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HOUSE BILL NO. 767

Offered January 22, 1996

A *BILL to amend and reenact §§ 59.1-280 and 59.1-280.1 of the Code of Virginia, relating to enterprise zone tax credits.*

Patrons—Rhodes, Cantor and Cunningham; Senators: Benedetti and Lambert

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-280 and 59.1-280.1 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-280. State business income tax credit.

A. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credit provided herein for a qualified business firm against any tax due under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, other than a foreign fire or casualty insurance company, national bank, mutual savings bank, savings and loan association, partnership or sole proprietorship, in an amount equaling eighty percent of the tax due to the Commonwealth for the first tax year and sixty percent of the tax due the Commonwealth for the second tax year through the tenth tax year. However, if the qualified business firm makes qualified zone investments (as defined in subsection K of § 59.1-280.1) in excess of \$25 million and such qualified zone investments result in the creation of at least 100 full-time positions, the percentage amounts of the income tax credits available to such qualified business firms under this subsection shall be determined by agreement between the Department and the qualified business firm, provided such percentage amounts shall not exceed the percentages provided for other qualified business firms as set forth in the preceding sentence. Any tax credit not usable may not be applied to future tax years. The total amount of tax credits granted to qualified business firms (other than firms that are granted a tax credit under subsection J of § 59.1-280.1) under this section and to qualified zone residents under subsection B of § 59.1-280.1, for each fiscal year, shall not exceed ~~five million dollars~~ \$7.5 million. However, tax credits granted under this section to business firms designated as qualified business firms prior to July 1, 1995, shall not be subject to inclusion in such ~~five million dollar~~ \$7.5 million limitation.

B. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively. Any qualified business firm having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business in accordance with the procedures contained in §§ 58.1-302 through 58.1-420. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone.

§ 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~~ \$7.5 million.

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. Seasonal or temporary

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60 positions, or a position created when a job function is shifted from an existing location in this
61 Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent
62 full-time positions.

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

66 E. "Qualified zone improvements" means the amount properly chargeable to a capital account for
67 improvements to rehabilitate or expand depreciable real property placed in service during the taxable
68 year within an enterprise zone, provided that the total amount of such improvements equals or exceeds
69 (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or
70 expansion. Qualified zone improvements include expenditures associated with any exterior, structural,
71 mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or
72 industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping or other land
73 improvements. Qualified zone improvements shall include, but not be limited to, costs associated with
74 demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression
75 systems, roofing and flashing, exterior repair, cleaning, and cleanup.

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

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

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

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

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

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

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

109 J. In the event that a qualified zone resident (i) makes qualified zone investments in excess of \$100
110 million and (ii) such qualified zone investments result in the creation of at least 200 permanent full-time
111 positions, then such qualified zone resident shall be eligible for a credit in an amount of up to five
112 percent of such qualified zone investments in lieu of the credit provided by subsection B of this section.
113 The percentage amount of the investment tax credit granted to a qualified zone resident shall be
114 determined by agreement between the Department and the qualified zone resident, provided such
115 percentage amount shall not exceed five percent. The total amount of tax credits granted to qualified
116 zone residents under subsection J, and to qualified business firms under § 59.1-280 for firms granted a
117 tax credit under subsection J of this section, for each fiscal year shall not exceed three million dollars.
118 The percentage amounts of the business income tax credit provided in § 59.1-280 which may be granted
119 to a qualified business firm that is eligible for an investment tax credit under this subsection shall be
120 determined by agreement between the Department and the qualified zone resident, provided such
121 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.