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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 921

Session of 1991

INTRODUCED BY PETRONE, BELFANTI, FAIRCHILD, ANGSTADT, McNALLY, FARGO, HALUSKA, CLARK, CARLSON, NOYE, KOSINSKI, LAUGHLIN, PERZEL, ALLEN, JOHNSON, M. N. WRIGHT, GEIST, MELIO, CAWLEY, DALEY, RAYMOND, BROUJOS, BELARDI, GIGLIOTTI, RICHARDSON, TRICH, LANGTRY, PESCI, PISTELLA AND TRELLO, APRIL 2, 1991

REFERRED TO COMMITTEE ON FINANCE, APRIL 2, 1991

AN ACT

Providing for tax credits for investments that result in new jobs.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Job Expansion, Retention and Business Investment Tax Credit Act.

Section 2. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The encouragement of economic growth and development in this Commonwealth is in the public interest and promotes the general welfare of the people.

(2) In order to encourage capital investment in businesses in this Commonwealth and thereby increase employment and economic development, a jobs expansion, retention and business investment tax credit should be

provided.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Business facility." A property that is depreciable under section 167 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 167) and that is used in this Commonwealth in manufacturing or mining operations which are engaged in as a commercial enterprise conducted for profit. The term does not include machinery, equipment or other real and tangible personal property which is classified as three-year property under section 168(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 168(e)). The term does not include a replacement facility.

"Business facility employee." An individual who is employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit under section 4 is claimed and who performs duties in connection with the operation of the new business facility on:

(1) a regular, full-time basis; or

(2) a part-time basis if the individual is customarily performing the duties at least 32 hours per week throughout the taxable year.

"Department." The Department of Revenue of the Commonwealth.

"Qualified business facility." A business facility which meets all of the following:

(1) Is employed by the taxpayer in the conduct of a business. If the taxpayer's only activity with respect to the facility is to lease the facility to a person who is not a

related taxpayer, the facility is not a qualifying business facility. If the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to a person who is not a related taxpayer or does not otherwise use the other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer is a qualifying business facility.

(2) Is purchased or leased by the taxpayer after July 1, 1987.

(3) Was not in service or use during the 90 days immediately prior to purchase or lease. This paragraph may be waived by the department upon application of the taxpayer setting forth good cause.

"Qualified business facility investment." The value of the qualified business facility, excluding inventory and property held for sale to customers in the ordinary course of the taxpayer's business, multiplied by the qualifying percentage.

(1) The value of the qualified business facility during the taxable year shall be determined as follows:

(i) If the taxpayer owns the qualified business facility, the value of the qualified business facility is the original cost of the facility.

(ii) If the taxpayer leases the qualified business facility, the value of the qualified business facility is the lessor's original cost or eight times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer minus any annual rental rate received by the taxpayer under subleases.

(2) The qualifying percentages shall be determined under

the following table, and property classification shall be determined under section 168(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 168(e)):

Property Classification	Qualifying Percentage
3-year property	0
5-year property	50
7-year property	100
10-year property	100
15-year property	100
20-year property	100
31.5-year property	100

"Related taxpayer."

(1) Any of the following:

(i) An individual, corporation, partnership, trust or association controlled by the taxpayer.

(ii) An individual, corporation, partnership, trust or association under the control of the taxpayer.

(iii) An individual, corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association under the control of the taxpayer.

(2) For purposes of this definition, control of a corporation means ownership, directly or indirectly, of stock possessing at least 80% of the combined voting power of all classes of stock entitled to vote.

(3) For purposes of this definition, an individual is deemed under the control of the taxpayer if the individual and the taxpayer are related by consanguinity, affinity or adoption.

(4) For purposes of this definition, section 318 of the

Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 318) is controlling.

"Replacement facility."

(1) A business facility that replaces another business facility located in this Commonwealth which:

(i) the taxpayer or a related taxpayer used in connection with an activity for more than two years during the five years immediately preceding the replacement; and

(ii) was not used by the taxpayer or a related taxpayer in connection with an activity for at least one year immediately following the replacement.

(2) The term does not include a new business facility in which the taxpayer's qualified business facility investment exceeds the lesser of $3,000,000 or 300% of the qualified business facility investment in the old business facility.

Section 4. Tax credit.

(a) General rule.--If a taxpayer's qualified business facility results in at least 50 new business facility employees or if the taxpayer makes a new qualified business facility investment in excess of $2,000,000, the taxpayer is eligible for a credit against the tax imposed under Articles II, III, IV and VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(b) Amount.--The amount of the credit under this section shall be the greater of 10% of the qualified business facility investment or $100 per new business facility employee. The number of new business facility employees during a taxable year shall be determined as follows:

(1) Determine the average number of employees reported

quarterly for the taxable year.

(2) Determine the average number of employees reported quarterly over the two prior taxable years.

(3) Subtract the average under paragraph (2) from the average under paragraph (1).

(c) Time.--The credit under this section may be taken in the taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the qualified business facility investment begins.

(d) Maximum.--The portion of the credit used may not exceed 75% of the taxes due in any taxable year.

(e) Carryover.--Credits earned under this section, to the extent not utilized, may be carried over for up to seven additional years by the taxpayer and shall then expire.

(f) Change in status.--If, during a taxable year, the situs of a qualified business facility is moved outside this Commonwealth within 48 months after the credit is taken for it, the taxes payable under Articles II, III, IV and VI of the Tax Reform Code of 1971 shall be increased, in the taxable year that the situs of the qualified business facility is moved, by the amount of credit previously granted for the qualified business facility and utilized by the taxpayer.

Section 5. Transfer of qualified business facilities.

If a taxpayer has established a qualified business facility and if, prior to the total utilization of the credit under section 4, all or a portion of the qualified business facility is acquired by or leased to another taxpayer, the transferor may, if the transferee recognizes the collective bargaining agent, under the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C. § 141 et seq.), of the employees of the transferor, do any of the following:

(1) Treat the portion of the new business facility acquired by or leased to the transferee as a qualified business facility held by the transferor. In this case the transferor shall be entitled to the remaining portion of the credit that has not been utilized, but the transferee shall not be entitled to any portion of the credit.

(2) Allow the transferee to claim the portion of the credit that has not been utilized.

Section 6. Regulations.

The department may promulgate regulations to administer this act.

Section 7. Effective date.

This act shall take effect in 60 days.