

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Richard P. Bell

3. **Committee** House Finance

4. **Title** Income Tax: Small Business Job Creation
Tax Credit

2. **Bill Number** HB 111

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow a corporate and individual income tax credit for each new full-time job that is created in Virginia to a small business. The amount of the credit would be equal to \$1,000 for each new full-time job that is created. The tax credit would be allowed for up to 50 new full-time jobs created by the small business. The tax credit would be allowed in the first taxable year in which the job had been filled for at least one year.

The amount of these credits would not be allowed to exceed the tax liability of the taxpayer. Any unused credits to be carried over for five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. A taxpayer would not be allowed to claim this credit and the Green Jobs Tax Credit for the creation of the same job.

To qualify for this tax credit the small business would be required to demonstrate to the Department of Taxation that it created the full-time job.

This bill would be effective for taxable years beginning on or after January 1, 2012, but before January 1, 2015.

6. **Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not “routine.” Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have a potentially significant unknown revenue loss on the General Fund for Fiscal Years 2013 through 2016. The tax credit proposed by this bill would have no cap. Additionally, it could have an unknown revenue loss over the remainder of the forecast horizon due to the five year carry forward provision.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes

Under this bill, the definition of a small business requires that it have less than 250 employees. The small business would have to wait until the new hires have been employed at least 12 months before claiming the credit. The Department normally applies eligibility criteria as of the taxable year for which a credit is sought. Therefore, under this bill a business with close to the maximum 250 employees could hire its way out of eligibility for the credit.

To address this issue, the Department suggests the following technical amendment, which the patron of this bill supports:

Line 29, after job

Insert: and qualified as a small business, as defined in § 2.2-904.1, by the end of the taxable year immediately prior to the taxable year in which the full-time job was filled.

11. Other comments:

Other States

Several states have established job creation tax credit programs that impact small businesses. Under Illinois law, a small business may claim a \$2,500 tax credit to be applied against withholding tax for employers that have 50 or fewer total employees and hire new full-time employees.

Connecticut created the Qualified Small Business Job Creation Tax Credit Program, which provides a tax credit to small businesses that hire new full-time employees. Under this program, Connecticut-based businesses with less than 50 employees are eligible for a \$200 per month tax credit for each new full-time employee they hire.

In 2011, Ohio created the InvestOhio program, which provides tax credits for investments made to small business. InvestOhio is intended to assist small businesses in Ohio

acquire the capital they need to succeed and create jobs. Under InvestOhio, individuals who invest up to \$10 million in eligible small businesses may receive a tax credit equal to 10 percent of the investment, provided that the investment is held for two years.

Virginia

Major Business Facility Jobs Tax Credit

Individuals, estates, trusts, corporations, banks, and insurance companies may claim a Virginia tax credit if the taxpayer creates at least 50 new full-time jobs in connection with the establishment or expansion of a major business facility, and the company is engaged in a qualifying industry in Virginia. If a taxpayer is located in an enterprise zone or in an economically distressed area (as defined by the Virginia Economic Development Partnership), the threshold is reduced from 50 to 25. Credits will be recaptured proportionately if employment decreases during the five years following the initial credit year.

This nonrefundable credit is equal to \$1,000 per each qualifying new job in excess of the 50/25 job threshold and is spread over three years. The credit only applies to facilities where an announcement to expand or establish such a facility was made on or after January 1, 1994.

The credit must be claimed ratably over three taxable years, beginning with the taxable year following the year in which the facility is established or expanded, or the new qualifying jobs are added. Unused credits may be carried forward for the next ten taxable years.

Effective for taxable years beginning on January 1, 2009, through December 31, 2012, taxpayers are allowed to claim the credit amount over two years instead of three.

Green Jobs Tax Credit

Individuals and corporations may claim a credit for each new “green job” that is created in Virginia. The nonrefundable credit is equal to \$500 for each position that is created and that has an annual salary of \$50,000 or more. The tax credit is allowed for the first taxable year in which the job has been filled for at least one year, and for the four succeeding taxable years in which the job is continuously filled. An individual or corporation may claim a credit for up to 350 green jobs.

Any taxpayer that is allowed a green jobs tax credit can still qualify for benefits under the Enterprise Zone Grant Program. However, an individual or corporation is not allowed to claim the Green Jobs Tax Credit and the Major Business Facility Jobs Tax Credit or a federal tax credit for investments in clean energy manufacturing facilities that fosters job creation for the creation of the same job.

Enterprise Zone Grant Program

The Virginia Enterprise Zone program, administered by the Department of Housing and Community Development, provides two grant programs available to eligible businesses

that locate a facility within the zone. The Job Creation Grant program provides grants to eligible businesses for certain permanent full-time job creation exceeding a four job threshold. The Real Property Investment Grant program provides grants for qualified real property investments made in a designated Virginia Enterprise Zone by an eligible individual or business. Since the program was converted to a grant program in 2005, no new tax credits have been allowed. However, firms that had previously been allowed Enterprise Zone General Business Tax Credits are permitted to continue to claim them.

Proposal

This bill would allow a corporate and individual income tax credit for each new full-time job that is created in Virginia to a small business. The amount of the credit would be equal to \$1,000 for each new full-time job that is created. The tax credit would be allowed for up to 50 new full-time jobs created by the taxpayer. The tax credit would be allowed in the first taxable year in which the job had been filled for at least one year

"Full-time job" would mean a job of indefinite duration, for which the small business is the employer and for which the standard fringe benefits are paid by the small business, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such taxpayer's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as a full-time job under this section.

"Small business" would mean 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.

The amount of these credits would not be allowed to exceed the tax liability of the taxpayer. Any unused credits to be carried over for five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. A taxpayer would not be allowed to claim this credit and the Green Jobs Tax Credit for the creation of the same job.

In order to qualify for the tax credit, the taxpayer would need to demonstrate that the job was created by the taxpayer and was filled for the taxable year in which the credit is claimed.

This bill would require the Tax Commissioner to develop guidelines, exempt from the provisions of the Administrative Process Act, to implement this tax credit.

Any credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) would be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

This bill would be effective for taxable years beginning on or after January 1, 2012, but before January 1, 2015.

Similar Bills

Executive bills:

House Bill 585 and Senate Bill 344 would allow an individual income tax credit for certain investments made to small businesses.

House Bill 714 and Senate Bill 368 would extend the time during which the major business facility job tax credit may be taken over a two-year period through 2014.

House Bill 1013 and Senate Bill 226 would extend the subtraction from individual and corporate income tax for capital gains to apply to investments in qualified businesses made through June 30, 2015.

Other bills:

House Bill 149 and SB 61 would reduce the corporate income tax rate to 3% for 3 years for corporations that locate satellite offices in certain localities.

House Bill 191 would allow a corporate or individual income tax credit, equal to \$2,500, to a small business for each new job it creates in Virginia and fills with a graduate of a Virginia college or university.

House Bill 228 would create a corporate income tax credit for certain large federal government contractors equal to five percent of the value of new qualified subcontracts or the increase in the existing subcontracts with small businesses located in HUB zones or Enterprise Zones or are minority-owned, women-owned, or veteran-owned business.

House Bill 335 would allow an individual and corporate income tax deduction for any income taxed as a capital gain or investment services partnership interest income for federal income tax purposes attributable to an investment in a small business held for a period of at least five years.

House Bill 720 would increase the worker retraining tax credit for worker retraining courses taken by employees at private schools from a maximum of \$100 per year per employee to \$250 per year per employee, and \$500 per year per employee if the worker retraining includes retraining in a STEM or STEAM (science, technology, engineering, mathematics, or applied mathematics) discipline or a healthcare related discipline.

House Bill 1041 would create an individual and corporate income tax credit for each new full-time job created and filled by a veteran with an annual salary of at least \$50,000. The amount of the credit would be equal to \$500 for each new full-time job that is filled with a returning military veteran, or \$1,000 if the new full-time job that is filled with a disabled military veteran.

House Bill 1049 would create an individual and corporate income tax credit for taxpayers employing persons in STEM internship positions in the Commonwealth. The credit would be equal to 25 percent of the wages or salary paid to the intern. The total amount of tax credits that may be allocated in a fiscal year would be limited to \$2 million.

cc : Secretary of Finance

Date: 1/27/2012 tlg
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