

002196632

HOUSE BILL NO. 402

Offered January 13, 2000

A BILL to amend and reenact § 9-385 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 sections numbered 58.1-439.12 and 58.1-439.13, relating to investment and research and development tax credits.

Patrons—Bennett and Clement

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 9-385 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-439.12 and 58.1-439.13 as follows:

§ 9-385. Tobacco Indemnification and Community Revitalization Fund.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; *however, five million dollars shall be deposited into the Technology Initiative in Tobacco-Dependent Localities Fund, as created by § 58.1-439.13, each year starting with 2000 and ending in 2009.* Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

§ 58.1-439.12. *Tax credit for investing in technology industry in tobacco-dependent localities.*

A. For purposes of this section, "tobacco-dependent locality" means those localities that have traditionally economically depended on tobacco and shall be identified by the Tobacco Indemnification and Community Revitalization Commission.

B. For taxable years beginning on and after January 1, 2000, but before January 1, 2010, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter in the amount equal to fifty percent of the amount invested in an information technology or biotechnology company located in or that will be located in a tobacco-dependent locality not to exceed \$500,000 per taxpayer. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year the credit is allowed may be carried over for the next ten succeeding taxable years. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section. In no event shall more than five million dollars in credits be allowed for any taxable year; however, if credits exceed five million dollars for a taxable year, they shall be allocated by the Department of Taxation on a pro rata basis. If credits are less than five million dollars for a taxable year, the unused amount shall be utilized in the succeeding taxable year in addition to the five million dollars of credit allowed during that year.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders or members, respectively, in proportion to their ownership or interest in such business entities.

D. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), relating to the computation, carryover, and rollover of the credit provided under this section.

INTRODUCED

HB402

60 § 58.1-439.13. Tax credit for research and development activity occurring in tobacco-dependent
61 localities.

62 A. As used in this section:

63 "Authority" means the Innovative Technology Authority established pursuant to § 9-252.

64 "Eligible company" means a company that is eligible to claim tax credits under this section.

65 "Eligible research and development activity" means qualified research expenses as defined in § 41 of
66 the Internal Revenue Code of 1986, 26 U.S.C. § 41, when such expenses are incurred by a taxpayer for
67 activity occurring in a tobacco-dependent locality of the Commonwealth.

68 "Tobacco-dependent locality" means those localities that have traditionally economically depended on
69 tobacco and shall be identified by the Tobacco Indemnification and Community Revitalization
70 Commission.

71 B. For taxable years beginning on and after January 1, 2000, but before January 1, 2010, a
72 taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6
73 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter as set forth in this section. The amount
74 of credit earned pursuant to this section shall be equal to fifty percent of the amount expended by a
75 taxpayer on an eligible research and development activity during the taxable year.

76 C. A taxpayer shall be eligible to claim the credit for the taxable year in which the eligible research
77 and development activity occurred. No taxpayer shall be eligible to claim a credit of more than
78 \$500,000 per year. The amount of credit allowed shall not exceed the tax imposed for the taxable year.
79 Any credit not usable for the taxable year the credit is allowed may be, to the extent usable and subject
80 to subsections E and F, carried over for the next ten succeeding taxable years. No credit shall be
81 carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed
82 pursuant to this subsection is allowed another credit pursuant to any other section of the Code of
83 Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to
84 have first utilized any credit allowed that does not have a carryover provision, and then any credit that
85 is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant
86 to this section.

87 D. In no event shall more than five million dollars in credits be allowed for any taxable year;
88 however, if credits exceed five million dollars for a taxable year, they shall be allocated by the
89 Department of Taxation on a pro rata basis. If credits are less than five million dollars for a taxable
90 year, the unused amount shall be utilized in the succeeding taxable year in addition to the five million
91 dollars of credit allowed during that year.

92 E. Tax credit redemption.

93 1. If the taxpayer has no state tax liability for two consecutive tax years, at the election of the
94 taxpayer the credit amount shall be redeemable by the Tax Commissioner on behalf of the
95 Commonwealth for seventy-five percent of the face value within ninety days after filing the return or be
96 transferred pursuant to provisions of subsection G. The moneys for redeeming the credit shall be drawn
97 from the Technology Initiative in Tobacco-Dependent Localities Fund as created in this subsection.

98 2. There is hereby created in the Department of the Treasury a special fund that shall be known as
99 the Technology Initiative in Tobacco-Dependent Localities Fund ("Fund"). The Fund shall be composed
100 of those moneys forwarded from the Tobacco Indemnification and Community Revitalization Fund as
101 provided in § 9-385. The Department of Treasury shall administer and manage the Fund, subject to the
102 authority of the Tax Commissioner, to provide for its disbursement for the purpose of redeeming tax
103 credits under this section. Interest earned on moneys in the Fund shall remain in the Fund and be
104 credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal
105 year shall not revert to the general fund but shall remain in the Fund. After all redeemable tax credits
106 have been redeemed, any moneys left in the Fund shall revert to the Tobacco Indemnification and
107 Community Revitalization Fund.

108 F. Tax credit transfer.

109 1. The Authority, pursuant to the general powers granted to it by § 2.1-548.35, shall establish a
110 corporation tax benefit certificate program to allow eligible companies to surrender unused but
111 otherwise allowable carry-over tax credits pursuant to this section for use by other corporation
112 taxpayers in Virginia on their corporation tax returns in exchange for cash, in an amount equal to at
113 least eighty percent of the amount of the surrendered tax benefit, to be paid by the corporation taxpayer
114 that is the recipient of the corporation tax benefit certificate.

115 2. The Authority, in cooperation with the Department of Taxation, shall review and approve
116 applications from eligible companies with unused but otherwise allowable tax credits pursuant to this
117 subsection. Upon approval, the Authority shall issue a corporate tax credit certificate in the amount of
118 the tax credit surrendered.

119 3. The Authority, in cooperation with the Department of Taxation, shall review and approve
120 applications from corporation taxpayers under Article 10 (§ 58.1-400 et seq.) of this chapter to acquire
121 surrendered tax credit certificates approved and issued pursuant to subdivision 2 of this subsection.

122 4. The Authority shall coordinate applications for surrender of unused but otherwise allowable tax
123 benefits and the acquisition of tax benefit certificates in a manner that best stimulates and encourages
124 the extension of private financial assistance to information technology and biotechnology companies
125 located in, or that will be located in, tobacco-dependent localities. Prior to the transfer of any
126 corporation tax credit certificate, the Authority shall require the eligible companies and the corporation
127 taxpayer to sign a written agreement that specifies the price of the transfer and such other terms and
128 conditions as the parties deem necessary, convenient, and desirable.

129 G. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative
130 Process Act (§ 9-6.14:1 et seq.), relating to the computation, carryover, and rollover of the credit
131 provided under this section.