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SENATE BILL NO. 1364

Senate Amendments in [] — January 30, 2015

A *BILL to amend and reenact § 58.1-422 of the Code of Virginia, relating to corporate income tax; apportionment of income for manufacturers; defense manufacturers.*

Patron Prior to Engrossment—Senator Alexander

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-422 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-422. Manufacturing companies; apportionment.**

A. For taxable years beginning on or after July 1, 2011, the Virginia taxable income of a manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and without the Commonwealth as provided in § 58.1-408 or as follows:

1. From July 1, 2011, until July 1, 2013, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2013, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2014, and thereafter, by multiplying such income by the sales factor.

B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the taxpayer may not revoke the election for a period of three taxable years.

In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry.

C. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than 90 percent of the base year employment, or the average wage of its full-time employees as certified by the taxpayer is not greater than the lower of the state or local average weekly wage, then the Department of Taxation shall assess the manufacturing company with additional taxes pursuant to this article computed as the difference between (i) the taxes that would have been due under the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes due under the alternative apportionment provided under this section for such three taxable years. Interest shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with such interest accruing from the original due date for filing of the income tax return to the date of payment of such additional taxes.

Such additional taxes and interest are hereby imposed on manufacturing companies using the alternative apportionment set forth in this section.

The provisions of this subsection shall not apply to defense employers for taxable years beginning on and after January 1, [2015 2016], but before January 1, 2021.

D. As used in this section, unless the context requires another meaning:

"Base year employment" means the average number of full-time employees employed by the manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the alternative apportionment set forth in this section.

"Defense employer" means a manufacturing company that has contracts subject to the requirements of 48 C.F.R. Chapter 2.

"Full-time employee" means an employee of a manufacturing company who is employed for an indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the manufacturing company, for which employment requires a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturing company's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

"Manufacturing company" means a domestic or foreign corporation primarily engaged in activities

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60 that, in accordance with the North American Industrial Classification System (NAICS), United States
61 Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector
62 11, 31, 32, or 33.

63 E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health
64 of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs.
65 Accordingly, the provisions of this section relating to manufacturing companies that increase their
66 employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If
67 any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a
68 court of competent jurisdiction, that provision shall not be deemed severable.

69 **[2. That the provisions of this act shall not become effective unless reenacted by the 2016 Session**
70 **of the General Assembly.**

71 **3. That the Department of Taxation shall report to the chairmen of the House Committee on**
72 **Appropriations and the Senate Committee on Finance no later than January 1, 2016 regarding the**
73 **implementation of § 58.1-422. Such report shall include, at a minimum, (i) the amount of taxes**
74 **assessed pursuant to subsection C of § 58.1-422 because of manufacturers not maintaining the**
75 **required levels of employment, (ii) an estimate of the fiscal impact of this act had it been in effect**
76 **for taxable years beginning on or after January 1, 2015, and (iii) if applicable, an analysis of and**
77 **findings regarding the causes for any decline in employment for defense employers, as defined in**
78 **this act.]**