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HOUSE BILL NO. 6024

Offered June 23, 2008

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to telework income tax credit to assist with the mitigation of traffic congestion in Virginia.*

Patrons—Lingamfelter, Byron, Frederick, Janis, Loupassi, Marshall, R.G., Merricks, Miller, J.H., Peace and Suit

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03 as follows:

§ 58.1-439.12:03. Telework tax credit.

A. As used in this section, the term:

"Eligible telework expenses" means expenses incurred during the calendar year pursuant to a telework agreement, up to a limit of \$1,200 for each participating employee, to enable a participating employee to begin to telework, which expenses are not otherwise the subject of a deduction from income claimed by the employer in any tax year. Such expenses shall include, but not be limited to, expenses paid or incurred to purchase computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, high-speed Internet connectivity equipment, computer security software and devices, and all related delivery, installation, and maintenance fees. Such expenses shall not include replacement costs for computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, or computer security software and devices at the principal place of business when that equipment is relocated to the telework site. Such expenses shall not include expenses for which a credit is claimed under any other provision of this chapter. Such expenses may be incurred only once per employee. Such expenses may be incurred directly by the employer on behalf of the participating employee or directly by the participating employee and subsequently reimbursed by the employer.

"Employer" means any employer upon whom an income tax is imposed by this chapter.

"Participating employee" means an employee who has entered into a telework agreement with his employer on or after July 1, 2008. This term shall not include an individual who is self-employed or an individual who ordinarily spends a majority of his workday at a location other than the employer's principal place of business.

"Telework" means to perform normal and regular work functions on a workday that ordinarily would be performed at the employer's principal place of business at a different location, thereby eliminating or substantially reducing the physical commute to and from that employer's principal place of business. This term shall not include home-based businesses, extensions of the workday, or work performed on a weekend or holiday.

"Telework agreement" means an agreement signed by the employer and the participating employee, on or after July 1, 2008, that defines the terms of a telework arrangement, including the number of days per year the participating employee will telework, as provided in subsection B, in order to qualify for the credit, and any restrictions on the place from which the participating employee will telework.

"Telework assessment" means an optional assessment leading to the development of policies and procedures necessary to implement a formal telework program which would qualify the employer for the credit provided in subsection B, including but not limited to a workforce profile, a telework program business case and plan, a detailed accounting of the purpose, goals, and operating procedures of the telework program, methodologies for measuring telework program activities and success, and a deployment schedule for increasing telework activity.

B. For taxable years beginning on or after January 1, 2009, and prior to January 1, 2011, an employer shall be allowed a state income tax credit against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of this chapter for a percentage of eligible telework expenses incurred in the calendar years 2009 and 2010. The amount of such credit shall be equal to:

1. One hundred percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month if the employer's principal place of business is located in an area designated by the United States Environmental Protection Agency as a nonattainment area under the federal Clean Air Act, 42 U.S.C. § 7401 et seq.;

2. Seventy-five percent of the eligible telework expenses incurred pursuant to a telework agreement

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58 requiring the participating employee to telework at least 12 days per month; or

59 3. Twenty-five percent of the eligible telework expenses incurred pursuant to a telework agreement
60 requiring the participating employee to telework at least five days per month.

61 C. In addition to the credit provided by subsection B, an employer conducting a telework assessment
62 on or after July 1, 2008, shall be allowed a credit in the calendar year of implementation of the
63 employer's formal telework program against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et
64 seq.) and 10 (§ 58.1-400 et seq.) of this chapter for 100 percent of the cost for preparing the
65 assessment, up to a maximum credit of \$20,000 per employer. Such costs shall not be eligible for such
66 credit if they are otherwise the subject of a deduction from income claimed by the employer in any tax
67 year. Costs incurred on or after July 1, 2008, and before January 1, 2009, shall be treated as being
68 incurred on January 1, 2009, for purposes of this section. The credit provided by this subsection is
69 intended to include program planning expenses, including direct program development and training
70 costs, raw labor costs, and professional consulting fees. The credit shall not include expenses for which
71 a credit is claimed under any other provision of this chapter. This credit shall be allowed only once per
72 employer.

73 All telework assessments eligible for a state income tax credit under this subsection shall meet
74 standards for eligibility promulgated by the Tax Commissioner.

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

79 E. In no event shall the total amount of any tax credit under this section for a taxable year exceed
80 the employer's income tax liability. No unused tax credit shall be allowed to be carried forward to apply
81 to the employer's succeeding years' tax liability. No such tax credit shall be allowed the employer
82 against prior years' tax liability.

83 F. 1. An employer seeking to claim a tax credit provided for under subsections B and C must submit
84 an application between September 1 and October 31 of the year preceding the taxable year for which
85 the tax credit is to be earned to the Tax Commissioner for tentative approval of such tax credit. The
86 Tax Commissioner shall promulgate the rules and forms on which the application is to be submitted.
87 Amounts specified on such application shall not be changed by the employer after the application is
88 approved by the Tax Commissioner. Such applications must certify that the employer would not have
89 incurred the eligible telework expenses mentioned therein but for the availability of the tax credit. The
90 Tax Commissioner shall review the application and shall tentatively approve such application upon
91 determining that it meets the requirements of this section.

92 2. The Tax Commissioner shall provide tentative approval of the applications by the date provided in
93 subdivision 3. In no event shall the aggregate amount of tax credits approved by the Tax Commissioner
94 for all qualified employers under this section in a calendar year exceed:

95 a. Two million dollars for credits earned in calendar year 2009; and

96 b. Two million dollars for credits earned in calendar year 2010.

97 3. The Department shall notify each employer of the tax credits tentatively approved and allocated to
98 such employer by December 31st of the year in which the application was submitted. In the event that
99 the credit amounts on the tax credit applications filed with the Tax Commissioner exceed the maximum
100 aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the
101 employers who filed a timely application on a pro rata basis based upon the amounts otherwise allowed
102 by this section. Once the tax credit application has been approved and the amount approved has been
103 communicated to the applicant, the employer may make purchases approved for the tax credit at any
104 time during the calendar year following the approval of the application. The employer may then apply
105 the amount of the approved tax credit to its tax liability for the taxable year or years for which the
106 approved application applies. In the event the employer has a taxable year other than a calendar year
107 and the calendar year expenses are incurred in more than one taxable year, the credit shall be applied
108 to each taxable year based upon when the expenses were incurred.

109 G. Notwithstanding the provisions of § 58.1-3, on or before December 31, 2010, for credits allowed
110 in calendar year 2009 and by December 31, 2011, for credits allowed in calendar year 2010, the Tax
111 Commissioner shall report to the chairmen of the House Appropriations, House Finance, and Senate
112 Finance Committees the employer names and amounts of credit claimed pursuant to this section.

113 H. The Tax Commissioner shall promulgate any rules and regulations necessary to implement and
114 administer this section. Actions of the Tax Commissioner relating to the approval or denial of
115 applications for reservations of tax credits pursuant to this section shall be exempt from the provisions
116 of the Administrative Process Act (§ 2.2-4000 et seq.)