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SENATE BILL NO. 698

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 1, 2006)

(Patron Prior to Substitute—Senator Whipple)

A BILL to amend and reenact § 58.1-439 of the Code of Virginia, relating to state income tax credits for certain companies that create new jobs for qualified full-time employees in the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439. A. For taxable years beginning on and after January 1, 1995, 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 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 this title as set forth in this section.

B. 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.

C. A "major business facility" is a company that satisfies the following criteria:

1. Subject to the provisions of subsections K, ~~or~~ L, or M, the establishment or expansion of the company shall result in the creation of at least 100 jobs for qualified full-time employees; the first such 100 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of major business facilities that are eligible for the credit provided under this section include, but are not limited to, a headquarters, or portion of such a facility, where company employees are physically employed, and where the majority of the company's financial, personnel, legal or planning functions are handled either on a regional or national basis. A company primarily engaged in the Commonwealth in the business of manufacturing or mining; agriculture, forestry or fishing; transportation or communications; or a public utility subject to the corporation income tax shall be deemed to have established or expanded a major business facility in the Commonwealth if it meets the requirements of subdivision 1 during a single taxable year and such facilities are not retail establishments. A major business facility shall also include facilities that perform central management or administrative activities, whether operated as a separate trade or business, or as a separate support operation of another business. Central management or administrative activities include, but are not limited to, general management; accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems planning; advertising; technical sales and support operations; central administrative offices and warehouses; research, development and testing laboratories; computer-programming, data-processing and other computer-related services facilities; and legal, financial, insurance, and real estate services. The terms used in this subdivision to refer to various types of businesses shall have the same meanings as those terms are commonly defined in the Standard Industrial Classification Manual.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the major business facility commenced or expanded operations.

E. The Department of Taxation shall make all determinations as to the classification of a major business facility in accordance with the provisions of this section.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in the Commonwealth. A "new, permanent full-time position" is a job of an indefinite duration, created by the company as a result of the establishment or expansion of a major business facility in the Commonwealth, requiring a minimum of 35 hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the major business facility in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to the new major business facility and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal activities performed by the employees at a major business facility shall not qualify as new, permanent full-time positions.

G. For any major business facility, the amount of credit earned pursuant to this section shall be equal to \$1,000 per qualified full-time employee, over the threshold amount, employed during the credit year.

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60 The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years
61 beginning with the credit year. The portion of the \$1,000 credit earned with respect to any qualified
62 full-time employee who is employed in the Commonwealth for less than 12 full months during the
63 credit year will be determined by multiplying the credit amount by a fraction, the numerator of which is
64 the number of full months that the qualified full-time employee worked for the major business facility in
65 the Commonwealth during the credit year, and the denominator of which is 12. A separate credit year
66 and a three-year allowance period shall exist for each distinct major business facility of a single
67 taxpayer.

68 H. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
69 taxable year. Any credit not usable for the taxable year the credit was allowed may be, to the extent
70 usable, carried over for the next 10 succeeding taxable years. No credit shall be carried back to a
71 preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed
72 pursuant to this subsection is allowed another credit pursuant to any other section of the Code of
73 Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to
74 have first utilized any credit allowed which does not have a carryover provision, and then any credit
75 which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed
76 pursuant to this section.

77 I. No credit shall be earned pursuant to this section for any employee (i) for whom a credit under
78 this section was previously earned by a related party as defined by Internal Revenue Code § 267 (b) or a
79 trade or business under common control as defined by Internal Revenue Code § 52 (b); (ii) who was
80 previously employed in the same job function in Virginia by a related party as defined by Internal
81 Revenue Code § 267 (b) or a trade or business under common control as defined by Internal Revenue
82 Code § 52 (b); (iii) whose job function was previously performed at a different location in Virginia by
83 an employee of the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade
84 or business under common control as defined by Internal Revenue Code § 52 (b); or (iv) whose job
85 function previously qualified for a credit under this section at a different major business facility on
86 behalf of the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or
87 business under common control as defined by Internal Revenue Code § 52 (b).

88 J. Subject to the provisions of subsections K, ~~L~~, or M, recapture of this credit, under the following
89 circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the
90 taxable year in which a credit has been earned pursuant to this section if the number of qualified
91 full-time employees decreases below the average number of qualified full-time employees employed
92 during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which
93 would have been earned for the original credit year using the decreased number of qualified full-time
94 employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In
95 the event that the average number of qualifying full-time employees employed at a major business
96 facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all
97 credits earned with respect to such major business facility shall be recaptured. No credit amount will be
98 recaptured more than once pursuant to this subsection. Any recapture pursuant to this section shall
99 reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's
100 tax liability may be increased.

101 K. In the event that a major business facility is located in an economically distressed area or in an
102 enterprise zone as defined in § 59.1-271 or in Chapter 49 (§ 59.1-538 et seq.) of Title 59.1 during a
103 credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid
104 full recapture shall be reduced from 100 to 50 for purposes of subdivision C 1 and subsection J. An
105 area shall qualify as economically distressed if it is a city or county with an unemployment rate for the
106 preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such
107 year. The Virginia Economic Development Partnership shall identify and publish a list of all
108 economically distressed areas at least annually.

109 L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event
110 that a major business facility is located in a severely economically distressed area, the threshold amount
111 required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from
112 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit
113 allowable under this subsection shall not exceed \$100,000 in aggregate. An area shall qualify as severely
114 economically distressed if it is a city or county with an unemployment rate for the preceding year of at
115 least twice the average statewide unemployment rate for such year. The Virginia Economic Development
116 Partnership shall identify and publish a list of all severely economically distressed areas at least
117 annually.

118 M. *For taxable years beginning on or after January 1, 2007, but before January 1, 2012, in the*
119 *event that a major business facility is located in a BRAC Impacted Area, the threshold amount required*
120 *to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to*
121 *25 for purposes of subdivision C 1 and subsection J. For purposes of this subsection, a BRAC Impacted*

Area means census tracts, as established by the United States Census Bureau pursuant to the most recent United States census, in which decisions set forth in the 2005 final report of the Base Realignment and Closure Commission result in direct Department of Defense net job losses that exceed 1,000 jobs, both military and civilian.

N. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies pursuant to subsection S T.

~~N.~~ O. The provisions of this section shall apply only in instances where an announcement of intent to establish or expand a major business facility is made on or after January 1, 1994. An announcement of intent to establish or expand a major business facility includes, but is not limited to, a press conference or extensive press coverage, providing information with respect to the impact of the project on the economy of the area where the major business facility is to be established or expanded and the Commonwealth as a whole.

~~Θ.~~ P. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

~~P.~~ Q. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2.

~~Q.~~ R. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 shall claim a credit pursuant to this section.

~~R.~~ S. Notwithstanding subsection ~~Θ~~ P, a taxpayer may, for the purpose of determining the number of qualified full-time employees at a major business facility, include the employees of a contractor or a subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the contractor or subcontractor from also claiming these employees in order to receive a credit given under this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has entered into such a contract.

~~S.~~ T. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more companies related to each other such that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned by the same interests.

~~T.~~ U. The General Assembly of Virginia finds that modern business infrastructure allows businesses to locate their administrative or manufacturing facilities with minimal regard to the location of markets or the transportation of raw materials and finished goods, and that the economic vitality of the Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the provisions of this section targeting the credit to major business facilities and limiting the credit to those companies which establish a major business facility in Virginia are integral to the purpose of the credit earned pursuant to this section and shall not be deemed severable.