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HOUSE BILL NO. 1412

Offered January 28, 1994

A *BILL to amend the Code of Virginia by adding a section numbered 59.1-280.1, relating to the computation of Virginia income tax liability and an enterprise zone real property investment tax credit.*

Patron—Newman

Introduced at the request of the Governor

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 59.1-280.1 as follows:**

§ 59.1-280.1. Enterprise zone real property investment tax credit.

A. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12, Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1, as set forth in this section.

B. For any qualified zone resident, a credit shall be allowed pursuant to this section in an amount equaling fifteen percent of the qualified zone improvements. However, in no event shall the cumulative per project credit allowed to a qualified zone resident pursuant to this section exceed \$20,000.

C. "Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade of business by such owner or tenant within the enterprise zone.

D. "Qualified zone improvements" means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that (i) the total amount of such improvements equals or exceeds \$50,000 and (ii) the total amount of such improvements equals or exceeds the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, shee rock, plaster, painting, ceilings, fixtures, doors, windows, sprinkler systems installed for fire protection purposes, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup.

1. Except as provided in subsection E of this section, qualified zone improvements shall not include the cost of acquiring any real property or building.

2. Qualified zone improvements shall not include: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) excavations, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements; (ix) outbuildings; or (x) the cost of any well or septic or sewer system.

3. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer; a related party as defined by Internal Revenue Code § 267(b); a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014(a).

E. For purposes of this section, the cost of any newly constructed depreciable nonresidential real property shall be considered to be a qualified zone improvement eligible for the credit if the total amount of such expenditures is at least \$250,000 with respect to a single facility. For purposes of this subsection, land, land improvements, paving, grading, driveways, interest, and landscaping shall not be considered to be qualified zone improvements.

F. Any taxpayer requesting a credit pursuant to this section shall comply with the provisions of § 59.1-279 B and C. The Department shall certify the nature and amount of qualified zone improvements eligible for credit in any taxable year. Only improvements that have been properly certified shall be

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60 eligible for the credit. Any form filed with the Department of Taxation for the purpose of claiming the
61 credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department.

62 G. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
63 taxable year. Any tax credit granted pursuant to this section is nonrefundable, but any credit not usable
64 for the taxable year the credit was generated may be, to the extent usable, carried over until the full
65 credit is utilized. No credit shall be carried back to a preceding taxable year. In the event that a
66 taxpayer who is subject to the tax limitation imposed pursuant to this subsection has earned another
67 credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding
68 taxable year, such taxpayer shall be considered to have first utilized any credit which does not have a
69 carryover provision, and then any credit which is carried forward from a preceding taxable year, prior
70 to the utilization of any credit earned pursuant to this section.

71 H. In the case of a partnership, limited liability company or S corporation, the term "qualified zone
72 resident" as used in this section means the partnership, limited liability company or S corporation.
73 Credits granted to a partnership, limited liability company or S corporation shall be passed through to
74 the partners, members or shareholders, respectively.

75 I. The Tax Commissioner shall have the authority to issue regulations relating to the computation
76 and carryover of the credit provided under this section. The Department shall have the authority to
77 issue regulations relating to the certification process, the nature of qualified zone improvements, and the
78 eligibility of qualified zone residents pursuant to this section.

79 **2. The General Assembly of Virginia believes that encouraging businesses to rehabilitate and**
80 **improve real property located within an enterprise zone will add to the economic vitality of this**
81 **Commonwealth. Accordingly, the provisions of this act targeting the credit to qualified zone**
82 **improvements are integral to the purpose of the credit allowed by this section and shall not be**
83 **deemed severable.**