

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 271

An Act to amend and reenact §§ 59.1-280, 59.1-548, and 59.1-549 of the Code of Virginia and to repeal §§ 59.1-282.1 and 59.1-282.2 of the Code of Virginia, relating to enterprise zone economic incentives.

[S 1165]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-280, 59.1-548, and 59.1-549 of the Code of Virginia are amended and reenacted as follows:

§ 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.

"High investment/limited job creation qualified business firm" means a qualified business firm making qualified zone investments of \$50 million or more when such qualified zone investments result in the creation of fewer than 50 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.

"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 50 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 or a high investment/limited job creation 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 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 80 percent of the tax due to the Commonwealth for the first tax year and 60 percent of the tax due the Commonwealth for the second tax year through the tenth tax year.

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.

E. High investment/limited job creation qualified business firms shall be allowed a business tax credit in an amount determined by agreement between the Department and the high investment/limited job creation qualified business firm, provided that (i) the amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C and (ii) it can be demonstrated that the amount of the business tax credits shall not exceed the amount that will be recovered by the Commonwealth through the revenues generated from new state income taxes resulting from the new permanent full-time positions within a five-year period. The demonstration required by clause (ii) shall be based on an analysis conducted by the Department or its designee using information provided by the high investment/limited job creation qualified business firm.

F. Any business tax credit not usable may not be applied to future tax years.

G. 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.

H. 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.

¶ H. Tax credits awarded under this section and under § 59.1-280.1 shall not exceed \$7.5 million annually until the end of fiscal year 2019.

¶ I. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

§ 59.1-548. Enterprise zone real property investment grants.

A. As used in this section:

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

"Mixed use" means a building incorporating residential uses in which a minimum of 30 percent of the useable floor space will be devoted to commercial, office or industrial use.

"Qualified real property investment" means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) ~~\$50,000~~ \$100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) ~~\$250,000~~ \$500,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.

2. Other acquisition costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance,

signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

3. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iv) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the ~~property building or facility~~ for which the tenant holds a valid lease. *In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements.*

B. *Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of \$100,000 in the case of the rehabilitation or expansion of an existing building or facility. For any qualified zone investor making less than \$5 million or less in qualified real property investment, a real property investment grant shall be allowed in an amount equaling 20 percent of the amount of qualified real property investment not to exceed \$125,000 \$100,000 within any five-year period for any individual building or facility. For any qualified zone investor making more than \$5 million or more in qualified real property investments investment, a real property investment grant shall be allowed in an amount equaling 20 percent of the amount of qualified real property investment not to not exceed \$250,000 \$200,000 within any five-year period for any individual building or facility.*

C. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service.

§ 59.1-549. Policies and procedures for allocation of enterprise zone incentive grants.

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone incentive grants provided for in this chapter to the extent that they apply for and are approved for grant allocations through the Department.

B. *If the sum of (i) the total amount of grants for which qualified business firms are eligible under § 59.1-547 exceeds the annual appropriation for such grants, then the amount of grant that each qualified business firm is eligible for shall be prorated in a proportional manner plus (ii) the total amount of grants for which qualified zone investors are eligible under § 59.1-548 exceeds the total annual appropriation for the payment of all grants under this chapter for the relevant year, then the amount of the grant that each qualified business firm and qualified zone investor is eligible for shall be prorated in a proportional manner.*

C. *If the total amount of grants for which qualified business firms are eligible under § 59.1-547 is less than the annual appropriation for such grants, then any amount remaining after all eligible grants have been allocated shall be made available to meet any unmet eligible grant requests pursuant to § 59.1-548.*

D. *If the total amount of grants for which qualified zone investors are eligible under § 59.1-548 exceeds the annual appropriation for such grants, then the amount of grant for which each qualified zone investor is eligible shall be prorated in a proportional manner.*

E. *If the total amount of grants for which qualified zone investors are eligible under § 59.1-548 is less than the annual appropriation for such grants, then any amount remaining after all eligible grants have been allocated shall be made available to meet any unmet eligible grant requests pursuant to § 59.1-547.*

F C. Qualified zone businesses and qualified zone investors shall make application to the Department each year for which they seek eligibility for enterprise zone incentive grants. Such application is to be in accordance with regulations promulgated by the Board on forms supplied by the Department and in accordance with dates specified by the Department.

G D. The accuracy and validity of information on qualified real property investments, permanent full-time positions, wage rates and provision of health benefits provided in such applications are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the Department.

H E. Applicants for enterprise zone incentive grants under this chapter must have the local zone administrator verify that the location of their business or property is in the enterprise zone using a form supplied by the Department. The local zone administrator shall make this verification in accordance with

dates specified by the Department.

~~¶~~ *F.* The Department may at any time review qualified zone businesses and qualified zone investors to assure that information provided in the application process is accurate.

~~¶~~ *G.* Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

~~¶~~ *H.* Enterprise zone incentive grants that do not have adequate documentation regarding qualified real property investments, permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business or qualified zone investor.

~~¶~~ *I.* Actions of the Department relating to the approval or denial of applications for enterprise zone incentive grants under this chapter shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

2. That the provisions of this act amending §§ 59.1-548 and 59.1-549 of the Code of Virginia shall be applicable for calendar year 2009 and for each calendar year thereafter.

3. That §§ 59.1-282.1 and 59.1-282.2 of the Code of Virginia are repealed.