

DEPARTMENT OF TAXATION

2013 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 1370

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 to a small business for each new full-time job that it creates in Virginia. The amount of the tax 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.

This bill would be effective for taxable years beginning on or after January 1, 2013, but before January 1, 2016.

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

ITEM(S): 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 an unknown, but potentially significant, negative impact on General Fund revenues for Fiscal Years 2014 through 2016. The tax credit proposed by this bill would have no cap. Additionally, this bill could have an unknown negative impact on General Fund revenues over the remainder of the forecast horizon due to the five-year carryforward 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 250 or fewer 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:

Line 30, 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 fewer than 50 employees are eligible for a \$200 per month tax credit for each new full-time employee they hire.

Alabama allows an income and financial institution excise tax credit to small businesses that create new jobs paying more than \$10 per hour. The tax credit is equal to \$1,000 per new job and is available in the taxable year during which the employee completes 12 months of consecutive employment.

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. Tax credits will be recaptured proportionately if employment decreases during the five years following the initial credit year.

This nonrefundable tax credit is equal to \$1,000 per each qualifying new job in excess of the 50/25 job threshold. The tax 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 tax credits may be carried forward for the next ten taxable years.

Effective for taxable years beginning on January 1, 2009, through December 31, 2014, taxpayers are allowed to claim the tax credit amount over two years instead of three.

Green Jobs Tax Credit

Individuals and corporations may claim a tax credit for each new “green job” that is created in Virginia. The nonrefundable tax 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 tax 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 manufacturing facilities for clean energy technologies that would foster investment and job creation in clean energy manufacturing.

International Trade Facility Tax Credit

Taxpayers may claim a nonrefundable corporate income or individual income tax credit for either making capital investments in an international trade facility or for increasing jobs related to an international trade facility. The jobs portion of the International Trade Facility Tax Credit is equal to \$3,500 for each qualified full-time employee that results from increased qualified trade activities by the taxpayer. An international trade facility that creates jobs in a tobacco-dependent locality may claim an increased tax credit amount equal to \$7,000 for each qualified full-time employee that results from increased qualified

trade activities by the taxpayer, to the extent that funding is available in the Technology Initiative in Tobacco-Dependent Localities Fund.

Tax credits will be recaptured proportionately if employment decreases during the five years following the initial tax credit year. An individual or corporation is not allowed to claim the International Trade Facility Tax Credit and the Major Business Facility Jobs Tax Credit for the same qualified full-time employee.

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 an enterprise 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 to a small business for each new full-time job that it creates in Virginia. The amount of the tax 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 continuously filled for 12 months.

"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 small business' operations, in 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 would not qualify as a full-time job.

"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 tax credits would not be allowed to exceed the tax liability of the taxpayer. Any tax credits not usable for the taxable year for which the credit was first allowed to be claimed would be allowed 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 tax credit and the Green Jobs Creation Tax Credit for the creation of the same job. Nothing in this bill would prohibit a taxpayer from claiming this tax credit and the Major Business Facility Job Tax Credit, the International Trade Facility Tax Credit, or an Enterprise Zone Grant for the same jobs.

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 tax 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 tax 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, 2013, but before January 1, 2016.

Similar Bills

House Bill 1303 would allow a corporate or individual income tax credit, equal to \$2,500, to a small business for each new job that it creates in Virginia and fills with a graduate of a Virginia public institution of higher education.

House Bill 1304 would create a corporate income tax credit, equal to five percent of the value of qualified subcontracts, for certain large businesses that contract with the federal government and enter into qualified subcontracts with small businesses located in HUBZones or Enterprise Zones that are either minority-owned, women-owned, veteran-owned, or a Small Business Administration qualified small business that is HUBZone certified.

Senate Bill 745 would reduce the corporate income tax rate from six percent to three percent for certain businesses that open a satellite office or operation in a Virginia locality with a population of 200,000 or less.

Senate Bill 831 would provide an individual and corporate income tax credit for each new full-time job that is created and filled by a military veteran with an annual salary of at least \$50,000. The amount of the tax credit would be equal to \$500 for each new full-time job that is filled with a returning military veteran or \$1,000 for each new full-time job that is filled with a disabled military veteran.

cc : Secretary of Finance

Date: 1/13/2013 MTH
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