

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 850

An Act to amend and reenact §§ 32.1-352, 38.2-1026, 38.2-1611.1, 38.2-1709, 38.2-4809, 58.1-435, 58.1-2500, 58.1-2503 through 58.1-2508, 58.1-2510, 58.1-2520, 58.1-2521, 58.1-2522, 58.1-2525, 58.1-2526, 58.1-2528, 58.1-2531, and 59.1-280 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 48 of Title 38.2 sections numbered 38.2-4809.1 and 38.2-4816, and by adding in Article 2 of Chapter 25 of Title 58.1 sections numbered 58.1-2532 and 58.1-2533, relating to the administration of the tax on gross premiums of certain insurance.

[S 1124]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-352, 38.2-1026, 38.2-1611.1, 38.2-1709, 38.2-4809, 58.1-435, 58.1-2500, 58.1-2503 through 58.1-2508, 58.1-2510, 58.1-2520, 58.1-2521, 58.1-2522, 58.1-2525, 58.1-2526, 58.1-2528, 58.1-2531, and 59.1-280 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 48 of Title 38.2 sections numbered 38.2-4809.1 and 38.2-4816, and by adding in Article 2 of Chapter 25 of Title 58.1 sections numbered 58.1-2532 and 58.1-2533 as follows:

§ 32.1-352. Virginia Family Access to Medical Insurance Security Plan Trust Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Family Access to Medical Insurance Security Plan Trust Fund, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the Director of the Department of Medical Assistance Services. The Fund shall consist of the premium differential, any and all employer contributions which may be solicited or received by the Department of Medical Assistance Services, grants, donations, gifts, and bequests, or any and all moneys designated for the Fund, from any source, public or private. As used in this section, "premium differential" means an amount equal to the difference between (i) 0.75 percent of the direct gross subscriber fee income derived from eligible contracts and (ii) the amount of license tax revenue generated pursuant to subdivision A 4 of § 58.1-2501 with respect to eligible contracts. As used in this section, "eligible contract" means any subscription contract for any kind of plan classified and defined in § 38.2-4201 or § 38.2-4501 issued other than to (i) an individual or (ii) a primary small group employer if income from the contract is subject to license tax at the rate of 2.25 percent pursuant to subsection D of § 38.2-4229.1. The ~~State Corporation Commission~~ *Department of Taxation* shall annually, on or before June 30, calculate the premium differential for the immediately preceding taxable year and notify the Comptroller of the Commonwealth to transfer such amount to the Virginia Family Access to Medical Insurance Security Plan Trust Fund as established on the books of the Comptroller.

B. 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. Moneys in the Fund shall be used solely to support the Virginia Family Access to Medical Insurance Security Plan in accordance with the requirements of Title XXI of the Social Security Act, as amended, the Commonwealth's plan for the State Children's Health Insurance Program (SCHIP), as established in Subtitle J of the federal Balanced Budget Act of 1997 (P. L. 105-33), and any conditions set forth in the appropriation act.

C. The Director of the Department of Medical Assistance Services shall report annually on December 1 to the Governor, the General Assembly, and the Joint Commission on Health Care on the status of the Fund, the number of children served by this program, the costs of such services, and any issues related to the Virginia Family Access to Medical Insurance Security Plan that may need to be addressed.

§ 38.2-1026. Retaliatory provisions as to taxes, fees, deposits and other requirements.

A. When a domestic insurer or its agents are subject to regulatory costs in another state that are greater than those imposed in this Commonwealth upon insurers domiciled in that state or their agents, then the regulatory costs imposed by this Commonwealth on those foreign insurers or their agents shall be increased to equal the regulatory costs imposed by the other state on the domestic insurer or its agents. For the purpose of this section, regulatory cost includes (i) any deposits of securities, (ii) payment of taxes, fines, penalties or fees exacted for the privilege of doing business or (iii) any restitutions, obligations or conditions necessary for doing business.

B. For the purposes of this section an alien insurance company shall be considered domiciled in the state wherein it has the largest amount of its assets held in trust and on deposit for the benefit of its policyholders, or of its policyholders and creditors in the United States. An insurance company incorporated in Canada shall be considered domiciled in Canada.

C. Any foreign or alien insurance company subject to this section shall annually, on or before March 1, file a report with the ~~Commission~~ *Department of Taxation* which compares the regulatory costs

imposed on such insurer by this Commonwealth during the preceding calendar year to the regulatory costs that would have been imposed on a similar insurer domiciled in this Commonwealth by such insurer's state of domicile during the preceding calendar year. This report shall be filed on a form and in such detail as prescribed by the ~~Commission~~ *Department of Taxation*. Amounts owed due to the equalization of the regulatory costs imposed on such insurer by this Commonwealth and the regulatory costs of such insurer's state of domicile shall be remitted to the ~~Commission~~ *Department of Taxation* on or before March 1 of each year. Upon the failure of any insurance company to pay amounts due under this section before the date herein prescribed, the ~~Commission~~ *Department of Taxation* shall impose a penalty of ~~ten~~ 10 percent of the amount due and interest shall be charged at a rate established pursuant to § 58.1-15 for the period between the due date and the date of full payment.

§ 38.2-1611.1. Tax write-offs of certificates of contribution.

A. A member insurer shall have at its option the right to show a certificate of contribution as an asset in the form approved by the Commission pursuant to subdivision 3a of subsection A of § 38.2-1606 at the original face amount for the calendar year of issuance. Such amount may be amortized as follows:

1. Certificates of contribution issued prior to January 1, 1998, shall be amortized in each succeeding calendar year through December 31, 1997, at an amount not to exceed 0.05 of one percent of the member's direct gross premium income for the classes of insurance in the account for which the member insurer is assessed. As used herein, the definition of direct gross premium income shall be the same as that specified in § 58.1-2500. If the amount of the certificate has not been fully amortized by the contributing insurer by December 31, 1997, the unamortized balance of the certificate amount shall be amortized, at the option of the contributing insurer, either (i) in the same manner as the certificate was amortized prior to January 1, 1998; however, if not amortized in full prior to calendar year 2010, the unamortized balance of the certificate shall be amortized in full during calendar year 2010, or (ii) over the ~~ten~~ 10 successive calendar years commencing January 1, 1998, in amounts each equal to ~~ten~~ 10 percent of such unamortized balance. A contributing insurer whose certificate has not been fully amortized by December 31, 1997, shall notify the Commission in writing of the amortization schedule option it has selected on or before March 1, 1998; however, if a contributing insurer fails to notify the Commission by such date, the insurer shall be deemed to have selected the option described in clause (i) of the preceding sentence.

2. Certificates of contribution issued on or after January 1, 1998, shall be amortized over the ~~ten~~ 10 calendar years following the year the contribution was paid in amounts each equal to ~~10~~ ~~ten~~ 10 percent of the amount of the contribution.

B. The insurer may offset the amount of the certificate amortized in a calendar year as provided in subsection A. This amount shall be deducted from the premium tax liability incurred on business transacted in this Commonwealth for that year. However, the Association shall diligently pursue all rights available to it to recover its expenditures made in the fulfillment of its responsibilities under this chapter. In the event the Commission determines after a hearing that the Association is not diligently pursuing available measures of recovery, *the Commission shall notify the Department and* participating insurers will not be able to offset amounts amortized during the period that the Commission determines that the Association has not been diligently pursuing available measures of recovery.

C. Any sums that have been (i) amortized by contributing insurers and offset against premium taxes as provided in subsection B and (ii) subsequently refunded pursuant to subdivision A 3 of subsection A of § 38.2-1606 or subdivision B 6 of ~~subsection B~~ of § 38.2-1606 shall be paid to the ~~Commission~~ *Department of Taxation* and deposited with the State Treasurer for credit to the general fund of this Commonwealth.

D. The amount of any credit against premium taxes provided for in this section for an insurer shall be reduced by the amount of reduction in federal income taxes for any deduction claimed by the insurer for an assessment paid pursuant to this chapter.

§ 38.2-1709. Tax write-offs of certificates of contributions.

A. A member insurer shall have at its option the right to show a certificate of contribution as an asset in the form approved by the Commission pursuant to subsection H of § 38.2-1705 at the original face amount for the calendar year of issuance. Such amount shall be amortized over the 10 calendar years following the year the contribution was paid in amounts each equal to 10 percent of the amount of the contribution.

B. The insurer may offset the amount of the certificate amortized in a calendar year as provided in subsection A. This amount shall be deducted from the premium tax liability incurred on business transacted in this Commonwealth for that year. However, the Association shall diligently pursue all rights available to it to recover its expenditures made in the fulfillment of its responsibilities under this chapter. If the Commission determines after a hearing that the Association is not diligently pursuing available measures of recovery, *the Commission shall notify the Department and* contributing insurers will not be able to offset amounts amortized during the period that the Commission determines that the Association has not been diligently pursuing available measures of recovery.

C. Any sums for which a certificate of contribution has been issued that have been (i) amortized by

contributing insurers and offset against premium taxes as provided in subsection B and (ii) subsequently refunded pursuant to subsection F of § 38.2-1705 shall be paid to the ~~Commission~~ *Department of Taxation* and deposited with the State Treasurer for credit to the general fund of this Commonwealth.

D. The amount of any credit against premium taxes provided for in this section for an insurer shall be reduced by the amount of reduction in federal income taxes for any deduction claimed by the insurer for an assessment paid pursuant to this chapter.

§ 38.2-4809. Licensees to pay assessments and license taxes on insurers.

A. 1. Every licensed surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to the ~~annual assessment, penalties, and other provisions of §§ 38.2-400 and 38.2-403 and shall also be subject to the annual taxes, license taxes, penalties, and other provisions of~~ Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on each policy of insurance procured by him during the preceding calendar year with an insurer not licensed to transact insurance business in this Commonwealth. *For policies effective on or after July 1, 2011, such payments shall be made based on the direct gross premium income derived from policies for insureds whose home state is the Commonwealth of Virginia.*

2. ~~If any person overestimates and overpays the assessment or annual taxes, the Commission shall order a refund of the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury on the order of the Commission upon the Comptroller. Every surplus lines broker subject to the provisions of this chapter shall, on or before March 1 of 2012 and 2013 report under oath to the Commission, and on or before March 1 of each year thereafter, report under oath to the Department of Taxation, upon the prescribed form, the direct gross premium income derived from policies for insureds whose home state is the Commonwealth of Virginia during the preceding year ending December 31.~~

3. *Every surplus lines broker failing to file the report required by this section shall be fined \$50 for each day's failure to file the report.*

4. *Upon the failure of any such surplus lines broker to pay the premium license tax within the time required by this section, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full payment. The Commission or Department of Taxation shall notify the surplus lines broker of all additional amounts owed, and the surplus lines broker shall pay such amounts within 14 days of the date of the notice.*

5. *Upon good cause shown, the Department of Taxation may accept late payment of the premium license tax exclusive of penalties; however, interest shall be paid on such tax as prescribed in this subsection.*

6. *If any person overestimates and overpays the annual taxes, the Department of Taxation shall refund the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury.*

B. Each licensed surplus lines broker or any person required to be licensed as a surplus lines broker whose annual premium tax liability can reasonably be expected to exceed \$1,500 shall file a quarterly tax report with the ~~Commission~~ *Department of Taxation*. Such report shall be in a form prescribed by the ~~Commission~~ *Department of Taxation*. This report shall be filed no later than thirty calendar days after the end of each calendar quarter. Notwithstanding any provision to the contrary, each such person shall pay the premium tax owed for the direct gross premiums adjusted for additional and returned premiums shown by each quarterly tax report when such report is filed with the ~~Commission~~ *Department of Taxation*.

C. In addition to other penalties provided by law, any licensed surplus lines broker or any person required to be licensed as a surplus lines broker who willfully fails or refuses to pay the full amount of the tax or assessment required by this chapter, either by himself or through his agents or employees, or who makes a false or fraudulent return with intent to evade the tax or assessment hereby levied, or who makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor.

D. If any licensed surplus lines broker or any person required to be licensed as a surplus lines broker charges and collects from the insured the taxes and assessments required by this section *and* § 38.2-4809.1, such person shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth under this chapter.

§ 38.2-4809.1. Licensees to pay assessments on insurers.

Every licensed surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to the annual maintenance fund assessment, penalties, and other provisions of §§ 38.2-400 and 38.2-403. If any person overestimates and overpays the assessment or annual taxes, the Commission shall order a refund of the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury on the order of the Commission upon the Comptroller.

§ 38.2-4816. Exchange of information.

The Commission and Department of Taxation may exchange information for purposes of enforcing the provisions of this title.

§ 58.1-435. Low-income housing credit.

A. Any person shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 in the amount certified to the Department or the State Corporation Commission, as applicable, pursuant to subsection F for any five taxable years, as such years are determined by the Board of Housing and Community Development, in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by the Board for claiming such credit on the applicable Virginia tax return.

B. The Board of Housing and Community Development shall issue regulations establishing the amount of the low-income housing credit allowable, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than 12 months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a 12-month period for the taxable year.

C. The Department of Housing and Community Development shall administer the approval of low-income housing credits. However, the Board shall not approve any low-income housing credits after June 30, 2010. The total maximum amount of low-income housing credits which may be approved by the Board of Housing and Community Development in any calendar year shall be \$500,000. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.

D. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the Department of Housing and Community Development has certified the amount of such tax credit pursuant to subsection F. No credit shall be carried back to a preceding taxable year. If a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which the applicable Virginia low-income housing credit was applied or used. Any credit recapture shall be assessed and collected in the same manner as a tax attributable to a change in federal taxable income within the meaning of § 58.1-311. The Board of Housing and Community Development shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia tax return.

F. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation ~~or the State Corporation Commission, as applicable,~~ that such person qualified for the Virginia low-income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia tax return filed with the Department of Taxation ~~or the State Corporation Commission, as applicable.~~ The Department of Housing and Community Development shall also provide the Department of Taxation ~~or the State Corporation Commission, as applicable,~~ with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.

§ 58.1-2500. Definitions.

As used in this chapter the term or phrase:

"Commission" means the State Corporation Commission, ~~which is responsible for the administration of this chapter.~~

"Company" means any association, aggregation of individuals, business, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or inter-insurance exchange, trustee or society.

"Department" means the Department of Taxation.

"Direct gross premium income" means the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this Commonwealth during each year ending December 31, excluding premiums received for reinsurance assumed from licensed insurance companies, without any deduction for dividends paid or deduction on any other account except

for premiums returned on cancelled policies, or on account of reduction in rates or reduction in the amount insured, and excluding premiums received or derived to provide insurance of the kinds classified in §§ 38.2-102 and 38.2-109 issued on a group basis by an insurance company insuring its employees, agents and representatives. In computing direct gross premium income on insurance issued by mutual insurance companies other than life insurance companies, refunds or returns made to policyholders otherwise than for losses may be deducted.

"Estimated tax" means the amount which the insurance company estimates as the amount of the tax imposed by this chapter for the license year, measured by direct gross premium income received or derived in the taxable year.

"Insurance company" means any company engaged in the business of making contracts of insurance.

"License year" means the 12-month period beginning on July 1 next succeeding the taxable year and ending on June 30 of the subsequent year.

"Preceding year's tax" means the tax as ascertained on the preceding year's tax report.

"Subscriber fee income" means the gross premium or deposit income collected, received or derived from and credited to the accounts of subscribers from business in the Commonwealth during the preceding year ending December 31, decreased by all returns for cancellation and all amounts returned to subscribers or credited to their accounts as savings.

"Tax" means the amount derived by multiplying the direct gross premium income in the taxable year by the tax rate.

"Taxable year" means the calendar year preceding the license year upon the basis of which direct gross premium income is computed. The term includes, in the case of direct gross premium income for a fractional part of a calendar year, the period in which such direct gross premium income is received or derived from business in this Commonwealth.

§ 58.1-2503. When tax payable.

The annual license tax shall be transmitted to the ~~Commission~~ *Department* on or before March 1 of each year for deposit into the state treasury.

§ 58.1-2504. Companies commencing business.

A. The license tax on a company commencing business in the Commonwealth shall be paid to the ~~Commission~~ *Department* before the license is issued. If a payment is made in an amount subsequently found to be in error, the ~~Commission~~ *Department* shall, if an additional amount is due, notify the taxpayer of the additional amount due and the company shall pay such amount within ~~fourteen~~ 14 days of the date of the notice, and, if an overpayment is made, order a refund as provided for in § 58.1-2505.

B. No license ~~to transact the business of insurance~~ shall be issued by the *Commission* for less than a year except to a company when it first commences business in the Commonwealth, in which case the initial license shall be issued for that part of the year from the date of the issuance of the license to June 30 following.

§ 58.1-2505. Amount of license tax for company commencing business.

The license tax on a company commencing business in the Commonwealth shall be measured by an estimate of direct gross premium income reasonably expected to be derived from such business in the Commonwealth from the time of commencing business to December 31 following. Every estimate made under this section shall be subject to review by the ~~Commission~~ *Department* after the close of the year for which the estimate is made and any variance between the estimate and the actual direct gross premium income shall be adjusted by the ~~Commission~~ *Department* by order of refund or the assessment of additional license tax depending on whether such estimate was in excess of or less than the actual direct gross premium income of such company for such year.

§ 58.1-2506. Reports to the Commission.

Every company subject to the provisions of this chapter shall, on or before March 1 of each year, report under oath to the ~~Commission~~ *Department*, upon forms to be furnished or approved by and in such detail as may be prescribed by the ~~Commission~~ *Department*, the direct gross premium income derived from its business in the Commonwealth during the preceding year ending December 31.

§ 58.1-2507. Penalties for failure to make report or pay tax; revocation of license; recovery by suit.

A. Every company failing to make the report required by § 58.1-2506 shall be fined \$50 for each day's failure to make the report.

B. Upon the failure of any such company to pay the license tax within the time required by this chapter, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full payment. The ~~Commission~~ *Department* shall notify the taxpayer of all additional amounts owed, and the taxpayer shall pay such amounts within 14 days of the date of the notice. If an overpayment is made, the ~~Commission~~ *Department* shall ~~order~~ *issue* a refund of the amount of the overpayment to the taxpayer pursuant to subsection B of § 58.1-2526. The Commission may suspend or revoke the company's license to do business in this Commonwealth pursuant to § 38.2-1040 ~~if the~~ *upon notification by the Department that the* additional amounts due are not paid. The ~~Comptroller~~ *Department* shall proceed to recover the tax, penalty and interest ~~by suit in the appropriate circuit court,~~ (i) *in the same manner as is done for any other tax administered by the Department* or (ii) by

proceedings brought to subject any bonds or other securities deposited by such company with the Treasurer.

C. If such failure is due to providential or other good cause shown to the satisfaction of the ~~Commission~~ Department, such return or payment or return and payment may be accepted exclusive of penalties; however, such company shall pay interest on such tax as prescribed in subsection B.

§ 58.1-2508. Taxes applicable to insurance companies.

A. The real estate and tangible personal property, situated or located in the Commonwealth, of every such company and every fraternal benefit society transacting insurance in the Commonwealth shall be listed and assessed on the land and property books of the commissioner of the revenue in the same manner as other real estate and tangible personal property are assessed, and shall be taxed at the same rates as other like property is taxed.

B. The license tax provided in this chapter, the tax on real estate and tangible personal property provided for in subsection A, the fee assessed by the Commission for the administration of the insurance laws pursuant to Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, the fee assessed by the Commission for the Fire Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, the fee assessed by the Commission to fund the program to reduce losses from insurance fraud pursuant to § 38.2-415, and the retaliatory amounts assessed by the ~~Commission~~ Department pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and levies whatsoever, state, county, city or town; however, nothing in this section shall be construed to exempt insurance companies from the tax levied in Chapter 6 (§ 58.1-600 et seq.) of this title. No additional fee or license tax shall be applicable to an agent of an insurance company other than the annual license fee on agents required pursuant to Article 3 (§ 38.2-1819 et seq.) of Chapter 18 of Title 38.2.

§ 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~~ 80 percent of the voting power of the other company or at least ~~eighty~~ 80 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~~ 35 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~~ 48 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.

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

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

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

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

§ 58.1-2520. Requirement of declaration.

A. Every insurance company and nonstock corporation licensed pursuant to Chapters 42 and 45 of Title 38.2 subject to the state license tax imposed by § 58.1-2501 shall make a declaration of estimated tax if the tax imposed by this chapter, for the license year, measured by direct gross premium income, can reasonably be expected to exceed \$3,000.

Such declaration shall contain such pertinent information as the ~~Commission~~ Department may by forms or ~~regulations~~ guidelines prescribe.

B. Any such insurance company or nonstock corporation with a taxable year of less than ~~12~~ twelve 12 months shall make a declaration in accordance with ~~regulations~~ guidelines prescribed by the ~~Commission~~ Department.

§ 58.1-2521. Time for filing declarations of estimated tax.

A. The declaration of estimated tax shall be filed as follows:

If the requirements of subsection A of § 58.1-2520 are first met:

1. Before April 1 of the taxable year, the declaration shall be filed on or before April 15 of the taxable year.

2. After March 31 but before June 1 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year.

3. After May 31, but before September 1 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year.

4. After August 31, but before December 1 of the taxable year, the declaration shall be filed on or before December 15 of the taxable year.

B. The application of this section to taxable years of less than ~~12~~ twelve 12 months shall be in accordance with ~~regulations~~ guidelines prescribed by the ~~Commission~~ Department.

§ 58.1-2522. Amendments to declaration.

An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval. Such amendments shall be filed pursuant to ~~regulations~~ guidelines prescribed by the ~~Commission~~ Department.

§ 58.1-2525. Extensions of time.

The ~~Commission~~ Department may grant a reasonable extension of time for payment of estimated tax, or any installment, or for filing any declaration pursuant to this article, on condition that the taxpayer shall pay interest on the amount involved at the rate of three-fourths of one percent per month or fraction thereof from the time the payment was due until the time of payment. Whenever the taxpayer, without having been granted an extension, fails to make payment of estimated tax, or any installment, or file any declaration as required by this article, it shall pay interest on the amount involved at the rate of one percent per month or fraction thereof from the time payment was due until the time of payment.

§ 58.1-2526. Where declarations filed and how payments made; refunding overpayments.

A. Every insurance company required by this article to file a declaration and make payment of the estimated tax shall file and pay the same with the ~~Commission~~ Department. All such payments shall be deposited by the ~~Commission~~ Department into the state treasury.

B. If any insurance company overestimates and overpays estimated tax or overpays as a result of increased regulatory costs imposed pursuant to § 38.2-1026, the ~~Commission~~ Department shall ~~order~~ issue a refund of the amount of the overpayment to the taxpayer pursuant to Article 2 (§ 58.1-1820 et seq.) of Chapter 18. The overpayment shall be refunded out of the state treasury ~~on the order of the Commission upon the Comptroller. The Commission may act under this paragraph within three years from the date on which such overpayment was made.~~

§ 58.1-2528. Exception to § 58.1-2527.

A. Notwithstanding the provisions of § 58.1-2527, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax as ascertained for the preceding license year, and the tax for such preceding license year was computed on the basis of a taxable year of ~~twelve~~ 12 months.

2. An amount equal to the tax computed at the rate applicable to the license year but otherwise on the basis of the facts shown on the report of the insurance company for, and the law applicable to, the preceding license year.

3. An amount equal to ~~ninety~~ 90 percent of the tax measured by direct gross premium income received or derived in the taxable year computed by placing on an annualized basis the taxable direct gross premium income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first ~~eleven~~ 11 months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

B. For purposes of subdivision A 3 ~~of subsection A~~, the taxable direct gross premium income shall be placed on an annualized basis by multiplying by twelve the taxable direct gross premium income referred to in subdivision A 3, and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or ~~eleven~~ 11, as the case may be) referred to in subdivision A 3.

C. The application of this section to taxable years of less than ~~twelve~~ 12 months shall be in accordance with ~~regulations~~ guidelines prescribed by the ~~Commission~~ Department.

§ 58.1-2531. Distribution of certain revenue.

A. Beginning with the Commonwealth's fiscal year beginning on July 1, 2008 and for each fiscal year thereafter, an amount equal to one-third of all revenues collected by the ~~Commission~~ Department in the most recently ended fiscal year from the tax imposed under this chapter, less one-third of the total amount of such tax refunded in the most recently ended fiscal year, shall be deposited by the Comptroller to the Priority Transportation Fund established under § 33.1-23.03:8.

B. For purposes of the Comptroller's deposits under this section, the Tax Commissioner ~~of the Bureau of Insurance~~ shall, no later than July 15 of each year, provide a written certification to the Comptroller that reports the amount to be deposited pursuant to subsection A. After the required amount has been deposited as provided in subsection A, all remaining revenues from the tax imposed under this chapter shall be deposited into the general fund of the state treasury. The Comptroller shall make all deposits under this section as soon as practicable.

§ 58.1-2532. Exchange of information.

The Department and the Commission may exchange information for purposes of enforcing the provisions of this title.

§ 58.1-2533. Reimbursement for certain costs.

Any costs related to the insurance premiums tax that are incurred by the Department shall be recovered from the assessment for expenses under §§ 38.2-400 and 38.2-403.

§ 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.

"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.

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

F. 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.

G. 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.

2. That the provisions of this act shall become effective for the taxable year commencing on or after January 1, 2013, except that the provisions of this act in subdivisions A 1 through A 4 of § 38.2-4809 of the Code of Virginia and § 38.2-4809.1 of the Code of Virginia shall be effective on July 1, 2011.