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HOUSE BILL NO. 1359

Offered January 22, 2010

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 by small businesses.*

Patron—Keam

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 investment tax credit.

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

"New investment" means the purchase price paid or the lease payments made by a small business 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 small business for resale or for lease to another person.

"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

B. For taxable years beginning on or after January 1, 2010, but before January 1, 2013, a small business taxpayer shall be allowed a credit against the taxes imposed by § 58.1-320 or § 58.1-400 equal to 20 percent of the small business's investment for the taxable year.

C. Small business taxpayers shall apply to the Department for tax credits under this section. As part of the application, such 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 credits under this section for any taxable year in which an investment was made.

D. 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 (§ 2.2-4000et seq.). The guidelines shall include, but shall not be limited to, procedures for claiming the tax credit provided by this section.

E. The amount of the credit shall not exceed the total amount of tax imposed for the taxable year in which the 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 entity.