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HOUSE BILL NO. 194

Offered January 15, 1998

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.7, relating to employees with disabilities tax credit.

Patron—Reid

Referred to 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 58.1-439.7 as follows:

§ 58.1-439.7. Employees with disabilities tax credit.

A. As used in this section, unless the context clearly requires otherwise:

"Qualified employee" means an otherwise qualified person with a disability who (i) meets the definition of an individual with a disability, as defined by the Americans with Disabilities Act; (ii) has a disability that presently constitutes an impediment to obtaining or maintaining employment or transitioning from school to work; (iii) is otherwise qualified for employment under state and federal law; and (iv) has been certified by the Department of Rehabilitative Services as having met the criteria of an otherwise qualified person with a disability established under this section. An otherwise qualified person with a disability (a) shall not be a relative of any owner or the employer claiming the credit and (b) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer, and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"Qualified child care or transportation expenses" means (i) child care expenses that are incurred by an employer to enable a qualified employee to be gainfully employed or (ii) transportation expenses that are incurred by an employer to enable a qualified employee to travel to and from work.

"Wages" means wages, within the meaning of § 51 (c) (1), (2) and (3) of the Internal Revenue Code without regard to § 51 (c) (4) of the Internal Revenue Code that are paid by an employer to an employee for services performed in the employer's trade or business.

B. Except as provided in subsection D of this section, an employer may claim a tax credit in the amounts determined under subsection C of this section for the wages and qualified child care or transportation expenses with respect to a qualified employee that are paid in the taxable year for which the business entity claims the credit. The same tax credit shall not be applied more than once against different taxes by the same taxpayer.

C. For taxable years beginning on and after January 1, 1999, and ending December 31, 2002, an employer 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 in an amount equal to twenty percent of the first \$6,000 of wages paid annually to each qualified employee during the first two taxable years of such employee's employment.

In addition, for child care provided or paid for by an employer for the children of a qualified employee, or transportation expenses that are incurred by an employer to enable a qualified employee to travel to and from work, a credit is allowed for each qualified employee in an amount up to (i) \$600 of the qualified child care or transportation expenses incurred during the first year of employment and (ii) \$500 of such expenses incurred during the second year of employment.

D. An employer shall not claim the credits allowed under this section for a qualified employee who is on strike or for whom the employer simultaneously receives federal or state employment training benefits. Furthermore, the credit allowed under this section shall be based on actual wages paid during the applicable taxable year.

E. 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.

F. An employer shall be entitled to the credit granted under this section only for those qualified employees who have been certified as otherwise qualified persons with disabilities to the Department of Taxation by the Department of Rehabilitative Services. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), establishing

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60 *procedures for claiming the credit provided by this section. The Department of Rehabilitative Services*
61 *shall review requests for certification submitted by employers and shall advise the Tax Commissioner*
62 *whether an employee qualifies.*

63 *G. Any credit not usable for the taxable year may be carried over for the next three taxable years.*
64 *The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable*
65 *year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the*
66 *tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other*
67 *section of this Code, or has a credit carryover from a preceding taxable year, such employer shall be*
68 *considered to have first utilized any credit allowed which does not have a carryover provision, and then*
69 *any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit*
70 *allowed pursuant to this section.*

71 *H. No employer shall be eligible to claim a credit under this section if the employer is claiming a*
72 *tax credit for the same employee under § 58.1-439 of this chapter.*

73 *I. The Director of the Department of Rehabilitative Services shall report annually to the chairmen of*
74 *the House Finance and Senate Finance Committees on the status and implementation of the credit*
75 *established by this section, including certifications for otherwise qualified persons with disabilities.*