VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 49

An Act to amend and reenact § 58.1-439.15 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:06, relating to an international trade facility income tax credit.

[S 1136]

Approved March 10, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.15 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:06 as follows:

§ 58.1-439.12:06. International trade facility tax credit.

A. As used in this section, unless the context requires a different meaning:

"Affiliated companies" means two or more companies related to each other so that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) the same interest owns at least 80 percent of the voting power of two or more companies.

"Capital investment" means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year and the cost of machinery, tools, and equipment used in an international trade facility directly related to the movement of cargo. Capital investment includes expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. For purposes of this section, machinery, tools, and equipment shall be deemed to include only that property placed in service by the international trade facility on and after January 1, 2011. Machinery, tools, and equipment excludes property (i) for which a credit under this section was previously granted; (ii) placed in service by the taxpayer, a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; or (iii) previously in service in the Commonwealth that 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 acquired or § 1014(a) of the Internal Revenue Code, as amended.

"Capital investment" shall not include:

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

2. The cost of furnishings;

3. Any expenditure associated with appraisal, architectural, engineering, or interior design fees;

4. Loan fees, points, or capitalized interest;

5. Legal, accounting, realtor, sales and marketing, or other professional fees;

6. Closing costs, permit fees, user fees, zoning fees, impact fees, and inspection fees;

7. Bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities costs incurred during construction;

8. Utility hook-up or access fees;

9. Outbuildings; or

10. The cost of any well or septic system.

"Credit year" means the first taxable year following the taxable year in which the international trade facility commenced or expanded its operations. A separate credit year and a three-year allowance shall exist for each distinct international trade facility of a single taxpayer.

"International trade facility" means a company that:

1. Is engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing;

2. Uses maritime port facilities located in the Commonwealth; and

3. Transports at least 10 percent more cargo, measured in 20-foot equivalent marine containers, through maritime port facilities in the Commonwealth during the taxable year than was transported by the company through such facilities during the preceding taxable year.

"New, permanent full-time position" means a job of indefinite duration, created by the company after establishing or expanding an international trade facility in the Commonwealth, requiring a minimum of 35 hours of employment per week for each employee for the entire normal year of the company's operations, or a position of indefinite duration that requires a minimum of 35 hours of employment per week for each employee for the portion of the taxable year in which the employee was initially hired for, or transferred to, the international trade 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 international trade facility, and positions in building and grounds maintenance, security, and other such positions that are ancillary to the principal activities performed by the employees at the international trade facility shall not qualify as new, permanent full-time positions.

"Normal year" means at least 48 weeks in a calendar year.

"Qualified full-time employee" means an employee filling a new, permanent full-time position in an international trade facility in the Commonwealth.

"Qualified trade activities" means the completed exportation or importation of at least one International Organization for Standardization ocean container, with a minimum 20-foot length, through a Virginia Port Authority-operated cargo facility. An export container must be loaded on a barge or ocean-going vessel and an import must be discharged from a barge or ocean-going vessel at such facility.

B. For taxable years beginning on and after January 1, 2011, but before January 1, 2015, a taxpayer satisfying the requirements of this section shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.). The amount of the credit earned pursuant to this section shall be equal to either (i) $3,000 per qualified full-time employee that results from increased qualified trade activities by the taxpayer or (ii) an amount equal to two percent of the capital investment made by the taxpayer to facilitate the increased qualified trade activities. The election of which tax credit amount to claim shall be the responsibility of the taxpayer. Both tax credits shall not be claimed for the same activities that occur in a calendar year. The portion of the $3,000 credit earned with respect to any qualified full-time employee who works in the Commonwealth for less than 12 full months during the credit year shall be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months such employee worked for the international trade facility in the Commonwealth during the credit year and the denominator of which is 12.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $250,000 in tax credits pursuant to this section in any fiscal year of the Commonwealth. If the amount of tax credits requested under this section for any taxable year exceeds $250,000, such credits shall be allocated proportionately among all qualified taxpayers. The Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2015. The taxpayer shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit amount allowable for the taxable year and shall provide a written certification to the taxpayer, which certification shall report the amount of the tax credit approved by the Department. The taxpayer shall attach the certification to the applicable income tax return.

D. The amount of the credit allowed pursuant to this section shall not exceed 50 percent of the tax imposed for the taxable year. Any remaining credit amount may be carried forward for the next 10 taxable years. In the event a taxpayer who is subject to the limitation imposed pursuant to this subsection is allowed a different tax credit pursuant to another section of the Code, or has a credit carry forward from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit that does not have a carry forward provision, and then any credit carried forward from a preceding taxable year, before using any of the credit allowed pursuant to this section.

E. No credit shall be earned for any employee (i) for whom a credit under this section was previously earned by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; (ii) who was previously employed in the same job function in Virginia by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; (iii) whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; or (iv) whose job function previously qualified for a credit under this section at a different major business facility, as defined in subsection C of § 58.1-439, on behalf of the taxpayer, by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended.

F. 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.

G. For purposes of this section, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees or the amounts of capital investments as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed herein.

H. Recapture of the credit amount, under the following circumstances, shall be accomplished by

increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees falls below the average number of qualified full-time employees during the taxable year. The tax increase amount shall be determined by (i) recalculating the credit that would have been earned for the original taxable year using the decreased number of qualified full-time employees and (ii) subtracting the recalculated credit amount from the amount previously earned. In the event that the average number of qualified full-time employees employed at an international trade facility falls below the number employed by the taxpayer prior to claiming any credits pursuant to this section in any of the five taxable years succeeding the year in which the credits were earned, all credits earned with respect to the international trade facility shall be recaptured. No credit amount shall be recaptured more than once pursuant to this subsection. Any recapture pursuant to this subsection shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability is increased.

I. International trade facilities that create jobs or make capital investments in a tobacco-dependent locality, as defined in subsection A of § 58.1-439.13, shall be entitled to tax credits twice the amount in subsection B to the extent moneys from the Tobacco Indemnification and Community Revitalization Fund, established under § 3.2-3106, are deposited into the Technology Initiative in Tobacco-Dependent Localities Fund (the Fund), established under § 58.1-439.15, for the purpose of funding this credit. If the amount of credits allowable pursuant to this section exceeds the amount deposited in the Fund for any fiscal year, such credits shall be allocated to taxpayers on a pro rata basis by the Department of Taxation for such year.

J. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (i) the computation, carryover, and recapture of the credits provided under this section; (ii) the establishment of criteria for (a) international trade facilities, (b) qualified full-time employees at such facilities, and (c) capital investments; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-439.15. Technology Initiative in Tobacco-Dependent Localities Fund.

There is hereby created in the Department of the Treasury a special fund that shall be known as the Technology Initiative in Tobacco-Dependent Localities Fund (the Fund). The Fund shall be composed of those moneys deposited from the Tobacco Indemnification and Community Revitalization Fund as provided in § 3.2-3106. The Department of the Treasury shall administer and manage the Fund. Moneys in the Fund shall be made available to reimburse the general fund for providing tax credits under this article, including redeeming tax credits pursuant to § 58.1-439.14 *and pursuant to subsection I of § 58.1-439.12:06*, and shall be used to reimburse the general fund for the administrative costs incurred by the Department of Taxation in implementing the provisions of this article. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. After all eligible tax credits have been claimed through all taxable years beginning before January 1, ~~2010~~ *2013*, any moneys left in the Fund shall revert to the Tobacco Indemnification and Community Revitalization Fund.