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SENATE BILL NO. 990

Offered January 14, 2009

Prefiled January 12, 2009

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to tax credit for investments in machinery or equipment.*

 Patron—Deeds

 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 58.1-439.12:03 as follows:

§ 58.1-439.12:03. Machinery and equipment incremental investment tax credit.

A. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"Incremental investment" means an amount equal to the excess of (i) the total new investment made by the taxpayer in the taxable year, over (ii) the product of 0.80 and the total new investment made by the taxpayer in taxable year 2008.

"New investment" means the purchase price paid or the lease payments made by a taxpayer in the taxable year to acquire machinery or equipment that is used in the Commonwealth in the taxpayer's trade or business. The term shall not apply to any machinery or equipment (i) that is rented under a short-term rental agreement, (ii) that is purchased or leased pursuant to a sale and leaseback transaction, (iii) that is acquired by merger with another entity or by the acquisition of all or a portion of the assets of another entity or that is included as part of the spin-off of an entity, or (iv) that is purchased by the taxpayer for resale or for lease to another person.

B. For taxable years beginning on or after January 1, 2009, but before January 1, 2012, 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.), or 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.

C. The taxpayer shall be allowed a credit under this section equal to 20 percent of the taxpayer's incremental investment for the taxable year. To be eligible for the tax credit under this section a taxpayer shall have made a new investment in taxable year 2008.

D. Taxpayers shall apply to the Department for tax credits under this section. As part of the application, the taxpayer shall provide to the Department sales receipts, contracts, and such other evidence of new investments as may be required by the Department. The Department shall determine the credit amount allowable for the taxable year and shall issue the corresponding tax credit. In no case shall any taxpayer be issued more than \$10,000 in tax credit under this section for any taxable year in which an incremental investment was made.

E. The aggregate amount of tax credits available under this section for each calendar year shall be \$2 million. The Department shall develop and issue guidelines for purposes of implementing the provisions of this section. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). The guidelines shall include, but shall not be limited to, procedures (i) for claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the available amount of credits in any one calendar year.

F. The amount of the credit shall not exceed the total amount of tax imposed for the taxable year in which the incremental investment was made. If the amount of credit issued by the Department exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of the taxpayer in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

INTRODUCED

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