VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 370

An Act to amend and reenact §§ 58.1-439.18 and 58.1-439.21 of the Code of Virginia, relating to Neighborhood Assistance Act income tax credit; trusts.

[H 2231]

Approved March 22, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.18 and 58.1-439.21 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.18. Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 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. *"Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.*

"Commissioner of the State Department of Social Services" means the Commissioner of the State Department of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means individuals with family annual income not in excess of 200 percent of the current poverty guidelines for education proposals submitted to the Superintendent of Public Instruction requesting an allocation of tax credits under this article. For other than education proposals, impoverished people means individuals with family annual income not in excess of 150 percent of the current poverty guidelines.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c) (3) and 501(c) (4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, or (ii) scholarships.

§ 58.1-439.21. Tax credit; amount; limitation; carry over.

A. The Superintendent of Public Instruction and the Commissioner of the State Department of Social Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for 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, in an amount equal to 40 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 58.1-439.20. Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. No tax credit of less than $400 shall be granted for any donation, and a business firm shall not be allowed a tax credit in excess of $175,000 per taxable year. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received and the business firm making the donation. A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.