

VIRGINIA ACTS OF ASSEMBLY -- 1997 RECONVENED SESSION

CHAPTER 852

An Act to amend and reenact § 58.1-439 of the Code of Virginia, relating to the major business facility job tax credit.

[H 2183]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439 of the Code of Virginia is amended and reenacted as follows:

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

A. For taxable years beginning on and after January 1, 1995, but before January 1, 2005, 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 of this title 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 "qualified company" "major business facility" is a company that satisfies the following criteria:

1. The Department of Taxation shall certify: (i) that the company has established or expanded a major business facility in this Commonwealth and (ii) the date on which such facility commenced or expanded operations;

2. Subject to the provisions of subsection K, the establishment or expansion of the major business facility company shall result in the creation of at least 100 jobs for qualified full-time employees; the first such 100 jobs shall be referred to as the "threshold amount"; and

3. The company is primarily 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 (i) manufacturing or mining; (ii) agriculture, forestry or fishing; (iii) transportation or communications; or (iv) 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. In addition, the following 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, shall satisfy the requirements of this subdivision regardless of what industry the taxpayer is engaged in: (i) 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; (ii) research, development and testing laboratories; (iii) computer-programming, data-processing and other computer-related services facilities; and (iv) 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. "Major business facility" includes, but is not limited to, a headquarters, or portion of such a facility, where company staff 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 major business facility shall also include facilities that perform a central management or administrative function for other establishments of the same enterprise such as general management, accounting, computing, tabulating, data processing, purchasing, transportation or shipping, engineering and systems planning, advertising, legal, financial, and research and development if it otherwise meets the staffing requirements. An enterprise engaged in the Commonwealth in the business of (i) manufacturing or mining; (ii) agriculture, forestry or fishing; (iii) transportation or communications; or (iv) a public utility subject to the corporation income tax shall be deemed to have established or expanded a major business facility in this Commonwealth if it meets the requirements of subdivision C

2 during a single taxable year. 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. ~~Only those major business facilities which have been certified by the Department of Taxation shall be eligible to receive the credit pursuant to this section.~~

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in this 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 this Commonwealth, requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" must consist of at least 48 *forty-eight* weeks, or a position of indefinite duration which requires 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 major business facility in this Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in this 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 ~~qualified company~~ 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. The portion of the \$1,000 credit earned with respect to any qualified full-time employee who is employed in this Commonwealth for less than twelve 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 ~~qualified company~~ major business facility in this Commonwealth during the credit year, and the denominator of which is twelve. A separate credit year and a three-year allowance period will 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 ten 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 subsection K, 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 § 59.1-271 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 100 to 50 for purposes of subdivision C 2 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 ~~Department of~~ Virginia Economic Development *Partnership* shall identify and publish a list of all economically distressed areas at least annually.

L. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), relating to (i) the computation, carryover, and recapture of the credit provided under this section and (ii) defining criteria for (a) a major business facility, (b) qualifying jobs ~~for full-time employees at~~ such facility, and (c) economically distressed areas.

M. 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.

N. *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.*

O. *No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2.*

P. *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.*

Q. *Notwithstanding subsection N, 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.*

~~N.~~ R. 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 this Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the provisions of this section targeting the credit to ~~qualified companies~~ *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.

2. That the provisions of this act amending or adding subsections F, O and P of § 58.1-439 of the Code of Virginia shall apply to the establishment or expansion of a major business facility commenced on or after January 1, 1997. The provision of this act adding subsection Q shall be effective for taxable years beginning on or after January 1, 1995; however, in the case of a taxpayer which includes employees of a contractor or subcontractor as qualified full-time employees in computing its credit, any credit which is related to the establishment or expansion of all major business facilities during a twenty-four-month period ending between January 1, 1995, and December 31, 1996, shall be limited to \$750,000 and shall be further limited to taxpayers who established major business facilities in a city with a population of more than 170,000 and less than 172,000. A taxpayer subject to the foregoing limitation may elect the credit year in which it counts qualified full-time employees for purposes of computing its credit. All other provisions of this act are declaratory of existing law.