



State of Tennessee

PUBLIC CHAPTER NO. 508

HOUSE BILL NO. 1995

By Representatives McCormick, Sexton, Parkinson, Shaw, Todd, Cooper, Watson, Moore, Lollar, Kevin Brooks, Sanderson, Brown, Hall, Eldridge, Curtis Johnson, Coley, Bass, White, Favors, Gotto, Sparks, Holt, Weaver, Butt, Evans, Powers, Shepard, Niceley, Don Miller, Roach, Ragan, Alexander, Hardaway, Sargent, Halford

Substituted for: Senate Bill No. 1518

By Senators Norris, McNally

AN ACT to amend Tennessee Code Annotated, Title 7; Title 49; Title 55; Title 57 and Title 67, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-224(a), is amended by deleting the current language in its entirety and by substituting instead the following:

(a) A taxpayer that constructs, expands, or remodels a headquarters facility in this state through a minimum capital investment of at least ten million dollars (\$10,000,000) and creates at least one hundred (100) new full-time employee jobs in conjunction with the construction, expansion, or remodeling of such facility shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sale or use of qualified tangible personal property that is directly related to the creation of the new full-time employee jobs.

SECTION 2. Tennessee Code Annotated, Section 67-6-224(b)(1), is amended by deleting the language "beginning from the date of substantial completion" and substituting instead the language "from the end of the investment period".

SECTION 3. Tennessee Code Annotated, Section 67-6-224(b)(2), is amended by deleting the current language in its entirety and by substituting instead the following:

(2) "Full-time employee job" means a permanent, rather than seasonal or part-time, employment position that provides employment as a headquarters staff employee to a person for at least thirty-seven and one half (37.5) hours per week with minimum health care, as described in title 56, chapter 7, part 22, and that pays at least one hundred fifty percent (150%) of the state's average occupational wage, as defined in § 67-4-2004, for the month of January of the year in which the full-time employee job was created;

SECTION 4. Tennessee Code Annotated, Section 67-6-224(b)(4), is amended by deleting the following language:

For purposes of this subsection (b), regional means a geographic area comprised of at least Tennessee and one (1) or more of its contiguous states.

SECTION 5. Tennessee Code Annotated, Section 67-6-224(b)(7), is amended by deleting the current language in its entirety and by substituting instead the following:

(7) "Minimum capital investment" means an investment by the taxpayer and the lessor to the taxpayer of ten million dollars (\$10,000,000), during the investment period, in a building or buildings, either newly constructed, expanded, or remodeled. The minimum capital investment may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory;

HB 1995

SECTION 6. Tennessee Code Annotated, Section 67-6-224(b)(8), is amended by deleting the current language in its entirety and by substituting instead the following:

(8) "New full-time employee job" means full-time headquarters staff employee jobs that are new to the state of Tennessee, that increase net employment of the taxpayer above the level of employment in existence immediately prior to the beginning of the investment period, and that, for at least ninety (90) days, did not exist in Tennessee as a job position of the taxpayer or of another business entity. The new full-time employee jobs must be created and filled within the investment period. An employee in a new full-time employee job may be employed at a temporary location in this state, pending completion of construction, expansion, or remodeling work at the qualified headquarters facility;

SECTION 7. Tennessee Code Annotated, Section 67-6-224(b)(9), is amended by deleting the current language in its entirety and by substituting instead the following:

(9) "Qualified headquarters facility" means a headquarters facility where the taxpayer has made the minimum capital investment and has created the required number of new full-time employee jobs to be entitled to the credit provided by this section;

SECTION 8. Tennessee Code Annotated, Section 67-6-224(b)(10), is amended by deleting the language "in conjunction with the initial establishment of such facility".

SECTION 9. Tennessee Code Annotated, Section 67-6-224(b)(11), is amended by deleting the period [.] at the end of the first sentence of the subdivision and by substituting instead the following language:

; provided, however, that "qualified tangible personal property" only includes such property that is directly related to the creation of the new full-time employee jobs.

SECTION 10. Tennessee Code Annotated, Section 67-6-224(d)(1), is amended by deleting the language "and, if applicable, documentation verifying employment and wage information" and by substituting instead the language "the number of new full-time employee jobs to be created, and a description of such jobs".

SECTION 11. Tennessee Code Annotated, Section 67-6-224(d), is amended by deleting the following language:

The credit may only be taken by the taxpayer establishing the qualified headquarters facility.

and by substituting instead the following language:

The credit may only be taken by the taxpayer making the minimum capital investment of at least ten million dollars (\$10,000,000) and creating at least one hundred (100) new full-time employee jobs in conjunction with the construction, expansion, or remodeling of the qualified headquarters facility.

and is further amended by inserting the following as a new subdivision immediately following subdivision (3) and by renumbering the subsequent subdivision accordingly:

() In order to receive the credit, the taxpayer must also certify, on a form prescribed by the department, the number of new full-time employee jobs created and that the purchases of qualified tangible personal property for which the credit is claimed are directly related to the creation of such new full-time employee jobs.

SECTION 12. Tennessee Code Annotated, Section 67-6-224, is amended by inserting the following as a new subsection immediately following subsection (d) and by redesignating the remaining subsections accordingly:

() If determined to be in the best interests of the state, the commissioner of revenue and the commissioner of economic and community development are authorized

to lower the number of jobs that must be created in order to qualify for the credit provided in this section; provided, however, that the amount of the credit shall also be reduced in direct proportion to the reduction in the job creation requirement. Under no circumstances, however, shall the job creation requirement be lowered by more than fifty percent (50%).

SECTION 13. Tennessee Code Annotated, Section 67-4-2109(h)(2), is amended by deleting the language "subsection (c)" and substituting instead the language "subsection (b)" and is further amended by deleting the language "for establishing a qualified headquarters facility".

SECTION 14. Tennessee Code Annotated, Section 67-4-2109(h)(5), is amended by deleting the language ", beginning from the date of substantial completion of the qualified headquarters facility" and by substituting instead the language "from the end of the investment period".

SECTION 15. Tennessee Code Annotated, Section 67-4-2109(h)(9), is amended by deleting the current language in its entirety and by substituting instead the following:

(9)(i) If determined to be in the best interests of the state, the commissioner of revenue and the commissioner of economic and community development are authorized to lower the number of jobs that must be created in order to qualify for the credit provided in this subsection (h); provided, however, that the amount of the credit shall also be reduced in direct proportion to the reduction in the job creation requirement. Under no circumstances, however, shall the job creation requirement be lowered by more than fifty percent (50%).

(ii) If determined to be in the best interests of the state, the commissioner is further authorized to allow a relocation expense credit to any scrap metal processing facility relocating from a central business district or an area adjacent to the central business district and separated only by a waterway. Such credit shall be equal to the amount of relocation expenses incurred and paid by the facility but shall not exceed the amount of credit allowed under subdivision (h)(3)(E) for the relocation of staff employees of a headquarters facility.

SECTION 16. Tennessee Code Annotated, Section 67-4-2109(b)(1)(C), is amended by deleting the current language in its entirety and by substituting instead the following:

(C) In order to qualify for the credit, the qualified business enterprise must, within the investment period, make the required capital investment and create at least twenty-five (25) qualified jobs. The credit provided in subdivision (b)(1)(A) shall first apply in the tax year in which the qualified business enterprise first satisfies the capital investment and job creation requirements and in subsequent tax years within the investment period in which further net increases occur above the level of employment established when the credit was last taken.

SECTION 17. Tennessee Code Annotated, Section 67-4-2109(b), is amended by deleting the following language each place that it appears within subdivision (2):

"beginning with the first tax year after the initial job tax credit is created"

and by substituting instead the following language:

"beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(C)"

SECTION 18. Tennessee Code Annotated, Section 67-4-2109(b)(2), is amended by adding the following as two new subdivisions designated as subdivisions (C) and (D):

(C) The qualified business enterprise may first apply the credit provided in this subdivision (b)(2) in any tax year after the qualified business enterprise has met all of the requirements of subdivisions (b)(1) and (b)(2); provided, however, that the qualified business enterprise must begin to apply the credit no later than the first tax year following the end of the investment period.

HB 1995

(D) Notwithstanding any provision to the contrary, the circumstances described in subdivisions (b)(2)(A)(i)-(ii) and (b)(2)(B)(i)-(v) shall be deemed to be mutually exclusive and a taxpayer shall not receive a credit under more than one (1) such subdivision for jobs created during a single investment period.

SECTION 19. Tennessee Code Annotated, Section 67-4-2109(b)(3)(D), is amended by designating the current language as subdivision (i) and by adding the following as a new subdivision (ii):

(ii) Subdivision (b)(3)(D)(i) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

SECTION 20. Tennessee Code Annotated, Section 67-4-2109(b)(3)(F), is amended by deleting the language "earned and not expended as of June 1, 2006".

SECTION 21. Tennessee Code Annotated, Section 67-4-2109(b)(3)(I), is amended by deleting the current language in its entirety and by substituting instead the following:

(I) If determined to be in the best interests of the state, the commissioner of revenue and the commissioner of economic and community development are authorized to lower the number of jobs that must be created in order to qualify for the additional annual credit provided in subdivision (b)(2)(B); provided, however, that the amount of the credit shall also be reduced in direct proportion to the reduction in the job creation requirement. Under no circumstances, however, shall the job creation requirement be lowered by more than fifty percent (50%);

SECTION 22. Tennessee Code Annotated, Section 67-4-2006(c)(6), is amended by designating the current language as subdivision (A) and by adding the following as a new subdivision (B):

(B) Subdivision (c)(6)(A) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

SECTION 23. Tennessee Code Annotated, Section 67-4-2006(c)(7), is amended by designating the current language as subdivision (A) and by adding the following as a new subdivision (B):

(B) Subdivision (c)(7)(A) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

SECTION 24. Tennessee Code Annotated, Section 67-4-2009(4)(C), is amended by deleting the current language in its entirety and substituting instead the following:

(C)(i) Any unused credit may be carried forward in any tax period until the credit is taken; however, the credit may not be carried forward for more than fifteen (15) years;

(ii) If the taxpayer qualifies for the credit provided in subdivision (4)(I)(i), the fifteen (15) year limitation otherwise applicable to the carry-forward of unused credit shall not apply; provided, that the commissioner of economic and community development and the commissioner of revenue have determined that the allowance of the additional carry-forward is in the best interest of the state;

(iii) Subdivision (4)(C)(ii) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

SECTION 25. Tennessee Code Annotated, Section 67-4-2109(a)(1), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

HB 1995

SECTION 26. Tennessee Code Annotated, Section 67-4-2109(j), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

SECTION 27. Tennessee Code Annotated, Section 67-4-2109(n)(5), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

SECTION 28. Tennessee Code Annotated, Section 67-4-2009(4)(H), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

SECTION 29. Tennessee Code Annotated, Section 67-4-2009(4)(I)(vii)(a), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

SECTION 30. Tennessee Code Annotated, Section 67-6-102(76), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

SECTION 31. Tennessee Code Annotated, Section 67-6-232(b)(1), is amended by deleting the language "includes, but is not limited to," and by substituting instead the language "means".

SECTION 32. Tennessee Code Annotated, Section 67-6-102(47)(H)(i), is amended by deleting the word "or" at the end of subdivision (b) and by inserting the following as a new subdivision designated subdivision (c) immediately following subdivision (b) and by redesignating the existing subdivision (c) as subdivision (d):

(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars (\$10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or

SECTION 33. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following language as a new section:

67-6-397.

(a) For purposes of this section:

(1) "Claimant" means any natural person receiving disaster assistance through the federal emergency management agency (FEMA) as a result of a disaster in Tennessee occurring between March 23, 2011 and May 12, 2011;

(2) "Major appliance" means any water heater, dishwasher, washer, dryer, refrigerator, freezer, stove, range, oven, cooktop, microwave, vacuum, or fan that is used in the claimant's primary residence to replace an appliance that was damaged or destroyed in a disaster in Tennessee occurring between March 23, 2011 and May 12, 2011; provided, that the sales price per item is three thousand two hundred dollars (\$3,200) or less;

(3) "Residential building supplies" means any of the following items if used in the claimant's primary residence and reasonably determined by the department to be for purposes of restoration, repair, replacement, or rebuilding due to a disaster in Tennessee occurring between March 23, 2011 and May 12, 2011; provided, that the sales price per item is five hundred dollars (\$500) or less:

(A) Cleaning and disinfecting materials as determined by the department;

(B) Trash bags, boxes, construction tools, and hardware, as determined by the department;

(C) Roofing shingles, roofing paper, gutters, downspouts, vents, doors, windows, sheetrock, drywall, insulation, paint and paint materials, flooring, and other necessary building materials, as determined by the department; and

(4) "Residential furniture" means furniture commonly used in a residential dwelling, as determined by the department, that is used in the claimant's primary residence to replace furniture that was damaged or destroyed in a disaster in Tennessee occurring between March 23, 2011 and May 12, 2011; provided, that the sales price per item is three thousand two hundred dollars (\$3,200) or less,

(b)

(1) Except as otherwise provided in this section, a claimant shall be entitled to a refund equal to the total amount of Tennessee state and local sales and use tax paid by the claimant to one (1) or more retailers as a result of the claimant's purchases of major appliances, residential furniture, or residential building supplies from such retailers, provided that such purchases occur between 12:01 a.m. on March 23, 2011, and 11:59 p.m. on December 31, 2011.

(2) The total amount refunded under this section in connection with any one (1) residence shall not exceed two thousand five hundred dollars (\$2,500).

(c) To receive a refund under this section, a claimant shall file a single application with the department on or before February 29, 2012, that shall include the aggregate amount requested by the claimant in connection with all eligible purchases described in subsection (b). Only one (1) application per residence shall be allowed. Notwithstanding any provision of § 67-1-1802, such refund shall be made by the department directly to the claimant and shall not be made by the retailer to the claimant. All applications for refund shall be submitted as prescribed by the department and shall include satisfactory proof of receipt of federal disaster assistance, eligible purchases, and Tennessee taxes paid on such purchases, and any other information or documentation that the department may require, including, but not limited to, store receipts and copies of payment documents such as checks, credit card receipts, or a sworn statement under penalty of perjury to support any purchases made using cash. The department shall develop guidelines concerning the administration of this section, which shall be posted on the web site of the department. The commissioner is granted broad discretion to administer the refund process in a manner that the commissioner deems necessary to quickly, efficiently, and accurately carry out the purposes of this section.

(d) The department may assess a civil penalty not to exceed twenty-five thousand dollars (\$25,000) against any person that knowingly files a false or fraudulent application for refund under this section. Any claimant that is assessed a penalty under this subsection (d) shall be entitled to the remedies provided in § 67-1-1801.

(e) It is the intent of the general assembly to appropriate a sum sufficient in the general appropriations act for the purpose of funding this section. Implementation of this section is contingent upon such appropriation. All refunds under this section shall be paid from the state's general fund and nothing in this section shall be construed to reduce the amount of sales and use tax payable to local governments.

(f) This section is repealed July 1, 2012.

HB 1995

SECTION 34. Sections 1-32 of this act shall take effect on July 1, 2011, the public welfare requiring it and shall apply to any written proposal by the department of economic and community development or the department of revenue on or after such date. All other provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 1995

PASSED: May 21, 2011



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 16th day of June 2011



BILL HASLAM, GOVERNOR