

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 634

An Act to amend and reenact §§ 59.1-280.1 and 59.1-282.1 of the Code of Virginia, relating to the enterprise zone act.

[S 804]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-280.1 and 59.1-282.1 of the Code of Virginia are amended and reenacted 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 (§ 58.1-1200), 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 thirty percent of the qualified zone improvements. However, in no event shall the cumulative credit allowed to a qualified zone resident pursuant to this section exceed \$125,000 in any five-year period. The total amount of tax credits granted to qualified zone residents under this subsection and to qualified business firms under § 59.1-280, for each fiscal year, shall not exceed five million dollars.

C. "Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, ~~or~~ (ii) a minimum of thirty-five 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 business firm, *or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee.* Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

D. "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 or business by such owner or tenant within the enterprise zone.

E. "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 the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) 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 and excavations, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

1. Except as provided in subsection F 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 other 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) outbuildings; or (ix) 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), or 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).

F. 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, and interest shall not be considered to be qualified zone improvements.

G. The Department shall certify the nature and amount of qualified zone improvements and investments eligible for credit in any taxable year. Only improvements and investments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department.

H. The amount of credit allowed pursuant to subsection B of this section shall not exceed the tax imposed for such taxable year. Any tax credit granted pursuant to subsection B of this section is refundable; however, a taxpayer shall not be eligible to receive more than \$125,000 of tax credits under subsection B of this section within a five-year period.

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

J. In the event that a qualified zone resident (i) makes qualified zone investments in excess of \$100 million and (ii) such qualified zone investments result in the creation of at least 200 permanent full-time positions, then such qualified zone resident shall be eligible for a credit in an amount of up to five percent of such qualified zone investments in lieu of the credit provided by subsection B of this section. The percentage amount of the investment tax credit granted to a qualified zone resident shall be determined by agreement between the Department and the qualified zone resident, provided such percentage amount shall not exceed five percent. The total amount of tax credits granted to qualified zone residents under *this* subsection J, and to qualified business firms under § 59.1-280 for firms granted a tax credit under *this* subsection J ~~of this section~~, for each fiscal year shall not exceed three million dollars. The percentage amounts of the business income tax credit provided in § 59.1-280 which may be granted to a qualified business firm that is eligible for an investment tax credit under this subsection shall be determined by agreement between the Department and the qualified zone resident, provided such percentage amounts shall not exceed the percentages provided in § 59.1-280. The investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

K. "Qualified zone investments" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property within an enterprise zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the cost of such property which is placed in service in the enterprise zone on or after July 1, 1995. Machinery, tools and equipment 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), or 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 part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

L. The Tax Commissioner shall have the authority to issue regulations relating to the computation and carryover of the credit provided under this section.

M. In the first taxable year only, the credit provided in this section shall be prorated equally against the taxpayer's estimated payments made in the third and fourth quarters and the final payment, if such taxpayer is required to make quarterly payments.

§ 59.1-282.1. Grants for creating permanent full-time positions; eligibility.

A. As used in this section:

"Base year" means (i) the calendar year immediately preceding a business firm's first year of grant eligibility or (ii) at the option of the business firm, the next preceding calendar year. With respect to each three-year period of grant eligibility, a new base year shall be determined, and for the second and each subsequent three-year period of grant eligibility, the base year shall not precede the second year of grant eligibility in the preceding three-year period.

"First year of grant eligibility" means the first calendar year for which a business firm was both eligible and applied for a grant pursuant to this section.

"Grant year" means the calendar year for which a business firm applies for a grant pursuant to this section.

"Number of eligible positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the

business firm's operations, which "normal year" must consist of at least forty-eight weeks, ~~or~~ (ii) a minimum of thirty-five 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 business firm, *or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee.* Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Threshold number" means 110 percent of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for a grant under this section. For the second and any subsequent three-year period of grant eligibility, the threshold number means 120 percent of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer.

B. A business firm shall be eligible to receive enterprise zone incentive grants for the three calendar years commencing with the first year of grant eligibility. Following the expiration of any three-year period of grant eligibility a business firm shall be eligible for grants as provided in this section, provided that the first year of grant eligibility shall be the first calendar year during which the business firm was both eligible and applied for a grant pursuant to this section following the expiration of the preceding three-year eligibility period.

C. The amount of the grant for which a business firm is eligible in any grant year shall be equal to (i) \$1,000 multiplied by the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone. The number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone shall be determined for any grant year by multiplying the number of eligible positions by a fraction, the numerator of which shall be the number of employees hired for permanent full-time positions by the business firm from January 1 of the applicable base year through December 31 of the grant year whose permanent place of residence is within the enterprise zone, and the denominator of which shall be the number of employees hired for permanent full-time positions by the business firm during such period. The number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, determined as provided in the preceding sentence, from the number of eligible positions. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than twelve full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is twelve. In no event shall any business firm be eligible for a grant pursuant to this section in excess of \$100,000 for any grant year.

D. Grant applications shall be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall include evidence of the number of permanent full-time employees, their place of residence, and other relevant information as the local zone administrator and the Department may reasonably require.

E. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided in § 59.1-282.2 regarding carry-forward of unsatisfied grant request amounts.

F. The local zone administrator shall review and forward applications for grants to the Department by April 30 in accordance with regulations promulgated by the Board of Housing and Community Development.

G. Any business firm receiving an enterprise zone incentive grant under this section shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439.