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HOUSE BILL NO. 1546

Offered January 19, 2024

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—Watts and Sickles

Referred to Committee on Finance

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 that has not been certified to the Department of Taxation by a state certifying authority or subdivision

59 certifying authority pursuant to such section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150 c. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such  
 151 operator shall be required to submit an annual report to the Virginia Economic Development Partnership  
 152 Authority on behalf of itself and, if applicable, its participating tenants that includes their employment levels,  
 153 capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information  
 154 as the Virginia Economic Development Partnership Authority determines is relevant, pursuant to procedures  
 155 developed by the Virginia Economic Development Partnership Authority. The annual report shall be  
 156 submitted by the data center operator in a format prescribed by the Virginia Economic Development  
 157 Partnership Authority. The Virginia Economic Development Partnership Authority shall share all information  
 158 collected with the Department.

159 The Department, in collaboration with the Virginia Economic Development Partnership Authority, shall  
 160 publish a biennial report on the exemption that shall include aggregate information on qualifying expenses  
 161 claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes  
 162 direct and indirect jobs created by data center investment, state and local tax revenues generated, and any  
 163 other information the Department and the Virginia Economic Development Partnership Authority deem  
 164 appropriate to demonstrate the costs and benefits of the exemption. The report shall not include, and the  
 165 Department and the Virginia Economic Development Partnership Authority shall not publish or disclose, any  
 166 such information if it is unaggregated or if such report or publication could be used to identify a business or  
 167 individual. The Department shall submit the report to the Chairmen of the Senate Committee on Finance and  
 168 Appropriations and the House Committees on Appropriations and Finance. The Virginia Economic  
 169 Development Partnership Authority may publish on its website and distribute annual information indicating  
 170 the job creation and ranges of capital investments made by a data center operator and, if applicable, its  
 171 participating tenants, in a format to be developed in consultation with data center operators.

172 d. Beginning July 1, 2024, the amount of the exemption provided by this subdivision 18 shall be limited as  
 173 follows: (i) for equipment or enabling software described in subdivision a that is purchased or leased for use  
 174 in a newly constructed data center, the amount of the exemption shall be 100 percent; (ii) for such equipment  
 175 purchased or leased as part of the first refresh cycle for a data center, the amount of the exemption shall be  
 176 50 percent; and (iii) for all other purchases or leases, the amount of the exemption shall be 25 percent. For  
 177 purposes of this subdivision 18, "first refresh cycle" means purchases or leases (a) made to replace, repair,  
 178 or upgrade the equipment or enabling software described in subdivision a in order to improve performance  
 179 of a data center, address technological obsolescence, improve energy efficiency, or remedy worn out  
 180 equipment or enabling software and (b) which occur no earlier than three and no later than five years after

181 *the date on which the data center becomes operational for commercial purposes. The time frame of a data*  
182 *center's refresh cycle and the amount of exemption allowable to a data center pursuant to this subdivision d*  
183 *shall be included in any memorandum of understanding with the Virginia Economic Development*  
184 *Partnership Authority. As a condition of such memorandum of understanding, the data center or its operator*  
185 *shall provide a list of all equipment or enabling software purchased in the initial construction of the data*  
186 *center, a timeline for applicable refresh cycles of such equipment or enabling software, and a list of*  
187 *subsequent purchases or leases during the first refresh cycle period.*

188 *Additionally, any major expansion of a data center shall be eligible for the exemption described in clauses*  
189 *(i), (ii), and (iii) in the same manner as is provided for a newly constructed data center. For purposes of this*  
190 *subdivision 18, "major expansion of a data center" means an expansion of a data center in which the capital*  
191 *investment and job creation requirements of subdivision a are met, excluding any capital investment or jobs*  
192 *created as part of an existing data center.*

193 19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in  
194 subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software by or  
195 on behalf of data center operators for use in data centers in the Commonwealth that are under common  
196 ownership or affiliation with the data center operator as set forth in this subdivision 19. For purposes of this  
197 subdivision 19, a data center operator shall be considered to own a data center if it is operated on behalf of  
198 the data center operator pursuant to a long-term lease of at least ~~ten~~ 10 years.

199 b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter into a  
200 memorandum of understanding with the Virginia Economic Development Partnership Authority on or after  
201 January 1, 2023, that at a minimum provides the details for determining the amount of capital investment  
202 made and the number of new jobs created; the locality or localities in which the capital investment shall be  
203 made and new jobs shall be created in order to qualify for the extension; and the timeline for making the  
204 capital investment and creating the new jobs in each specified locality. A data center operator shall only be  
205 required to enter into one memorandum of understanding pursuant to this subdivision 19 in order to qualify  
206 for the extension pursuant to both subdivisions c and d.

207 c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered into a  
208 memorandum of understanding pursuant to subdivision b (i) makes or causes to be made a capital investment  
209 of at least \$35 billion in data centers in localities identified in a memorandum of understanding and (ii)  
210 creates at least 1,000 new full-time jobs, as defined in § 59.1-284.41, at such data centers, of which at least  
211 100 of such jobs shall pay at least one and one-half times the prevailing average wage in the Commonwealth,  
212 the data center operator shall be eligible to continue to utilize the exemption set forth in subdivision 18  
213 through June 30, 2040.

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

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

230 f. The reporting requirements set forth in subdivision 18 shall continue to apply to a data center operator  
231 for the duration of any extension granted pursuant to this subdivision 19.

232 g. *The provisions of subdivision 18 d and the limitations on the exemption provided therein shall apply to*  
233 *the extension of any exemption provided by this subdivision 19.*

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

240 21. If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i) machinery,  
241 tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii)

242 materials for processing, manufacturing, or conversion for resale where such materials either are recycled or  
243 recovered; and (iii) materials, including containers, labels, sacks, cans, boxes, drums, or bags used for  
244 packaging recycled or recovered material for shipment or resale.

**INTRODUCED**

HB1546