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SENATE BILL NO. 192

Offered January 10, 2024

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

Patrons—Subramanyam and Favola

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 products.

9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment

59 that has not been certified to the Department of Taxation by a state certifying authority or subdivision  
60 certifying authority pursuant to such section.

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

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

66 12. From July 1, 1994, and ending July 1, 2024, raw materials, fuel, power, energy, supplies, machinery  
67 or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing  
68 of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural  
69 gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.2-1600. For the purposes  
70 of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing,  
71 dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial  
72 practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted  
73 into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements  
74 thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or  
75 processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or  
76 federal law.

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

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

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

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

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

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

103 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a  
104 Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November  
105 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers,  
106 routers, connections, and other enabling hardware when part of a new investment of at least \$75 million in  
107 such exempt property, when such investment results in the creation of at least 100 new jobs paying at least  
108 twice the prevailing average wage in that locality, so long as such investment was made in accordance with a  
109 memorandum of understanding with the Virginia Economic Development Partnership Authority entered into  
110 or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such  
111 computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or  
112 leased in the initial investment. The exemption shall not apply to any computer software sold separately from  
113 the computer equipment, nor shall it apply to general building improvements or fixtures.

114 18. a. Beginning July 1, 2010, and ending June 30, 2035, except as provided in subdivision 19, computer  
115 equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication  
116 of data, including but not limited to servers, routers, connections, and other enabling hardware, including  
117 chillers and backup generators used or to be used in the operation of the equipment exempted in this  
118 paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a  
119 data center, which includes any data center facilities located in the same locality as the data center that are

120 under common ownership or affiliation of the data center operator, that (i) is located in a Virginia locality; (ii)  
 121 results in a new capital investment on or after January 1, 2009, of at least \$150 million; and (iii) results in the  
 122 creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data  
 123 center, collectively, associated with the operation or maintenance of the data center provided that such jobs  
 124 pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50  
 125 new jobs is reduced to 10 new jobs if the data center is located in a distressed locality at the time of the  
 126 execution of a memorandum of understanding with the Virginia Economic Development Partnership  
 127 Authority. Additionally, the requirement of a \$150 million capital investment shall be reduced to \$70 million  
 128 for data centers that qualify for the reduced jobs requirement.

129 This exemption applies to the data center operator and the tenants of the data center if they collectively  
 130 meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming  
 131 the exemption, including a data center operator on behalf of itself and its tenants, must enter into a  
 132 memorandum of understanding with the Virginia Economic Development Partnership Authority that at a  
 133 minimum provides the details for determining the amount of capital investment made and the number of new  
 134 jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations  
 135 should those goals not be achieved, and any conditions under which repayment by the qualifying data center  
 136 or data center tenant claiming the exemption may be required. *Such memorandum of understanding shall*  
 137 *include or, if already in effect prior to July 1, 2024, shall be amended to include the data center operator's*  
 138 *method of demonstrating compliance with energy procurement and use requirements described in subdivision*  
 139 *c.* In addition, the exemption shall apply to any such computer equipment or enabling software purchased or  
 140 leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in  
 141 the initial investment. The exemption shall not apply to any other computer software otherwise taxable under  
 142 Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to  
 143 general building improvements or other fixtures.

144 b. For purposes of this subdivision 18, "distressed locality" means:

145 (1) From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for  
 146 calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year  
 147 and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year;  
 148 and

149 (2) From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent  
 150 calendar year for which such data is available that is greater than the final statewide average unemployment  
 151 rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is  
 152 available that exceeds the statewide average poverty rate for that year.

153 c. *Beginning July 1, 2024, any purchases or leases shall be exempt pursuant to this subdivision 18 only if*  
 154 *the data center operator demonstrates that (i) its facilities either (a) have a power usage effectiveness score*  
 155 *of no greater than 1.2 or (b) for data centers co-located in buildings with other commercial uses that make*  
 156 *up more than 20 percent of the square footage of the building, achieve an energy efficiency level of no less*  
 157 *than the most efficient 15 percent of similar buildings constructed in the previous five years and (ii) by*  
 158 *January 1, 2027, it will procure carbon-free renewable energy and associated renewable energy certificates*  
 159 *from facilities located within the area of the transmission grid serving Virginia equal to 90 percent of its*  
 160 *electricity requirements, measured on an hourly basis, or that its electricity will be otherwise derived from*  
 161 *non-carbon-emitting, renewable sources. The Virginia Economic Development Partnership Authority shall*  
 162 *establish guidelines based on accepted industry and federal government standards for calculating the power*  
 163 *usage effectiveness (PUE) score and determining analogous buildings for comparison pursuant to clause (i).*  
 164 *In no case shall a qualifying data center use diesel fuel for on-site power generation.*

165 d. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such  
 166 operator shall be required to submit an annual report to the Virginia Economic Development Partnership  
 167 Authority on behalf of itself and, if applicable, its participating tenants that includes their employment levels,  
 168 capital investments, average annual wages, qualifying expenses, and tax benefit; *demonstration of their*  
 169 *compliance with energy procurement and use requirements;* and such other information as the Virginia  
 170 Economic Development Partnership Authority determines is relevant, pursuant to procedures developed by  
 171 the Virginia Economic Development Partnership Authority. The annual report shall be submitted by the data  
 172 center operator in a format prescribed by the Virginia Economic Development Partnership Authority. The  
 173 Virginia Economic Development Partnership Authority shall share all information collected with the  
 174 Department.

175 The Department, in collaboration with the Virginia Economic Development Partnership Authority, shall  
 176 publish a biennial report on the exemption that shall include aggregate information on qualifying expenses  
 177 claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes  
 178 direct and indirect jobs created by data center investment, state and local tax revenues generated, and any  
 179 other information the Department and the Virginia Economic Development Partnership Authority deem  
 180 appropriate to demonstrate the costs and benefits of the exemption. The report shall not include, and the

181 Department and the Virginia Economic Development Partnership Authority shall not publish or disclose, any  
182 such information if it is unaggregated or if such report or publication could be used to identify a business or  
183 individual. The Department shall submit the report to the Chairmen of the Senate Committee on Finance and  
184 Appropriations and the House Committees on Appropriations and Finance. The Virginia Economic  
185 Development Partnership Authority may publish on its website and distribute annual information indicating  
186 the job creation and ranges of capital investments made by a data center operator and, if applicable, its  
187 participating tenants, in a format to be developed in consultation with data center operators.

188 19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in  
189 subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software by or  
190 on behalf of data center operators for use in data centers in the Commonwealth that are under common  
191 ownership or affiliation with the data center operator as set forth in this subdivision 19. For purposes of this  
192 subdivision 19, a data center operator shall be considered to own a data center if it is operated on behalf of  
193 the data center operator pursuant to a long-term lease of at least ten years.

194 b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter into a  
195 memorandum of understanding with the Virginia Economic Development Partnership Authority on or after  
196 January 1, 2023, that at a minimum provides the details for determining the amount of capital investment  
197 made and the number of new jobs created; the locality or localities in which the capital investment shall be  
198 made and new jobs shall be created in order to qualify for the extension; and the timeline for making the  
199 capital investment and creating the new jobs in each specified locality. *Such memorandum of understanding*  
200 *shall include or, if already in effect prior to July 1, 2024, shall be amended to include the data center*  
201 *operator's method of demonstrating compliance with energy procurement and use requirements described in*  
202 *subdivision 18. A data center operator shall only be required to enter into one memorandum of understanding*  
203 *pursuant to this subdivision 19 in order to qualify for the extension pursuant to both subdivisions c and d.*

204 c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered into a  
205 memorandum of understanding pursuant to subdivision b (i) makes or causes to be made a capital investment  
206 of at least \$35 billion in data centers in localities identified in a memorandum of understanding and (ii)  
207 creates at least 1,000 new full-time jobs, as defined in § 59.1-284.41, at such data centers, of which at least  
208 100 of such jobs shall pay at least one and one-half times the prevailing average wage in the Commonwealth,  
209 the data center operator shall be eligible to continue to utilize the exemption set forth in subdivision 18  
210 through June 30, 2040.

211 d. If on or after January 1, 2023, but before July 1, 2040, a data center operator that has entered into a  
212 memorandum of understanding pursuant to subdivision b (i) makes a total capital investment of at least \$100  
213 billion, inclusive of any investment made pursuant to subdivision c, in data centers in the localities identified  
214 in such memorandum of understanding and (ii) creates a total of at least 2,500 new full-time jobs, as defined  
215 in § 59.1-284.41, at such data centers, of which at least 100 of such jobs shall pay at least one and one-half  
216 times the prevailing average wage in the Commonwealth, inclusive of any new full-time jobs created  
217 pursuant to subdivision c, the data center operator shall be eligible to utilize the exemption set forth in  
218 subdivision 18 through June 30, 2050.

219 e. The extension provided in this subdivision 19 shall apply to the computer equipment or enabling  
220 software purchased or leased for use in the data centers subject to the capital investment and job requirements  
221 set forth herein, as well as to any such computer equipment or enabling software purchased or leased to  
222 upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial  
223 investment. The extension shall also apply to any computer equipment or software purchased or leased in  
224 data centers under common ownership or affiliation with the data center operator for which the data center  
225 operator entered into a memorandum of understanding with the Virginia Economic Development Partnership  
226 Authority to qualify for the exemption set forth in subdivision 18.

227 f. The reporting requirements *and energy efficiency and procurement requirements* set forth in subdivision  
228 18 shall continue to apply to a data center operator for the duration of any extension granted pursuant to this  
229 subdivision 19.

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

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