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SENATE BILL NO. 1113

Offered January 20, 1997

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.6, relating to capital investment tax credit.

Patrons—Wampler, Hanger, Holland, Quayle, Stosch and Woods; Delegates: Behm, Bryant, Cantor, Clement, Crouch, Cunningham, Johnson, Kilgore, Reid, Scott and Watkins

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Referred to the Committee on Finance

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 58.1-439.6 as follows:

§ 58.1-439.6. Capital investment tax credit.

A. For taxable years beginning on and after January 1, 1998, but before January 1, 2008, 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 and Chapter 12 (§ 58.1-1200 et seq.) 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 taxpayer" is a taxpayer that, subject to the provisions of subsection J, makes an eligible capital investment which shall (i) exceed one million dollars, which shall be referred to as the "threshold amount," and (ii) result in the creation of jobs for at least twenty-five qualified full-time employees.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the eligible capital investment was made.

E. "Eligible capital investment" includes any property subject to taxation under Article 1 (§ 58.1-3500 et seq.) or Article 2 (§ 58.1-3507 et seq.) of Chapter 35 of this title which is purchased by a qualified taxpayer and placed in service in the Commonwealth by a qualified taxpayer during the taxable year. Eligible capital investments shall not include land, buildings, or other real property.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position created by a qualified taxpayer. A "new permanent full-time position" is a job of an indefinite duration, created by the qualified taxpayer as a result of making an eligible capital investment in the Commonwealth, requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of the qualified taxpayer's operations, which "normal year" shall consist of at least 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 facility of a qualified taxpayer in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to a taxpayer's facility, shall not qualify as new, permanent full-time positions.

G. For any qualified taxpayer, the amount of credit earned pursuant to this section shall be equal to a percentage of the eligible capital investment, over the threshold amount, made during the credit year. The percentages shall be as follows:

Amount of eligible capital investment	*Percentage*
$1,000,000 to $5,000,000	*5%*
More than $5,000,000 but less than $25,000,000	*4%*
$25,000,000 or more but less than $100,000,000	*3%*
$100,000,000 or more	*up to 2%*

The credit shall be allowed ratably, with one-fifth of the credit amount allowed annually for five years beginning with the credit year. The portion of the percentage of credit earned with respect to any eligible capital investment which has been in place in the Commonwealth for less than twelve full months during the credit year shall be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months that the eligible capital investment has been in place in this Commonwealth during the credit year, and the denominator of which is twelve. For purposes of this

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subsection, an eligible capital investment shall be deemed to be in place when it is physically located at a facility owned by a qualified taxpayer. Each distinct eligible capital investment of a single qualfied taxpayer shall have a separate credit year and a separate five-year allowance period. The Secretary of Commerce and Trade shall determine, in consultation with the qualified taxpayer, the percentage amount of credit available for eligible capital investments of more than one hundred million dollars; however, the percentage amount of such credit shall not exceed two percent of the amount of the eligible capital investment over the threshold amount.

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. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, 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. Subject to the provisions of subsection J, if the eligible capital investment is taken out of service in the Commonwealth or the number of qualified full-time employees at the qualified taxpayer's facility falls below the total of (i) the number of such employees at the facility immediately prior to the making of the capital investment and (ii) twenty-five, this credit shall be recaptured by increasing the tax in any of the three years succeeding the taxable year in which a credit has been earned pursuant to this section. Such tax increase amount shall be determined by (i) recomputing the credit which would have been earned for the original credit year had the eligible capital investment not been made and (ii) subtracting such recomputed credit from the amount of credit previously earned. No credit amount shall 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.

J. If an eligible capital investment is made at a facility operated by a qualified taxpayer which 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 $1,000,000 to $500,000 for purposes of subsections C, G and I. As used in this section, "economically distressed area" means an area identified as economically distressed pursuant to subsection K of § 58.1-439.

K. 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) an eligible capital investment, (b) qualifying jobs for such facility operated by a qualified taxpayer, and (c) when an eligible capital investment is in place or out of service.

L. The provisions of this section shall apply only in instances where an announcement of intent to make an eligible capital investment is made on or after January 1, 1997. An announcement of intent to make an eligible capital investment 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 eligible capital investment is to be made and the Commonwealth as a whole.

M. Any taxpayer that is receiving credits pursuant to §§ 58.1-439.1, 58.1-439.2, 58.1-439.3 or the Enterprise Zone Act (§ 59.1-270 et seq.) shall not be eligible to receive credits pursuant to this section.

N. The General Assembly of Virginia finds that modern business infrastructure allows businesses to make capital investments 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 investments were established in Virginia. Accordingly, the provisions of this section targeting the credit to qualified taxpayers and limiting the credit to those businesses that make an eligible capital investment in Virginia are integral to the purpose of the credit earned pursuant to this section and shall not be deemed severable.