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HOUSE BILL NO. 1581

Offered January 11, 2017

Prefiled January 2, 2017

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.4, consisting of sections numbered 58.1-439.29 through 58.1-439.32, relating to Made in Appalachia tax credits.*

Patrons—Campbell and O'Quinn; Senator: Chafin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.4, consisting of sections numbered 58.1-439.29 through 58.1-439.32, as follows:

*Article 13.4.**Made in Appalachia Tax Credits.***§ 58.1-439.29. Definitions.**

As used in this article, unless the context requires a different meaning:

"Appalachian region" means the localities that comprise the Cumberland Plateau, LENOWISCO, and Mount Rogers planning districts.

"Capital investment" means an expenditure for (i) the construction or improvement of a facility in the Appalachian region or (ii) the purchase and placement into service or improvement of tangible personal property in the Appalachian region that has a useful life of not less than three years.

"Eligible job" means a new, permanent, full-time job or full-time equivalent in the Appalachian region. "Eligible job" does not include seasonal positions, temporary positions, or positions created by shifting an employee's location from elsewhere in the Commonwealth to the Appalachian region.

"Local median income" means the locality's median wage at the time of job creation as reported by the Virginia Employment Commission.

"Local unemployment factor" means a fraction, the numerator of which is the locality's unemployment rate and the denominator of which is the unemployment rate of the Commonwealth. The fraction shall be calculated using the local area unemployment statistics at the time of job creation as reported by the Virginia Employment Commission.

§ 58.1-439.30. Tax credits; amount.

A. For taxable years beginning on and after January 1, 2017, but before January 1, 2022, any person shall be eligible to earn a credit against the tax due under Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to:

1. Ten percent of any capital investment that directly results in the creation of at least one eligible job;

2. \$6,000 per eligible job at or above local median income and, in addition, either \$1,000 per eligible job at or above 150 percent of local median income or \$2,000 per eligible job at or above 200 percent of local median income. Any credit earned under this subdivision shall be subject to the following restrictions:

a. The amount of credit earned pursuant to this subdivision shall be multiplied by the local unemployment factor to calculate the total amount of credits for which the person is eligible; however, if the locality unemployment factor is one or less, the person shall not be eligible to claim any credits under this subdivision.

b. Any credit earned under this subdivision shall be subject to recapture if the eligible job fails to continue for at least three years. Recapture shall be prorated based on the part of the three-year period for which the eligible job continued; and

3. The sales tax paid by the person pursuant to Chapter 6 (§ 58.1-600 et seq.) in purchasing materials or products that are used directly in the manufacture of products in the Appalachian region; however, no credit shall be allowed under this subdivision for products not used directly in manufacturing, including but not limited to office supplies and products used in administration, transportation, or marketing.

B. Any person may claim any combination of the credits authorized under subsection A.

C. The Department shall not issue more than \$40 million in credits under this section during any taxable year. In the event that applications for credits exceed \$40 million for the taxable year, the Department shall allocate credits according to the following priority: first, the full amount of credits

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59 earned under subdivision A 2 shall be allocated to such credits, and second, the remainder, if any, shall
60 be allocated equitably among credits earned under subdivisions A 1 and 3.

61 F. The Department shall develop guidelines implementing the provisions of this article. Such
62 guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

63 **§ 58.1-439.31. Timing, refund, and carryover.**

64 A. Any credit earned pursuant to:

65 1. Subdivision A 1 of § 58.1-439.30 may be claimed in the year the person makes the capital
66 investment or the year the person places the property in service;

67 2. Subdivision A 2 of § 58.1-439.30 may be claimed in the year the person creates the job; and

68 3. Subdivision A 3 of § 58.1-439.30 may be claimed in the year the person makes the purchase
69 resulting in sales tax liability.

70 B. If the amount of the credit earned under this article exceeds the taxpayer's tax liability for the
71 taxable year, the amount that exceeds the tax liability shall be refunded to the taxpayer, subject to the
72 limitations set forth in the guidelines developed by the Department; however, in lieu of a refund, any
73 person may elect to carry over any credit earned under § 58.1-439.30 for the next three succeeding
74 taxable years or until the credit is fully taken, whichever is sooner. If a credit has been transferred
75 pursuant to § 58.1-439.32, the credit shall not be refunded. No credit shall be carried back to a
76 preceding taxable year.

77 **§ 58.1-439.32. Transfer.**

78 A. Any person who earns a credit under this article may transfer unused credit for use by another
79 taxpayer. If a person transfers any amount of such credit, he shall file a notification of the transfer with
80 the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

81 B. A fee of one percent of the dollar amount of the credit shall be imposed on any transfer arising
82 from the sale by any person of credits under this article.

83 C. Any credit transferred under this section must be used within the time limitations established in §
84 58.1-439.31.

85 D. To the extent included in and not otherwise subtracted from federal adjusted gross income
86 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any
87 amount of gain or income recognized by the taxpayer on the application of a tax credit under this
88 article against Virginia income tax liability.

89 E. The transfer of the credit and its application against tax liability shall not create gain or loss for
90 the transferor or the transferee of such credit.