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HOUSE BILL NO. 2715

Offered January 17, 2025

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

Patron—Martinez

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. *For purposes of this subdivision 18:*

114 "Benefits supplement" means an hourly supplement provided to an employee through the provision of (i)
115 health and other benefits, not including paid leave or benefits otherwise required by law, that cost the
116 employer the entire required hourly supplemental amount; (ii) cash; or (iii) a combination of both cash and
117 health and other benefits.

118 "Building service employee" means an employee in a position within, as the following terms are defined
119 by the federal Office of Personnel Management, (i) the custodial working occupational group or (ii) the

120 security guard occupational group.

121 "Distressed locality" means:

122 1. From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for
123 calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar
124 year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that
125 year; and

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

130 "Standard building service employee rate" means the prevailing wage and benefit rates designated on a
131 quarterly basis by the Virginia Economic Development Partnership Authority based on the determinations
132 made by the General Services Administration pursuant to the federal McNamara-O'Hara Service Contract
133 Act of 1965 (41 U.S.C. § 6701 et seq.) for the appropriate localities and classifications of building service
134 employees; however, in no event shall the prevailing wage and benefit rates applicable to a building service
135 employee be less than the following:

136 1. One and one-half times the amount of any otherwise applicable minimum wage rate established by the
137 Commissioner of Labor and Industry;

138 2. An amount of wages or benefit supplements equal to the rate for health and welfare for all occupations,
139 designated by the Virginia Economic Development Partnership Authority based on the determinations made
140 by the federal Department of Labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41
141 U.S.C. § 6701 et seq.) for the geographic region in which the data center is located and in effect on the date
142 of the designation by the Virginia Economic Development Partnership Authority; and

143 (3) Paid leave equal to the paid leave requirements designated by the Virginia Economic Development
144 Partnership Authority, based on the determinations made by the General Services Administration pursuant to
145 the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. § 6701 et seq.).

146 b. Beginning July 1, 2010, and ending June 30, 2035, except as provided in subdivision 19, computer
147 equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication
148 of data, including but not limited to servers, routers, connections, and other enabling hardware, including
149 chillers and backup generators used or to be used in the operation of the equipment exempted in this
150 paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a
151 data center, which includes any data center facilities located in the same locality as the data center that are
152 under common ownership or affiliation of the data center operator, that (i) is located in a Virginia locality; (ii)
153 results in a new capital investment on or after January 1, 2009, of at least \$150 million; and (iii) results in the
154 creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data
155 center, collectively, associated with the operation or maintenance of the data center provided that such jobs
156 pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50
157 new jobs is reduced to 10 new jobs if the data center is located in a distressed locality at the time of the
158 execution of a memorandum of understanding with the Virginia Economic Development Partnership
159 Authority. Additionally, the requirement of a \$150 million capital investment shall be reduced to \$70 million
160 for data centers that qualify for the reduced jobs requirement.

161 c. Beginning July 1, 2025, every data center operator claiming an exemption pursuant to this subdivision
162 shall ensure that every building service employee employed at the data center, whether employed by the
163 operator, a tenant, or any contractor or subcontractor, is compensated at a rate that is no less than the
164 standard building service employee rate. The Virginia Economic Development Partnership Authority shall
165 determine the standard building service rates and shall publish the rates on a quarterly basis.

166 This exemption applies to the data center operator and the tenants of the data center if they collectively
167 meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming
168 the exemption, including a data center operator on behalf of itself and its tenants, must enter into a
169 memorandum of understanding with the Virginia Economic Development Partnership Authority that at a
170 minimum provides the details for determining the amount of capital investment made and the number of new
171 jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations
172 should those goals not be achieved, and any conditions under which repayment by the qualifying data center
173 or data center tenant claiming the exemption may be required, which, beginning July 1, 2025, shall include
174 failure to comply with the requirement to pay building service employees the standard building service
175 employee rate. Beginning July 1, 2025, the memorandum of understanding shall further include the
176 requirement to pay the standard building service employee rate and authorize the Virginia Economic
177 Development Partnership Authority to conduct payroll audits of any employer of building service workers at
178 the data center. In addition, the exemption shall apply to any such computer equipment or enabling software
179 purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased
180 or leased in the initial investment. The exemption shall not apply to any other computer software otherwise

181 taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall
182 it apply to general building improvements or other fixtures.

183 *If, upon conducting a payroll audit, the Virginia Economic Development Partnership Authority finds that
184 any building service employer at the data center has failed to comply with the standard building service
185 employee rate requirement, the Virginia Economic Development Partnership Authority shall notify such
186 employer of such failure. If such failure is not cured within three months of the Virginia Economic
187 Development Partnership Authority's notification, the qualifying person claiming the exemption shall incur a
188 violation of the rate requirement. Upon an accumulation of three violations for a single data center operator
189 or tenant within a five year period, the Virginia Economic Development Partnership Authority shall notify
190 the Department, which shall revoke any tax exemption received by such data center operator or tenant and
191 require repayment.*

192 Any building service employee may seek to recover unpaid wages pursuant to §§ 40.1-29 and 40.1-29.1.
193 For the purpose of any such claim, the standard building service employee rate shall be the default wage rate
194 for any building service employee of any employer operating at a data center, and wage payment at that rate
195 or higher shall be enforceable under § 40.1-29 against any building service employer operating at a data
196 center for purposes of this subdivision. In such a claim, it shall be no defense that a lower wage was offered,
197 agreed to, or paid.

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

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

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

207 e. d. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such
208 operator shall be required to submit an annual report to the Virginia Economic Development Partnership
209 Authority on behalf of itself and, if applicable, its participating tenants that includes their employment levels,
210 capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information
211 as the Virginia Economic Development Partnership Authority determines is relevant, pursuant to procedures
212 developed by the Virginia Economic Development Partnership Authority. *Beginning October 1, 2026, and
213 for so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such operator
214 shall be required to submit such a report on a quarterly basis, and such report shall additionally include the
215 number of regular part-time and full-time employees employed at each data center by job classification and
216 certified payroll records for all building service workers employed at the data center.* The annual report shall
217 be submitted by the data center operator in a format prescribed by the Virginia Economic Development
218 Partnership Authority. The Virginia Economic Development Partnership Authority shall share all information
219 collected with the Department.

220 The Department, in collaboration with the Virginia Economic Development Partnership Authority, shall
221 publish a biennial report on the exemption that shall include aggregate information on qualifying expenses
222 claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes
223 direct and indirect jobs created by data center investment, state and local tax revenues generated, and any
224 other information the Department and the Virginia Economic Development Partnership Authority deem
225 appropriate to demonstrate the costs and benefits of the exemption. The report shall not include, and the
226 Department and the Virginia Economic Development Partnership Authority shall not publish or disclose, any
227 such information if it is unaggregated or if such report or publication could be used to identify a business or
228 individual. *Notwithstanding § 58.1-3, beginning July 1, 2026, the Department shall publish such report
229 annually, and such report shall additionally include the number of regular part-time and full-time building
230 service and other employees employed at each data center by job classification, indicating their average
231 weekly hours, wage rates and other compensation, including fringe benefits, and direct employer, if not the
232 data center operator.* The Department shall submit the report to the Chairmen of the Senate Committee on
233 Finance and Appropriations and the House Committees on Appropriations and Finance. *The report shall seek
234 to explain the economic contribution of each data center operator, including the quality of all jobs created at
235 such data center.* The Virginia Economic Development Partnership Authority may publish on its website and
236 distribute annual information indicating the job creation and ranges of capital investments made by a data
237 center operator and, if applicable, its participating tenants, in a format to be developed in consultation with
238 data center operators.

239 19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in
240 subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software by or
241 on behalf of data center operators for use in data centers in the Commonwealth that are under common

242 ownership or affiliation with the data center operator as set forth in this subdivision 19. For purposes of this
 243 subdivision 19, a data center operator shall be considered to own a data center if it is operated on behalf of
 244 the data center operator pursuant to a long-term lease of at least ten years.

245 b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter into a
 246 memorandum of understanding with the Virginia Economic Development Partnership Authority on or after
 247 January 1, 2023, that at a minimum provides the details for determining the amount of capital investment
 248 made and the number of new jobs created; the locality or localities in which the capital investment shall be
 249 made and new jobs shall be created in order to qualify for the extension; *the applicable standard building*
 250 *service employee rate for each job to be created and the requirement to pay the standard building service*
 251 *employee rate*; and the timeline for making the capital investment and creating the new jobs in each specified
 252 locality. A data center operator shall only be required to enter into one memorandum of understanding
 253 pursuant to this subdivision 19 in order to qualify for the extension pursuant to both subdivisions c and d.

254 c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered into a
 255 memorandum of understanding pursuant to subdivision b (i) makes or causes to be made a capital investment
 256 of at least \$35 billion in data centers in localities identified in a memorandum of understanding; *and* (ii)
 257 creates at least 1,000 new full-time jobs, as defined in § 59.1-284.42, at such data centers, of which at least
 258 100 of such jobs shall pay at least one and one-half times the prevailing average wage in the Commonwealth;
 259 *and (iii) ensures that all building service jobs at the data center pay at least the standard building service*
 260 *employee rate*, the data center operator shall be eligible to continue to utilize the exemption set forth in
 261 subdivision 18 through June 30, 2040.

262 d. If on or after January 1, 2023, but before July 1, 2040, a data center operator that has entered into a
 263 memorandum of understanding pursuant to subdivision b (i) makes a total capital investment of at least \$100
 264 billion, inclusive of any investment made pursuant to subdivision c, in data centers in the localities identified
 265 in such memorandum of understanding and (ii) creates a total of at least 2,500 new full-time jobs, as defined
 266 in § 59.1-284.42, at such data centers, of which at least 100 of such jobs shall pay at least one and one-half
 267 times the prevailing average wage in the Commonwealth, inclusive of any new full-time jobs created
 268 pursuant to subdivision c, the data center operator shall be eligible to utilize the exemption set forth in
 269 subdivision 18 through June 30, 2050.

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

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

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

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