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Alert

Virginia Tax Incentives Support Green Jobs Growth and Investment in Technology and Science Start-up Companies

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Virginia recently enacted two tax incentives that reflect Virginia's commitment to fostering employment and economic development in cutting edge industries.

Green Job Creation Income Tax Credit

Virginia enacted the Green Job Creation Income Tax Credit ("Green Jobs Credit") to create "green jobs" and encourage alternative energy entrepreneurs to locate in Virginia. The Green Jobs Credit is effective in 2010 and applies to green jobs created on or after Jan. 1, 2010 and before Jan. 1, 2015. In his press release accompanying the bill signing, Governor McDonnell stated that the Green Jobs Credit and the recently-created Virginia Universities Clean Energy Development and Economic Stimulus Foundation will promote green energy research and economic development in Virginia.

Details of the Green Jobs Credit. The Green Jobs Credit provides employers with a $500 credit that may applied against Virginia income tax for each new green job created. Aspects of the Green Jobs Credit include:

- Effective for "green jobs" (see below) created from Jan. 1, 2010 through Dec. 31, 2014;
- Allowable for the taxable year in which the job has been filled for one full year and for each of the four succeeding taxable years provided the job is continuously filled;
- Available for up to 350 jobs per employer;
- Each job must have an annual salary of $50,000 or more and include standard fringe benefits;
- A "job" requires full-time employment related to the field of renewable, alternative energy; and
- The credit is not refundable, but taxpayers can carry forward any unused credit for up to five years.

Green Jobs. To obtain the Green Jobs Credit, the employer must create a "green job." A green job means employment in industries relating to the field of renewable, alternative energy. A green job includes the manufacture and operation of products used to generate electricity and other forms of energy from alternative fuels. The Green Jobs Credit provides a non-exclusive list of alternative fuels. The non-exclusive list of alternative fuels includes hydrogen and fuel cell technology, landfill gas, geothermal heating systems, solar heating systems, hydropower systems, wind systems, and biomass and biofuel systems. The Secretary of Commerce and Trade will develop a detailed definition and a list of green jobs eligible for the credit.

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Provisions Applicable to Pass-Through Entities. Employers that are structured as pass-through entities, such as a partnership, limited liability company, or S corporation, are eligible to obtain the Green Jobs Credit. Pass-through entities must allocate the credit to their owners in proportion to their ownership interests.

Limitations. A Virginia taxpayer cannot receive the Green Jobs Credit if the taxpayer receives (i) a Virginia "major business facility job tax credit" for the same job; or (ii) a federal tax credit for investments in manufacturing facilities for clean energy technologies that would foster investment and job creation in clean energy manufacturing.

Tax Incentives on Investment Income from Technology and Science Start-ups

Virginia also enacted a tax incentive for investment income from technology and science start-ups. Under this new tax incentive, long-term capital gain and carried interest income from investments in small, technology and science start-up companies can be exempt from Virginia taxation. The taxpayer must report the income as long-term capital gain or investment partnership carried interest income for federal tax purposes in taxable years beginning on or after Jan. 1, 2011. The taxpayer must make the investment between the dates of April 1, 2010 and June 30, 2013.

Qualified Business. The taxpayer's income must be from an investment in a "qualified business." A qualified business is a business that:

- Has annual gross revenues of no more than $3 million in its most recent fiscal year;
- Has its principal office or facility in Virginia;
- Is engaged in business primarily in or does substantially all of its production in Virginia;
- Has not obtained, during its existence, more than $3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including bank lending); and
- Is primarily engaged, or is primarily organized to engage, in the fields of advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation issued by the Virginia Department of Taxation.

The Virginia Secretary of Technology can also approve any other technology business as a qualified business.

Certain Taxpayers Excluded. If a taxpayer has claimed a Virginia qualified equity and subordinated debt investments tax credit in a qualified business, the taxpayer is not eligible for the new technology and science investment tax incentives in the same business. The Virginia qualified equity and subordinated debt investments tax credit is a credit of up to $50,000. Taxpayers eligible to claim either the technology and science tax incentives or the Virginia qualified equity and subordinated debt investments tax credit should consider which tax incentive provides the greatest tax benefit based on the circumstances.

Williams Mullen regularly advises its business and individual clients on the implications of Virginia tax credits and economic incentives. In addition, the firm maintains a robust state and local tax planning and controversy practice. For further information, please contact any member of the Williams Mullen State and Local Tax Team.

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