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HOUSE BILL NO. 1814

Offered January 11, 2017
Prefiled January 9, 2017

A BILL to amend and reenact §§ 58.1-439.6 and 58.1-439.12:07 of the Code of Virginia, relating to tax credits for worker retraining and telework expenses.

Patrons—Ware and Hugo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.6 and 58.1-439.12:07 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.6. Worker retraining tax credit.

A. As used in this section, unless the context clearly requires otherwise:

"Eligible worker retraining" means retraining of a qualified employee that promotes economic development in the form of (i) noncredit courses at any of the Commonwealth's community colleges or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the Commissioner of Labor and Industry.

"Qualified employee" means an employee of an employer eligible for a credit under this section in a full-time position requiring a minimum of 1,680 hours in the entire normal year of the employer's operations if the standard fringe benefits are paid by the employer for the employee. Employees in seasonal or temporary positions shall not qualify as qualified employees. A qualified employee (i) shall not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer, and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"STEM or STEAM discipline" means a science, technology, engineering, mathematics, or applied mathematics related discipline as determined by the Department of Small Business and Supplier Diversity in consultation with the Superintendent of Public Instruction. The term shall include a health care-related discipline.

B. For taxable years beginning on and after January 1, 1999, but prior to January 1, ~~2018~~ *2022*, an employer 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 in an amount equal to 30 percent of all expenditures paid or incurred by the employer during the taxable year for eligible worker retraining. However, for taxable years beginning prior to January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed $100 per qualified employee annually. For taxable years beginning on or after January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed $200 per qualified employee annually, or $300 per qualified employee annually if the eligible worker retraining includes retraining in a STEM or STEAM discipline including but not limited to industry-recognized credentials, certificates, and certifications. The total amount of tax credits granted to employers under this section for each fiscal year shall not exceed $2,500,000.

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. An employer shall be entitled to the credit granted under this section only for those courses at a community college or a private school which courses have been certified as eligible worker retraining to the Department of Taxation by the Department of Small Business and Supplier Diversity. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), (i) establishing procedures for claiming the credit provided by this section, (ii) defining eligible worker retraining, which shall include only those courses and programs that are substantially related to the duties of a qualified employee or that enhance the qualified employee's job-related skills, and that promote economic development, and (iii) providing for the allocation of

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credits among employers requesting credits in the event that the amount of credits for which requests are made exceeds the available amount of credits in any year. The Department of Small Business and Supplier Diversity shall review requests for certification submitted by employers and shall advise the Tax Commissioner whether a course or program qualifies as eligible worker retraining and, if it qualifies, whether the course or program is in a STEM or STEAM discipline.

E. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer 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.

F. No employer shall be eligible to claim a credit under this section for worker retraining undertaken by any program operated, administered, or paid for by the Commonwealth.

G. The Director of the Department of Small Business and Supplier Diversity shall report annually to the chairmen of the House Finance and Senate Finance Committees on the status and implementation of the credit established by this section, including certifications for eligible worker retraining.

§ 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, ~~2017~~ *2022*, 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, ~~2017~~ *2022*, 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 calendar year that ends during the taxable year. The amount of the credit shall not exceed $50,000 per employer for each calendar 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 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 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. 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.).