VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 9-385 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.1, consisting of sections numbered 58.1-439.12 through 58.1-439.16, relating to investment and research and development tax credits in tobacco-dependent localities.

[H 402]

Approved

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 in Chapter 3 of Title 58.1 an article numbered 13.1, consisting of sections numbered 58.1-439.12 through 58.1-439.16, 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, starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.14, for purposes of funding the tax credits provided in §§ 58.1-439.12 and 58.1-439.13 and the grants provided in § 58.1-439.16.* 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.

Article 13.1.

Tax Credits for Technology Industries in Tobacco-Dependent Localities.

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

A. For purposes of this section:

"Biotechnology company" means a taxpayer that (i) has paid or incurred qualified research expenses for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes, (ii) conducts pilot scale manufacturing in Virginia, or (iii) provides services or products necessary for such research, development, production, or provision.

"Capital investment" means an investment in real property, personal property, or both, by an information technology or biotechnology company that is capitalized by such company.

"Equity" has the same meaning as that term is defined in § 58.1-339.4.

"Qualified investment" means a cash investment in an information technology or biotechnology company in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from such company in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

A qualified investment shall also include a capital investment.

"Qualified research expenses" means qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology,

or medical device technology.

"Subordinated debt" has the same meaning as that term is defined in § 58.1-339.4.

"Tobacco-dependent locality" means those Virginia 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 for such taxable years 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 qualified investment in an information technology or biotechnology company located in a tobacco-dependent locality. The amount of credit allowed to a taxpayer under this section shall not exceed $500,000 in aggregate for qualified investments other than capital investments, and shall not exceed $500,000 per taxable year for capital investments. Such credit shall be first allowed for the taxable year in which the qualified investment was completed or made if the qualified investment was a capital investment. For other qualified investments, before any credit is allowed under this section, the Tobacco Indemnification and Community Revitalization Commission first must approve the taxpayer's plan, as certified by the taxpayer, detailing how such qualified investment will be spent in a tobacco-dependent locality. The credit provided under this section shall then first be allowed for the taxable year in which the Commission finds that such qualified investment was spent in a tobacco-dependent locality. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year because of this limitation 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.

C. The tax credit established in this section may be claimed to the extent moneys from the Tobacco Indemnification and Community Revitalization Fund, created in § 9-385, are deposited into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.14, for the purpose of funding this credit. If the amount of credits otherwise allowable under this section exceed the amount deposited in the Fund for a fiscal year, such credits shall be allocated to taxpayers on a pro rata basis by the Department of Taxation.

D. In the case of a qualified investment other than a capital investment, unless the taxpayer transfers the equity received in connection with such investment as a result of (i) the liquidation of the information technology or biotechnology company issuing such equity, (ii) the merger, consolidation or other acquisition of such business with or by a party not affiliated with such business, or (iii) the death of the taxpayer, any taxpayer that fails to hold such equity for at least five full calendar years following the calendar year for which a tax credit for such investment is allowed pursuant to this section shall forfeit both used and unused tax credits and shall pay the Department of Taxation a penalty equal to all of the tax credits allowed to such taxpayer pursuant to this section, except for credit allowed for a capital investment, with interest at the rate of one percent per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. Any amount received under this subsection shall be deposited into the Technology Initiative in Tobacco-Dependent Localities Fund.

E. A taxpayer who claims the credit for a qualified investment under this section may not use such qualified investment as the basis for claiming any other credit provided under the Code of Virginia.

F. 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.

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

A. As used in this section:

"Eligible research and development activity" means qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology, or other technology field, when such expenses are paid or incurred by a taxpayer for such activity occurring at the taxpayer's place of business in a tobacco-dependent locality of the Commonwealth.

"Tobacco-dependent locality" means those Virginia 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 as set forth in this section. The amount of credit allowed pursuant to this section shall be equal to fifty percent of the amount paid or incurred by a taxpayer for an eligible research and development activity during the taxable year.

C. A taxpayer may claim the credit for the taxable year in which the eligible research and development activity occurred. No taxpayer shall be eligible to claim a credit of more than $500,000 per taxable year. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year because of such limitation may be, to the extent usable and subject to subsections D and E, 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.

D. The tax credit established in this section may be claimed to the extent moneys from the Tobacco Indemnification and Community Revitalization Fund, created in § 9-385, are deposited into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.14, for the purpose of funding this credit. If the amount of credits otherwise allowable under this section exceed the amount deposited in the Fund for a fiscal year, such credits shall be allocated to taxpayers on a pro rata basis by the Department of Taxation.

E. Tax credit redemption and transfer.

If the taxpayer has no state tax liability for two consecutive taxable years for which credit is otherwise allowable, the credit amount applicable to such taxable years may be redeemable by the Tax Commissioner on behalf of the Commonwealth for seventy-five percent of the face value within ninety days after the taxpayer has filed the applicable income tax return for the second such taxable year. If the Commonwealth does not redeem the tax credit or upon the taxpayer's election, such tax credit shall be transferable by sale.

F. 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.

G. A taxpayer who claims the credit for eligible research and development activity under this section may not use such research and development activity as the basis for claiming any other credit provided under the Code of Virginia.

§ 58.1-439.14. Technology Initiative in Tobacco-Dependent Localities Fund.

There is hereby created in the Department of the Treasury a special fund that shall be known as the Technology Initiative in Tobacco-Dependent Localities Fund (the Fund). The Fund shall be composed of those moneys deposited from the Tobacco Indemnification and Community Revitalization Fund as provided in § 9-385. The Department of the Treasury shall administer and manage the Fund. Moneys in the Fund shall be made available to reimburse the general fund for providing tax credits under this article, including redeeming tax credits pursuant to § 58.1-439.13, and shall be used to reimburse the general fund for the administrative costs incurred by the Department of Taxation in implementing the provisions of this article. 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. After all eligible tax credits have been claimed through all taxable years beginning before January 1, 2010, any moneys left in the Fund shall revert to the Tobacco Indemnification and Community Revitalization Fund.

§ 58.1-439.15. Tax Commissioner to promulgate regulations.

Pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), the Tax Commissioner shall promulgate regulations that are necessary or desirable to carry out the provisions of this article, including (i) computation, carryover, and rollover of the credits provided under this article and (ii) rules and procedures for redeeming and transferring tax credits under § 58.1-439.13.

§ 58.1-439.16. Grants in lieu of or in addition to tax credits.

Notwithstanding any provision of this article, the Tobacco Indemnification and Community Revitalization Commission may establish a grant program for purposes of encouraging qualified investments and eligible research and development activities in tobacco-dependent localities. If the Commission elects to establish such a program, the program may replace or may be in addition to the tax credits established under this article. The criteria for taxpayers to receive grants shall be the same as the criteria for taxpayers to be allowed tax credits under §§ 58.1-439.12 and 58.1-439.13. In any

case where a grant is awarded to a taxpayer for any investment under § 58.1-439.12 or for eligible research and development activity under § 58.1-439.13, such taxpayer may not use such investment or research and development activity as the basis for claiming any credit provided under the Code of Virginia.