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HOUSE BILL NO. 191

Offered January 11, 2012
Prefiled January 9, 2012

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11, relating to tax credits for small businesses employing graduates of Virginia's colleges and universities.

Patron—Herring

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11 as follows:

§ 58.1-439.12:11. Tax credit for employing graduates of Virginia's colleges and universities.

A. For taxable years beginning on or after January 1, 2012, but prior to January 1, 2014, a small business shall be eligible for a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 for each new full-time job created by the small business that has been filled by a Virginia graduate. The amount of the credit shall equal $2,500 for each such new full-time job created.

The credit shall be allowed for the taxable year at which time the new full-time job has been continuously filled for a period of 12 months. However, no credit shall be allowed under this section for the taxable year if the number of full-time jobs for which the small business is the employer for the taxable year is less than the base year employment.

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

"Base year employment" means the average annual number of full-time jobs for which the small business is the employer for the immediately preceding three taxable years of the small business.

"Full-time job" means a job in the Commonwealth of an indefinite duration, for which the small business is the employer and for which the standard fringe benefits are paid by the small business, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such small business' operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, and positions created when a job function is shifted from an existing location in the Commonwealth, shall not qualify as full-time jobs.

"In-state institution" means the same as that term is defined under § 23-276.1

"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 75 or fewer employees, or average annual gross receipts of $10 million or less averaged over the immediately preceding three taxable years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"Virginia graduate" means a person who was (i) awarded an associate's or bachelor's degree from an in-state institution within the three years immediately preceding the date the person was hired into a full-time job, and (ii) not an independent contractor of the small business within such three-year period.

C. To be eligible for the tax credit provided in subsection A, a small business shall demonstrate that the new full-time job was created by the small business, and that such job was continuously filled for a period of at least 12 months.

D. To claim the credit established under this section, the small business shall apply to the Department to determine the credit amount allowable for the taxable year. The Department shall issue the tax credit by providing a written certification to the small business of the amount of tax credit that may be claimed. The small business shall attach the certification to the Virginia income tax return filed with the Department. In no case shall the Department issue more than $2 million in tax credits under this section during any fiscal year of the Commonwealth. The Department shall develop procedures to issue tax credits in the event that applications for tax credits exceed $2 million for the fiscal year.

E. A small business shall not be allowed a tax credit pursuant to this section for any employee or job for which the small business is allowed a green job creation tax credit pursuant to § 58.1-439.12:05.

F. The amount of the credit shall not exceed the total amount of tax imposed by this chapter upon the small business for the taxable year. Any credit not usable for the taxable year for which the credit was allowed may be carried over for credit against the income taxes of the small business in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

G. Credits granted to a partnership, limited liability company, or electing small business corporation

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(S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

H. The Tax Commissioner shall develop guidelines implementing the provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).