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## SENATE BILL NO. 236

Offered January 14, 2000

*A BILL to amend and reenact §§ 58.1-439.4 and 59.1-280 of the Code of Virginia, relating to tax credits for child day-care facilities.*

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Patron—Miller, Y.B.

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-439.4 and 59.1-280 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-439.4. Day-care facility investment tax credit.

A. For taxable years beginning on and after January 1, 1997, any taxpayer shall be allowed a credit against the taxes imposed by § 58.1-320 or § 58.1-400 in an amount equal to ~~twenty-five~~ *thirty-five* percent of all expenditures paid or incurred by such taxpayer in such taxable year for planning, site preparation, construction, renovation, or acquisition of facilities for the purpose of establishing a child day-care facility to be used primarily by the children of such taxpayer's employees, and equipment installed for permanent use within or immediately adjacent to such facility, including kitchen appliances, to the extent that such equipment or appliances are necessary in the use of such facility for purposes of child day-care; however, the amount of credit allowed to any taxpayer under this section shall not exceed ~~\$25,000~~ *\$30,000*. If two or more taxpayers share in the cost of establishing the child day-care facility for the children of their employees, each such taxpayer shall be allowed such credit in relation to the respective share paid or incurred by such taxpayer, of the total expenditures for the facility in such taxable year.

B. The credits provided under this section shall be allowed only if (i) the child day-care facility shall be operated under the authority of a license issued by the Commissioner of Social Services pursuant to § 63.1-196, (ii) an application for a building permit for the facility is made after July 1, 1996, and (iii) the Tax Commissioner approves a taxpayer's application for a credit. Proper applications submitted to the Department for the credit shall be approved in the order received. For each application approved for credit it shall be assumed that the amount of the credit will be ~~\$25,000~~ *\$30,000*, and the amount of the credit will be taken in the fiscal year in which the application is approved and the following two fiscal years. Approval of applications shall be limited to those that are assumed to result in no more than ~~\$100,000~~ *\$150,000* of credits in any fiscal year based on the assumptions set forth in this subsection.

C. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next three taxable years; however, the balance of a credit shall not be claimed for any succeeding taxable year in which the child day-care facility is operated for purposes of child day-care for less than six months.

D. 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.

§ 59.1-280. Enterprise zone business tax credit.

A. As used in this section:

"Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 due from a business firm.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such qualified zone investments result in the creation of at least fifty permanent full-time positions. "Qualified zone investment" and "permanent full-time position" shall have the meanings provided in subsection A of § 59.1-280.1.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm.

B. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of (i) business firms subject to tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 to the Commissioner of Insurance for the State Corporation Commission, or (ii) business firms subject to tax under Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the business tax credit provided herein for a qualified business firm. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to

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deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a business firm is ineligible for such tax credit.

C. Small qualified business firms shall be allowed a business tax credit in an amount equal to eighty percent of the tax due to the Commonwealth for the first tax year and sixty percent of the tax due the Commonwealth for the second tax year through the tenth tax year; *however, any small qualified business firm operating as a child day-care business under the authority of a license issued by the Commissioner of Social Services pursuant to § 63.1-196 shall be allowed a business tax credit in an amount equal to eighty percent of the tax due to the Commonwealth for the first tax year and seventy percent of the tax due the Commonwealth for the second tax year through the tenth tax year.* Except as provided in subdivision B 1 of § 59.1-280.2, the total amount of (i) business tax credits granted to small qualified business firms under this subsection and (ii) real property investment tax credits granted to small qualified zone residents under subsection C of § 59.1-280.1, for each fiscal year, shall not exceed \$16 million.

D. Large qualified business firms shall be allowed a business tax credit in a percentage amount determined by agreement between the Department and the large qualified business firm, provided such percentage amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C. Except as provided in subdivision B 2 of § 59.1-280.2, the total amount of (i) business tax credits granted to large qualified business firms under this subsection and (ii) real property investment tax credits granted to large qualified zone residents under subsection D of § 59.1-280.1, for each fiscal year, shall not exceed three million dollars.

E. Any business tax credit not usable may not be applied to future tax years. However, tax credits granted under this section to business firms designated as qualified business firms prior to July 1, 1995, shall not be subject to inclusion in the \$16 million limitation set forth in subsection C or the three-million-dollar limitation set forth in subsection D.

F. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

G. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise zone shall allocate and apportion its Virginia taxable income attributable to the conduct of business as follows:

1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.

a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm which is used in the enterprise zone. The denominator is the average value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 for determining the Virginia taxable income of a corporation having income from business activities which is taxable both within and without the Commonwealth, *mutatis mutandis*.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income than is reasonably attributable to business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonably prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.