VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 58.1-439.12:10 of the Code of Virginia, relating to the Virginia port volume increase tax credit.

[H 1824]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:10 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.12:10. Virginia port volume increase tax credit.

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

"Agricultural entity" means a person engaged in growing or producing wheat, grains, fruits, nuts, crops; tobacco, nursery, or floral products; forestry products excluding raw wood fiber or wood fiber processed or manufactured for use as fuel for the generation of electricity; or seafood, meat, dairy, or poultry products.

"Base year port cargo volume" means the total amount of net tons of noncontainerized cargo or TEUs of cargo actually transported by way of a waterborne ship or vehicle through a port facility during the period from *(i)* January 1, 2010, through December 31, 2010*, for manufacturing-related entities or (ii) January 1, 2012, through December 31, 2012, for agricultural entities and mineral and gas entities*. Base year port cargo volume must be at least 75 net tons of noncontainerized cargo or 10 loaded TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December 31, 2010, *or December 31, 2012, as applicable,* including a taxpayer who locates in Virginia after ~~December 31, 2010~~ *such periods*, its base cargo volume will be measured by the initial January 1 through December 31 calendar year in which it meets the requirements of 75 net tons of noncontainerized cargo or 10 loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

"Major facility" means a new facility to be located in Virginia that is projected to import or export cargo through a port in excess of 25,000 TEUs in its first calendar year.

"Manufacturing-related entity" means a person engaged in the manufacturing of goods.

"Mineral and gas entity" means a person engaged in severing minerals or gases from the earth.

"Port cargo volume" means the total amount of net tons of noncontainerized cargo or containers measured in TEUs of cargo transported by way of a waterborne ship or vehicle through a port facility.

"Port facility" means any publicly or privately owned facility located within the Commonwealth through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside the Commonwealth and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

"TEU" or "20-foot equivalent unit" means a volumetric measure based on the size of a container that is 20 feet long by eight feet wide by eight feet, six inches high.

B. 1. For taxable years beginning on and after January 1, 2011, but before January 1, 2017, a taxpayer ~~engaged in the manufacturing of goods or the distribution of manufactured goods~~ *that is an agricultural entity, manufacturing-related entity, or mineral and gas entity* that uses port facilities in the Commonwealth and increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 in an amount determined by the Virginia Port Authority. The Virginia Port Authority may waive the requirement that port cargo volume be increased by a minimum of five percent over base year port cargo volume for any taxpayer that qualifies as a major facility.

2. Qualifying taxpayers that increase their port cargo volume by a minimum of five percent in a qualifying calendar year shall receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each TEU above the base year port cargo volume. A qualifying taxpayer that is a major facility as defined in this section shall receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each TEU transported through a port facility during the major facility's first calendar year. A qualifying taxpayer may not receive more than $250,000 for each calendar year except as provided for in subdivision C 2. The maximum amount of credits allowed for all qualifying taxpayers pursuant to this section shall not exceed $3.2 million for each calendar year. The Virginia Port Authority shall allocate the credits pursuant to the provisions in subdivisions C 1 and C 2.

3. If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

4. The credit may be claimed by the taxpayer as provided in subdivision 1 only if the taxpayer owns the cargo at the time the port facilities are used.

C. 1. For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the Virginia Port Authority by March 1 of the calendar year after the calendar year in which the increase in port cargo volume occurs. The taxpayer shall attach a schedule to the taxpayer's application to the Virginia Port Authority with the following information and any other information requested by the Virginia Port Authority or the Department:

a. A description of how the base year port cargo volume and the increase in port cargo volume were determined;

b. The amount of the base year port cargo volume;

c. The amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo and TEUs of cargo, including information that demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

d. Any tax credit utilized by the taxpayer in prior years; and

e. The amount of tax credit carried over from prior years.

2. If on March 15 of each year the $3.2 million amount of credit is not fully allocated among qualifying taxpayers, then those taxpayers who have been allocated a credit for the prior year shall be allowed a pro rata share of the remaining allocated credit up to $3.2 million. If on March 15 of each year, the cumulative amount of tax credits requested by qualifying taxpayers for the prior year exceeds $3.2 million, then the $3.2 million in credits shall be prorated among the qualifying taxpayers who requested the credit.

3. The taxpayer shall claim the credit on its income tax return in a manner prescribed by the Department. The Department may require a copy of the certification form issued by the Virginia Port Authority be attached to the return or otherwise provided.

D. 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 interests in such business entities.

2. That the provisions of this act shall become effective for taxable years beginning on or after January 1, 2013.