VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 341

An Act to amend and reenact § 58.1-439.12:07 of the Code of Virginia, relating to telework expenses tax credit.

[S 238]

Approved March 22, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:07 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.12:07. Telework expenses tax credit.

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

"Eligible telework expenses" means expenses incurred during the taxable year pursuant to a telework agreement, in an amount up to $1,200 for each participating employee, that enable a participating employee to begin to telework, which expenses are not otherwise the subject of a deduction from income claimed by the employer in any tax year. Such expenses include, but are not limited to, expenses paid or incurred to purchase computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, high-speed Internet connectivity equipment, computer security software and devices, and all related delivery, installation, and maintenance fees. Such expenses do not include replacement costs for computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, or computer security software and devices at the principal place of business when that equipment is relocated to the telework site. Eligible telework expenses may also include up to a maximum of $20,000 for conducting a telework assessment on or after January 1, 2012. Such costs shall be ineligible for this credit if they are otherwise taken as a deduction by the employer from income in any taxable year. The costs included and allowed to be taken as a credit include program planning costs, which may include direct program development and training costs, raw labor costs, and professional consulting fees. Such costs shall not include those for which a credit is claimed under any other provision of this chapter. The credit *for conducting a telework assessment* shall be allowed once for each employer meeting the requirements herein.

"Employer" means any employer subject to the income tax imposed by this chapter.

"Participating employee" means an employee who has entered into a telework agreement with his employer on or after July 1, 2012, in accordance with policies set by the Virginia Department of Rail and Public Transportation. The term shall not include an individual who is self-employed or an individual who ordinarily spends a majority of the workday at a location other than the place where his duties are normally performed.

"Telework" means the performance of normal and regular work functions on a workday at a location different from the place where work functions are normally performed and that is within or closer to the participating employee's residence. The term shall not include home-based businesses, extensions of the workday, or work performed on a weekend or holiday.

"Telework agreement" means an agreement signed by the employer and the participating employee, on or after July 1, 2012, but before January 1, ~~2014~~ *2017*, that defines the terms of a telework arrangement, including the number of days per month the participating employee will telework in order to qualify for the credit, and any restrictions on the location from which the employee will telework.

"Telework assessment" means an optional assessment leading to the development of policies and procedures necessary to implement a formal telework program that would qualify the employer for the credit provided in this section, including but not limited to a workforce profile; a telework program business case and plan; a detailed accounting of the purpose, goals, and operating procedures of the telework program; methodologies for measuring telework program activities and success; and a deployment schedule for increasing telework activity.

B. For taxable years beginning on or after January 1, 2012, but before January 1, ~~2014~~ *2017*, an employer shall be allowed a credit against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of this chapter for eligible telework expenses incurred during the ~~2012 and 2013~~ calendar ~~years~~ *year that ends during the taxable year*. The amount of the credit shall not exceed $50,000 per employer for ~~the 2012 and 2013~~ *each* calendar ~~years~~ *year*.

Such expenses may be incurred (i) only once per participating employee and (ii) directly by the employer on behalf of the participating employee or directly by the participating employee and reimbursed by the employer.

C. 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.

D. The amount of tax credits available to any employer under this section in any taxable year shall not exceed the employer's tax liability. No unused tax credit shall be carried forward or carried back against the employer's tax liability. An employer shall be ineligible for a tax credit pursuant to this section if such employer claims a credit *based on the jobs, wages, or other expenses for the same employee* under any other ~~provisions~~ *provision* of this chapter.

E. An employer seeking to claim a tax credit provided herein shall submit a reservation application to the Tax Commissioner for tentative approval of the credit between September 1 and October 31 of the year preceding the ~~taxable year for which the tax credit is to be earned~~ *calendar year in which the eligible telework expenses will be incurred*. The Tax Commissioner shall establish policies and procedures for the reservation of tax credits by eligible employers. Such policies and procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a system for allocating the available amount of tax credits among eligible employers; and (iii) a procedure for the cancellation and reallocation of tax credit reservations allocated to eligible employers that, after reserving tax credits, have been determined to be ineligible for all or a portion of the tax credits reserved. Such application shall certify that the employer would not have incurred the eligible telework expenses for which the credit is sought but for the availability of such credit. The Tax Commissioner shall provide tentative approval of the applications no later than December 31 of the year in which the applications are received. When the application and amount of tax credits have been approved and the employer applicant notified, such employer may make purchases approved for the tax credits during the immediately following taxable year or lose the right to such credits.

F. In no event shall the aggregate amount of tax credits approved by the Tax Commissioner exceed $1 million annually ~~for credits earned in taxable years 2012 and 2013~~. In the event the credit amounts on the applications filed with the Tax Commissioner exceed the maximum aggregate amount of tax credits, then the tax credits shall be allocated on a pro rata basis based on the amounts allowed by subsection B among the eligible employers who filed timely applications.

G. Actions of the Tax Commissioner relating to the approval or denial of applications for reservations of tax credits pursuant to this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2. That the provisions of this act shall be effective for taxable years beginning on or after January 1, 2012.