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HOUSE BILL NO. 995

Offered January 8, 2014
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A BILL to amend and reenact §§ 58.1-334, 58.1-337, 58.1-339.2, 58.1-339.3, 58.1-339.4, 58.1-339.6, 58.1-432, 58.1-436, 58.1-438.1, 58.1-439, 58.1-609.1, 58.1-610, and 58.1-626 of the Code of Virginia, relating to income tax and sales and use tax; placing expiration dates on credits and exemptions.

Patron—Hugo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-334, 58.1-337, 58.1-339.2, 58.1-339.3, 58.1-339.4, 58.1-339.6, 58.1-432, 58.1-436, 58.1-438.1, 58.1-439, 58.1-609.1, 58.1-610, and 58.1-626 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-334. Tax credit for purchase of conservation tillage equipment.

A. Any individual shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling 25 percent of all expenditures made for the purchase and installation of conservation tillage equipment used in agricultural production by the purchaser. As used in this section the term "conservation tillage equipment" means a planter, drill, or other equipment used to reduce soil compaction commonly known as a "no-till" planter, drill, or other equipment used to reduce soil compaction including guidance systems to control traffic patterns that are designed to minimize disturbance of the soil in planting crops, including such planters, drills, or other equipment designed to reduce soil compaction which may be attached to equipment already owned by the taxpayer.

B. The amount of such credit shall not exceed $4,000 or the total amount of tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such tax year, the amount which exceeds the tax liability may be carried over for credit against the income taxes of such individual in the next five taxable years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to the purchase and installation of conservation tillage equipment by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

D. The provisions of this section shall expire on July 1, 2016.

§ 58.1-337. Tax credit for purchase of advanced technology pesticide and fertilizer application equipment.

A. Any individual engaged in agricultural production for market who has in place a nutrient management plan approved by the local Soil and Water Conservation District by the required tax return filing date of the individual shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling twenty-five percent of all expenditures made by such individual for the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application. Virginia Polytechnic Institute and State University and Virginia State University shall provide at the request of the Virginia Soil and Water Conservation Board technical assistance in determining appropriate specifications for certified equipment which would provide for more precise pesticide and fertilizer application to reduce the potential for adverse environmental impacts. The equipment shall be divided into the following categories:

1. Sprayers for pesticides and liquid fertilizers;

2. Pneumatic fertilizer applicators;

3. Monitors, computer regulators, and height adjustable booms for sprayers and liquid fertilizer applicators;

4. Manure applicators;

5. Tramline adapters; and

6. Starter fertilizer banding attachments for planters.

B. The amount of such credit shall not exceed $3,750 or the total amount of the tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount which exceeds the tax liability may be carried over for credit against the income taxes of such individual in the next five taxable years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

D. The provisions of this section shall expire on July 1, 2016.

§ 58.1-339.2. Historic rehabilitation tax credit.

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure 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.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; and Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in accordance with the following schedule:

Year	% of Eligible Expenses
1997	10%
1998	15%
1999	20%
2000 and thereafter	25%

If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of such taxpayer in the next ten taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership 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 Director of the Department of Historic Resources.

B. Effective for taxable years beginning on and after January 1, 2000, any individual, trust, estate, or corporation resident in Virginia that incurs eligible expenses in the rehabilitation of a certified historic structure in any other state that has in effect a reciprocal historic structure rehabilitation tax credit program and agreement for residents of that state who rehabilitate historic structures in Virginia shall be entitled to a credit to the same extent as provided in subsection A and other applicable provisions of law; however, no eligible party shall receive any credit authorized under this subsection prior to taxable years beginning on and after January 1, 2002.

C. To claim the credit authorized under this section, the taxpayer shall apply to the Virginia Department of Historic Resources, which shall determine the amount of eligible rehabilitation expenses and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

D. When used in this section:

"Certified historic structure" means a property listed individually on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register or certified by the Director of the Virginia Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register.

"Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the Interior's Standards for Rehabilitation," the cost of which amounts to at least fifty percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least twenty-five percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses.

"Owner-occupied building" means any building that is used as a personal residence by the owner.

E. The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program, including the fees to defray necessary expenses thereof, and, except as otherwise prohibited by this section, the extent to which the availability of the credit provided by this section is coextensive with the availability of the federal tax credit for the rehabilitation of certified historic resources.

F. Any gain or income under federal law from the allocation or application of a tax credit under this section shall not be (i) taxable gain or income for purposes of the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), (ii) taxable gain or income for purposes of the tax imposed pursuant to Article 6

(§ 58.1-360 et seq.), or (iii) taxable gain or income for purposes of the tax imposed pursuant to Article 10 (§ 58.1-400 et seq.). However, nothing in this subsection shall be construed or interpreted as allowing a subtraction or deduction for such gain or income under federal law if the gain or income is otherwise excluded, deducted, or subtracted in computing the respective tax set forth under clauses (i) through (iii).

G. The provisions of this section shall expire on July 1, 2016.

§ 58.1-339.3. Agricultural best management practices tax credit.

A. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD), shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling 25 percent of the first $70,000 expended for agricultural best management practices by the individual.

As used in this section, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) which will provide a significant improvement to water quality in the state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall include, but are not limited to, the following:

1. Livestock-waste and poultry-waste management;
2. Soil erosion control;
3. Nutrient and sediment filtration and detention;
4. Nutrient management; and
5. Pest management and pesticide handling.

A detailed list of the standards and criteria for practices eligible for credit shall be found in the most recently approved "Virginia Agricultural BMP Manual" published annually prior to July 1 by the Department of Conservation and Recreation.

B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources.

C. 1. The amount of such credit shall not exceed $17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit under this section shall not claim a credit under any similar Virginia law for costs related to the same eligible practices.

2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on behalf of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days after the filing date of the income tax return on which the individual applies for the refund.

D. For purposes of this section, the amount of any credit attributable to agricultural best management practices by a pass-through entity such as a partnership, limited liability company, or electing small business corporation (S Corporation) shall be allocated to the individual partners, members, or shareholders in proportion to their ownership or interest in such entity.

E. A pass-through tax entity, such as a partnership, limited liability company or electing small business corporation (S corporation), may appoint a tax matters representative, who shall be a general partner, member-manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates tax credits arising under this article to its partners, members or shareholders and the allocated credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

F. The provisions of this section shall expire on July 1, 2016.

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a

partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.

"Qualified business" means a business which (i) has annual gross revenues of no more than $3 million in its most recent fiscal year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than $3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and (v) is primarily engaged, or is primarily organized to engage, in the fields of advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer that has committed capital under management in excess of $10 million and engages in the business of making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member or owner of an entity that engages in such business.

C. The amount of any credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.

D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) $50,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

E. The amount of tax credits available under this section for a calendar year shall be $5 million. Of the amount of available credits, one-half of the amount shall be allocated exclusively for credits for commercialization investments. Such allocation of tax credits shall constitute the minimum amount of tax credits to be allocated for commercialization investments. However, if the amount of tax credits requested for commercialization investments is less than one-half of the total amount of credits available under this section, the balance of such credits shall be allocated for qualified investments in any qualified business under this section.

F. Unless the taxpayer transfers the equity received in connection with a qualified investment as a result of (i) the liquidation of the qualified business issuing such equity, (ii) the merger, consolidation or other acquisition of such business with or by a party not affiliated with such business, or (iii) the death of the taxpayer, any taxpayer that fails to hold such equity for at least three full calendar years following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of one percent per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. The Department of Taxation shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

G. Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of Taxation shall permit an application for certification as a qualified business to be filed at any time during the calendar year regardless of when the investment was made during the calendar year.

H. The provisions of this section shall expire on July 1, 2016.

§ 58.1-339.6. Political candidate contribution tax credit.

A. For taxable years beginning on and after January 1, 2000, any individual shall be entitled to a credit against the tax levied pursuant to § 58.1-320 of an amount equal to fifty percent of the amount contributed by the taxpayer to a candidate, as defined in § 24.2-101, in one or more primary, special, or general elections for local or state office held in the Commonwealth in the taxable year in which the contributions are made. The amount of the credit shall not exceed twenty-five dollars for an individual taxpayer or fifty dollars for taxpayers filing a joint return.

B. The provisions of this section shall expire on July 1, 2016.

§ 58.1-432. Tax credit for purchase of conservation tillage equipment.

A. Any corporation shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling 25 percent of all expenditures made for the purchase and installation of conservation tillage equipment used in agricultural production by the purchaser. As used in this section, the term "conservation tillage equipment" means a planter, drill, or other equipment used to reduce soil compaction commonly known as a "no-till" planter, drill, or other equipment used to reduce soil compaction including guidance systems to control traffic patterns that are designed to minimize disturbance of the soil in planting crops, including such planters, drills, or other equipment used to reduce soil compaction which may be attached to equipment already owned by the taxpayer.

B. The amount of such credit shall not exceed $4,000 or the total amount of tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such tax year, the amount which exceeds such tax liability may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to the purchase and installation of conservation tillage equipment by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

D. The provisions of this section shall expire on July 1, 2016.

§ 58.1-436. Tax credit for purchase of advanced technology pesticide and fertilizer application equipment.

A. Any corporation engaged in agricultural production for market which has in place a nutrient management plan approved by the local Soil and Water Conservation District by the required tax return filing date of the corporation shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling twenty-five percent of all expenditures made by such corporation for the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application. Virginia Polytechnic Institute and State University and Virginia State University shall provide at the request of the Virginia Soil and Water Conservation Board technical assistance in determining appropriate specifications for certified equipment which would provide for more precise pesticide and fertilizer application to reduce the potential for adverse environmental impacts. The equipment shall be divided into the following categories:

1. Sprayers for pesticides and liquid fertilizers;

2. Pneumatic fertilizer applicators;

3. Monitors, computer regulators, and height adjustable booms for sprayers and liquid fertilizer applicators;

4. Manure applicators;

5. Tramline adapters; and

6. Starter fertilizer banding attachments for planters.

B. The amount of such credit shall not exceed $3,750 or the total amount of the tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount which exceeds the tax liability may be carried over for credit against the income taxes of such corporation in the next five taxable years until the total amount of the tax credit has been taken. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively.

C. For purposes of this section, the amount of any credit attributable to the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application by a partnership or S corporation shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

D. The provisions of this section shall expire on July 1, 2016.

§ 58.1-438.1. Tax credit for vehicle emissions testing equipment, clean-fuel vehicles and certain refueling property.

A. Any corporation, individual or public service corporation shall be allowed a credit against the income or gross receipts taxes imposed by Subtitle I (§ 58.1-100 et seq.) and Chapter 26 (§ 58.1-2600 et

seq.) of Title 58.1 of (i) an amount equal to ten percent of the deduction allowed to such corporation, individual or public service corporation under Section 179A of the Internal Revenue Code for purchases of clean-fuel vehicles principally garaged in Virginia or certain refueling property placed in service in Virginia or ten percent of the costs used to compute the credit under Section 30 of the Internal Revenue Code and (ii) an amount equal to twenty percent of the purchase or lease price paid during the taxable year for equipment certified by the Department of Environmental Quality for vehicle emissions testing, located within, or within any county, city or town adjacent to, any county, city or town wherein implementation of an enhanced vehicle emissions inspection program, as defined in § 46.2-1176, is required. Credits granted to a partnership or S corporation shall be passed through to the partners or shareholders, respectively. If the credit exceeds the tax liability in a year, the credit may be carried forward up to five succeeding years.

B. The provisions of this section shall expire on July 1, 2016.

§ 58.1-439. Major business facility job tax credit.

A. For taxable years beginning on and after January 1, 1995, but before January 1, 2020, a taxpayer shall be allowed a credit against the taxes 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.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 as set forth in this section.

B. 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.

C. A "major business facility" is a company that satisfies the following criteria:

1. Subject to the provisions of subsections K or L, the establishment or expansion of the company shall result in the creation of at least 50 jobs for qualified full-time employees; the first such 50 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of major business facilities that are eligible for the credit provided under this section include, but are not limited to, a headquarters, or portion of such a facility, where company employees are physically employed, and where the majority of the company's financial, personnel, legal or planning functions are handled either on a regional or national basis. A company primarily engaged in the Commonwealth in the business of manufacturing or mining; agriculture, forestry or fishing; transportation or communications; or a public utility subject to the corporation income tax shall be deemed to have established or expanded a major business facility in the Commonwealth if it meets the requirements of subdivision 1 during a single taxable year and such facilities are not retail establishments. A major business facility shall also include facilities that perform central management or administrative activities, whether operated as a separate trade or business, or as a separate support operation of another business. Central management or administrative activities include, but are not limited to, general management; accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems planning; advertising; technical sales and support operations; central administrative offices and warehouses; research, development and testing laboratories; computer-programming, data-processing and other computer-related services facilities; and legal, financial, insurance, and real estate services. The terms used in this subdivision to refer to various types of businesses shall have the same meanings as those terms are commonly defined in the Standard Industrial Classification Manual.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the major business facility commenced or expanded operations.

E. The Department of Taxation shall make all determinations as to the classification of a major business facility in accordance with the provisions of this section.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in the Commonwealth. A "new, permanent full-time position" is a job of an indefinite duration, created by the company as a result of the establishment or expansion of a major business facility in the Commonwealth, requiring a minimum of 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 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the major business 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 new major business facility and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal activities performed by the employees at a major business facility shall not qualify as new, permanent full-time positions.

G. For any major business facility, the amount of credit earned pursuant to this section shall be equal to $1,000 per qualified full-time employee, over the threshold amount, employed during the credit year.

The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years beginning with the credit year. However, for taxable years beginning January 1, 2009, through December 31, 2014, one-half of the credit amount shall be allowed each year for two years. The portion of the $1,000 credit earned with respect to any qualified full-time employee who is employed in the Commonwealth for less than 12 full months during the credit year will be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months that the qualified full-time employee worked for the major business facility in the Commonwealth during the credit year, and the denominator of which is 12. A separate credit year and a three-year allowance period shall exist for each distinct major business facility of a single taxpayer, except for credits allowed for taxable years beginning January 1, 2009, through December 31, 2014, when a two-year allowance period shall exist for each distinct major business facility of a single taxpayer.

H. 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 the credit was allowed may be, to the extent usable, carried over for the next 10 succeeding taxable years. No credit shall be carried back to a preceding taxable year. In the event that 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 which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

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

J. Subject to the provisions of subsections K or L, recapture of this credit, 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 decreases below the average number of qualified full-time employees employed during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In the event that the average number of qualifying full-time employees employed at a major business facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all credits earned with respect to such major business facility shall be recaptured. No credit amount will be recaptured more than once pursuant to this subsection. Any recapture pursuant to this section shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability may be increased.

K. In the event that a major business facility is located in an economically distressed area or in an enterprise zone as defined in Chapter 49 (§ 59.1-538 et seq.) of Title 59.1 during a credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 50 to 25 for purposes of subdivision C 1 and subsection J. An area shall qualify as economically distressed if it is a city or county with an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all economically distressed areas at least annually.

L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event that a major business facility is located in a severely economically distressed area, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit allowable under this subsection shall not exceed $100,000 in aggregate. An area shall qualify as severely economically distressed if it is a city or county with an unemployment rate for the preceding year of at least twice the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all severely economically distressed areas at least annually.

M. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies pursuant to subsection S.

N. The provisions of this section shall apply only in instances where an announcement of intent to establish or expand a major business facility is made on or after January 1, 1994. An announcement of intent to establish or expand a major business facility includes, but is not limited to, a press conference or extensive press coverage, providing information with respect to the impact of the project on the economy of the area where the major business facility is to be established or expanded and the Commonwealth as a whole.

O. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

P. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2. Any qualified business firm receiving an enterprise zone job creation grant under § 59.1-547 shall not be eligible to receive a major business facility job tax credit pursuant to this section for any job used to qualify for the enterprise zone job creation grant.

Q. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 shall claim a credit pursuant to this section.

R. Notwithstanding subsection O, a taxpayer may, for the purpose of determining the number of qualified full-time employees at a major business facility, include the employees of a contractor or a subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the contractor or subcontractor from also claiming these employees in order to receive a credit given under this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has entered into such a contract.

S. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more companies related to each other such that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned by the same interests.

T. The General Assembly of Virginia finds that modern business infrastructure allows businesses to locate their administrative or manufacturing facilities with minimal regard to the location of markets or the transportation of raw materials and finished goods, and that the economic vitality of the Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the provisions of this section targeting the credit to major business facilities and limiting the credit to those companies which establish a major business facility in Virginia are integral to the purpose of the credit earned pursuant to this section and shall not be deemed severable.

U. The provisions of this section shall expire on July 1, 2016.

§ 58.1-439.1. Clean fuel vehicle and advanced cellulosic biofuels job creation tax credit.

A. For purposes of this section:

"Advanced biofuel" means a fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass or algae.

"Clean special fuel" means any product or energy source used to propel a highway vehicle, the use of which, compared to conventional gasoline or reformulated gasoline, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof. The term includes compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen), or electricity.

"Job" shall mean the full-time employment of an individual in Virginia by a corporation for at least 40 hours per week during at least 40 weeks during the calendar year whose primary work activity is related directly to any of the activities listed in subsection B.

"Vehicle" shall have the same meaning as provided in U.S. Internal Revenue Code §§ 179A and 30.

B. For taxable years beginning on or after January 1, 1996, through December 31, 2014, a corporation shall be eligible for a credit against the tax levied pursuant to § 58.1-400 equal to $700 for each job that is created in either (i) the manufacture of the major components of the energy storage, energy supply, or engine, motor, and power train mechanisms unique to a vehicle fueled by clean special fuels; (ii) the manufacture of components uniquely used to convert vehicles designed to operate on gasoline or diesel fuel to operate on clean special fuels or advanced biofuels; (iii) the conversion of vehicles designed to operate on gasoline or diesel fuel to operate on clean special fuels or advanced

biofuels; (iv) the manufacture of vehicles designed to operate on clean special fuels; (v) the manufacture of components designed to produce, store, and dispense clean special fuels or advanced biofuels; or (vi) the production of advanced biofuels. The credit shall be allowed in the taxable year in which the job is created and in each of the two succeeding years in which the job is continued.

C. To qualify for the tax credit provided in subsection B of this section, a corporation must demonstrate (i) that a job was created during the taxable year for which the credit is claimed or was continued from the previous taxable year in which a credit was claimed and (ii) the employment level in jobs defined in subsection A of this section in the taxable year for which the credit is first claimed has increased in comparison to the previous taxable year.

D. Any tax credit not used in the taxable year of job creation or continuation may be carried over for credit against the corporation's income tax in the five succeeding taxable years until the total credit amount is used.

E. In case of a partnership or limited liability company, the credit shall be allocated to the corporate partners or corporate members in proportion to their ownership or interest in the partnership or limited liability company.

F. A corporation shall not be eligible for a tax credit pursuant to this section if such corporation is allowed a major business facility job tax credit pursuant to § 58.1-439.

G. The provisions of this section shall expire on July 1, 2016.

§ 58.1-609.1. Governmental and commodities exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.). Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States. Further, this exemption shall not apply to tangible personal property which is acquired by the Commonwealth or any of its political subdivisions and then transferred to private businesses for their use in a facility or real property improvement to be used by a private entity or for nongovernmental purposes other than tangible personal property acquired by the Herbert H. Bateman Advanced Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of Chapter 790 of the 1998 Acts of the General Assembly.

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.).

6. Motor fuels and alternative fuels for use in a commercial watercraft, as defined in § 58.1-2201, upon which a fuel tax is refunded pursuant to § 58.1-2259.

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § 51.5-60, of such Department.

13. [Expired.]

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

16. Tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

17. Tangible personal property sold or leased to Alexandria Transit Company, Greater Lynchburg

Transit Company, GRTC Transit System, or Greater Roanoke Transit Company, or to any other transit company that is owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services, and/or tangible personal property sold or leased to any county, city, or town, or any combination thereof, that is transferred to any of the companies set forth in this subdivision owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services.

18. (Effective until July 1, 2017) Qualified products designated as Energy Star or WaterSense with a sales price of $2,500 or less per product purchased for noncommercial home or personal use. The exemption provided by this subdivision shall apply only to sales occurring during the four-day period that begins each year on the Friday before the second Monday in October and ends at midnight on the second Monday in October.

For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. For the purposes of this exemption, WaterSense qualified products are those that have been recognized as being water efficient by the WaterSense program sponsored by the U.S. Environmental Protection Agency as indicated by a WaterSense label.

B. Subdivisions A 10 through 17 shall expire on July 1, 2016.

§ 58.1-610. Contractors.

A. Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and in connection therewith to furnish tangible personal property, shall be deemed to have purchased such tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be obligated to collect the tax to the extent required by this chapter.

B. Any person who contracts to perform services in this Commonwealth and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes vested in the contractor. This subsection, however, shall not apply to the industrial materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6; the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in § 58.1-609.10.

C. Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

D. Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section. Any person selling fences, venetian blinds, window shades, awnings, storm windows and doors, locks and locking devices, floor coverings (as distinguished from the floors themselves), cabinets, countertops, kitchen equipment, window air conditioning units or other like or comparable items, shall be deemed to be a retailer of such items and not a using or consuming contractor with respect to them, whether he sells to and installs such items for contractors or other customers and whether or not such retailer fabricates such items.

E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the exclusion for baptistries set out in § 58.1-609.10, or the partial exclusion for the sale of modular buildings as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the performance of contracts with the United States, this Commonwealth, or any political subdivision thereof, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

F. Notwithstanding the other provisions of this section, any person engaged in the business of furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a using or consuming contractor with respect to them.

G. Notwithstanding the other provisions of this section, any person or entity primarily engaged in the business of furnishing and installing tangible personal property that provides electronic or physical security on real property for the use of a financial institution, shall be deemed a retailer of such personal property, including when such personal property is installed on real property not for the use of a financial institution.

2. That the revenue attributable to the expiration of any tax credit or exemption pursuant to this act shall be used solely to reduce the corporate income tax rate by a concomitant amount.