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SENATE BILL NO. 540

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to income tax credit; small businesses.

Patrons—Peake and Ruff

Referred to Committee on Finance and Appropriations

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 58.1-439.12:13 as follows:

§ 58.1-439.12:13. Tax credit for small businesses.

A. For purposes of this section:

"Eligible small business" means a (i) (a) pass-through entity, as such term is defined in § 58.1-390.1, authorized to do business in the Commonwealth that employs fewer than 50 employees and that has no more than \$10 million in gross receipts for the taxable year or (b) self-employed individual, as that term is defined in § 38.2-3431, who is subject to the tax imposed by Article 2 (§ 58.1-320 et seq.), or (ii) business that is at least 51 percent independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, that has no more than \$10 million in gross receipts during such taxable year, and that, together with affiliates, employs 50 or fewer employees that is subject to the tax imposed by Article 10 (§ 58.1-400 et seq.).

B. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, an eligible small business may claim a nonrefundable credit against the tax levied pursuant to § 58.1-320 or 58.1-400, as applicable. The amount of the credit shall be equal to:

1. For an eligible small business subject to the tax imposed by Article 2 (§ 58.1-320 et seq.), the amount of Virginia income tax owed on up to \$250,000 of personal income during such taxable year.

2. For an eligible small business subject to the tax imposed by Article 10 (§ 58.1-400 et seq.), the amount of Virginia income tax owed during such taxable year on up to \$250,000 of the amount that is not deductible when computing federal taxable income solely on account of the portion of subdivision B 10 of § 58.1-301.

C. The total amount of tax credits available under this section for a taxable year shall not exceed \$75 million. In the event that applications for such credits exceed \$75 million for any taxable year, the Department shall allocate the credits on a pro rata basis.

D. The amount of the credit that may be claimed in any single taxable year shall not exceed the total amount of tax imposed by this chapter for that taxable year. If the amount of the credit allowed under this section exceeds the taxpayer's tax liability for the taxable year in which the eligible small business claims the credit, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the taxpayer in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

E. For purposes of this section, the amount of the 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.

F. The Tax Commissioner shall develop guidelines for applying for and claiming the credit provided by this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

INTRODUCED

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