

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 820

An Act to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:06, relating to an international trade facility income tax credit.

[H 2385]

Approved April 6, 2011

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 58.1-439.12:06 as follows:

§ 58.1-439.12:06. Barge and rail usage tax credit.

A. As used in this section:

"International trade facility" means a company that:

1. Is doing business in the Commonwealth and engaged in port-related activities, including but not limited to warehousing, distribution, freight forwarding and handling, and goods processing;

2. Has the sole discretion and authority to move cargo in containers originating or terminating in the Commonwealth;

3. Uses maritime port facilities located in the Commonwealth; and

4. Uses barges and rail systems to move cargo containers through port facilities in the Commonwealth rather than trucks or other motor vehicles on the Commonwealth's highways.

B. For taxable years beginning on and after January 1, 2011, but before January 1, 2015, a company that is an international trade facility 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 this chapter; 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. The amount of the credit shall be \$25 per 20-foot equivalent unit (TEU) moved by barge or rail rather than by trucks or other motor vehicles on the Commonwealth's highways.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than \$1.5 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. In addition, the Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2015. The international trade facility shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit amount allowable for the year and shall provide a written certification to the international trade facility, which certification shall report the amount of the tax credit approved by the Department. The international trade facility shall attach the certification to the applicable tax return.

D. 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.

E. Any credit not usable for the taxable year may be carried over for the next five taxable years or until such credit is fully taken, whichever occurs first. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. 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 that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, before using any credit allowed pursuant to this section.

F. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (i) the computation and carryover of the credits provided under this section and (ii) the establishment of criteria for international trade facilities. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).