

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 58.1-408 of the Code of Virginia and to amend the Code of Virginia by adding in Article 10 of Chapter 3 of Title 58.1 a section numbered 58.1-422, relating to corporate income tax; apportionment of income for manufacturers.

[H 2437]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-408 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 10 of Chapter 3 of Title 58.1 a section numbered 58.1-422 as follows:

§ 58.1-408. What income apportioned and how.

The Virginia taxable income of any corporation, except those subject to the provisions of §§ 58.1-417, 58.1-418, 58.1-419, ~~or~~ § 58.1-420, *or* 58.1-422, excluding income allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

§ 58.1-422. *Manufacturing companies; apportionment.*

A. For taxable years beginning on or after July 1, 2011, the Virginia taxable income of a manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and without the Commonwealth as provided in § 58.1-408 or as follows:

1. From July 1, 2011, until July 1, 2013, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2013, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2014, and thereafter, by multiplying such income by the sales factor.

B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the taxpayer may not revoke the election for a period of three taxable years.

In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry.

C. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than the base year employment, then the Department of Taxation shall assess the manufacturing company with additional taxes pursuant to this article computed as the difference between (i) the taxes that would have been due under the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes due under the alternative apportionment provided under this section for such three taxable years. In addition to such additional taxes, the Department shall assess the manufacturing company a penalty of 10 percent of the amount of such additional taxes. Interest shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with such interest accruing from the original due date for filing of the income tax return to the date of payment of such additional taxes.

Such additional taxes, penalty, and interest are hereby imposed on manufacturing companies using the alternative apportionment set forth in this section.

D. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"Base year employment" means the average number of full-time employees employed by the manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the alternative apportionment set forth in this section.

57 *"Full-time employee" means an employee of a manufacturing company who is employed for an*
58 *indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the*
59 *manufacturing company, for which employment requires a minimum of either (i) 35 hours of an*
60 *employee's time per week for the entire normal year of such manufacturing company's operations, which*
61 *"normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.*

62 *"Manufacturing company" means a domestic or foreign corporation primarily engaged in activities*
63 *that, in accordance with the North American Industrial Classification System (NAICS), United States*
64 *Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector 11,*
65 *31, 32, or 33.*

66 *E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health*
67 *of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs.*
68 *Accordingly, the provisions of this section relating to manufacturing companies that increase their*
69 *employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If*
70 *any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a*
71 *court of competent jurisdiction, that provision shall not be deemed severable.*

72 **2. That the Department of Taxation shall develop and make publicly available guidelines**
73 **implementing the provisions of this act. Among other items, the guidelines shall provide processes**
74 **and procedures for determining the number of full-time employees of a manufacturing company in**
75 **cases such as a merger, acquisition, spin-off, or other change in corporate structure. The**
76 **development of the guidelines shall be exempt from the provisions of the Administrative Process**
77 **Act (§ 2.2-4000 et seq.) of the Code of Virginia.**