivision 3 or 4 of § 4.1-206.1, (i) machinery, tools, and equipment, or  
 163 repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future  
 164 processing, manufacturing, or conversion into beer where such materials either enter into the production  
 165 of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans,  
 166 bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

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

172 **2. That the provisions of this act eliminating the job creation requirement for the development of**  
 173 **subsequent data centers in other Virginia localities shall apply to any data center operator that**  
 174 **develops its first data center in the Commonwealth after July 1, 2021, or that has not yet reached**  
 175 **the performance date of any existing memorandum of understanding with the Virginia Economic**  
 176 **Development Partnership.**