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SENATE BILL NO. 1246

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 58.1-2510 of the Code of Virginia, relating to retaliatory costs tax credit.

Patrons—Stosch, Cuccinelli and Newman; Delegate: O'Bannon

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-2510 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-2510. Tax credit for retaliatory costs paid to other states.

A. For license years beginning on and after July 1, 1998, every qualified company shall be allowed a credit against the tax imposed by § 58.1-2501 in an amount equal to the retaliatory costs incurred during the corresponding taxable year as a result of the difference between other states' lower premium tax rates and other costs and the tax rates and costs imposed by the Commonwealth of Virginia.

B. As used in this section:

"Affiliate" of a specific company or a company "affiliated" with a specific company means a company that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the company specified. A company shall be deemed to control, be controlled by, or be under common control with the company specified if their relationship to each other is such that one company owns at least eighty percent of the voting power of the other company or at least eighty percent of the voting power of all companies is owned by the same interests.

"Affiliated insurance group" means two or more affiliated companies (i) at least one of which is a domestic insurance company and (ii) each of which is in the business of insurance, leasing, financial services, or providing administrative or other support for other members of the group, or is a holding company for the other members of the group.

"Domestic insurance company" means any insurance company incorporated or organized under the laws of this Commonwealth and headquartered within this Commonwealth.

"Permanent full-time position" means a position of an indefinite duration in this Commonwealth requiring a minimum of thirty-five 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 forty-eight weeks. Seasonal or temporary positions and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal business of the employer shall not qualify as new, permanent full-time positions.

"Qualified company" means a domestic insurance company that (i) has made a qualified investment in this Commonwealth and (ii) for license years beginning on or after July 1, 1998, maintained the employment level required for a qualified investment, such level to be measured as of December 31 of the corresponding taxable year. The foregoing requirements may be satisfied by either the domestic insurance company or collectively by all the members of the affiliated insurance group of which the qualified company is a member.

"Qualified full-time employee" means an employee filling a permanent full-time position with a domestic insurance company or member of an affiliated insurance group.

"Qualified investment" means an investment in this Commonwealth by a domestic insurance company or any one or more members of an affiliated insurance group that results in (i) an increase as of December 31, 1997, of at least 325 qualified full-time employees above such company's or group's total combined employment level in this Commonwealth on December 31, 1996, or (ii) during any taxable year beginning on or after January 1, 2001, such company or group having more than 100 qualified full-time employees in this Commonwealth during that entire taxable year.

"Retaliatory cost" means the additional regulatory costs, including any taxes or fees exacted for the privilege of doing business, paid by a Virginia-domiciled insurer to another state pursuant to a law of such state requiring, when an insurer domiciled in such other state is subject to regulatory costs in this Commonwealth that are greater than those imposed by such other state on insurers domiciled in this Commonwealth, the Virginia-domiciled insurer to pay additional regulatory costs to equal the regulatory costs imposed by this Commonwealth on an insurer domiciled in such other state. Such term, however, shall not include penalties or interest for late payment of taxes, fees or other charges, fines or penalties assessed as the result of the violation of laws of such other state, or sums paid in settlement or compromise of alleged violations of such laws.

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59 C. Applications for a credit and for a refund of excess taxes may be submitted by a qualified
60 company individually or on behalf of the members of an affiliated insurance group on or before March
61 1 next succeeding the end of the taxable year. Any payment of the tax imposed under § 58.1-2501,
62 including any credit claimed under this section, shall be deemed to have been made with the return filed
63 on March 1 reporting such tax and claiming any credits or on the last day prescribed for the timely
64 filing of such return or, if later, the actual date of payment or notice of denial of any credits claimed
65 hereunder. An amended application or return may be filed, and a credit claimed under this section,
66 within one year of the payment of the tax for such year. Applications shall be submitted with a form
67 approved by the Commission and signed by an independent certified public accountant licensed by the
68 Commonwealth who states that the domestic insurance company or affiliated insurance group, as
69 applicable, is eligible for the credit claimed.

70 D. Any credit provided pursuant to this section shall be taken after all other applicable credits. Any
71 credit not taken by a domestic insurance company may be taken by other members of an affiliated
72 insurance group. Any credit not used to offset tax for the taxable year in which the credit was allowed
73 may be, to the extent not so used, carried forward for the next ~~five~~ 10 succeeding taxable years. Unused
74 credits, including credits carried forward from previous years, in an amount not exceeding \$800,000
75 annually, exclusive of refunds due to overpayment or other sources, per domestic insurance company or
76 affiliated insurance group, as applicable, shall be refunded to such company, or to the members of such
77 group as they may agree, upon filing a refund application with the Commission. Refunds for unused
78 credits shall first be applied to reduce the oldest unused credits. Refunds, including refunds based on the
79 application of credits and overpayments of estimated taxes, shall be made following the filing of the
80 refund application and paid out of the state treasury on the order of the Commission upon the
81 Comptroller.

82 E. If two or more domestic insurance companies paying retaliatory costs in any year are members of
83 an affiliated insurance group, the total of the retaliatory costs paid may be combined and apportioned
84 among the members of the affiliated insurance group as the members may agree.

85 F. The failure of a domestic insurance company or members of an affiliated insurance group to
86 qualify for a new credit under this section in any year shall not affect its ability to use credits carried
87 over from previous years.

88 **2. That the increase in the carry forward period to 10 consecutive taxable years pursuant to**
89 **subsection D of § 58.1-2510 of the Code of Virginia shall be applicable to any credit allowed prior**
90 **to or after January 1, 2009.**