

SENATE BILL 85

By Walley

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 9; Title 12, Chapter 3; Title 45; Title 50; Title 56, Chapter 1 and Title 67, relative to employee-owned businesses.

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

SECTION 1. This act is known and may be cited as the "Employee Ownership, Empowerment, and Expansion Act."

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new section:

67-4-2024.

(a) The purposes of this section are to:

(1) Provide an incentive for small businesses to establish employee stock ownership plans or employee ownership trusts or to convert to a worker-owned cooperative, which allows companies to share ownership with employees without requiring employees to invest their own money; and

(2) Encourage small business owners to sell, through three (3) different options, their businesses to the very employees that contributed to their success.

(b) As used in this section:

(1) "Conversion costs":

(A) Means all costs incurred by a qualified business for the transition of a business to an employee ownership trust, an employee stock ownership plan, or a worker-owned cooperative; and

(B) Includes, but is not limited to:

(i) The cost of professional services, including accounting, legal, and business advisory services;

(ii) Expenses necessary or incident to determining the feasibility and structure of the conversion; and

(iii) The cost of tax planning, audits, valuations, travel, proformas, and trustee or third-party administration;

(2) "Employee ownership trust" means an indirect form of employee ownership in which a trust holds a controlling stake in a qualified business and benefits all employees on an equal basis;

(3) "Employee stock ownership plan" has the same meaning as set forth in § 4975(e)(7) of the Internal Revenue Code (26 U.S.C. § 4975(e)(7)), as amended;

(4) "Owner" means the owner of a qualified business before a conversion occurs;

(5) "Qualified business" means a taxpayer subject to tax under this part, including a C corporation, S corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, or other similar pass-through entity, that:

(A)

(i) Is not owned in whole or in part by an employee ownership trust;

(ii) Does not have an employee stock ownership plan; or

(iii) Is not, in whole or in part, a worker-owned cooperative;

and

(B) Is approved by the department for the tax incentives in this section; and

(6) "Worker-owned cooperative" has the same meaning as set forth in § 1042(c)(2) of the Internal Revenue Code (26 U.S.C. § 1042(c)(2)), as amended.

(c) For tax years commencing on or after January 1, 2024, but prior to January 1, 2029, there is allowed a credit with respect to the taxes imposed pursuant to this part in the tax year in which the conversion is completed, as follows:

(1) Up to fifty percent (50%) of the conversion costs, not to exceed twenty-five thousand dollars (\$25,000), incurred by a qualified business for converting the qualified business to a worker-owned cooperative or an employee ownership trust; or

(2) Up to fifty percent (50%) of the conversion costs, not to exceed one hundred thousand dollars (\$100,000), incurred by a qualified business for converting the qualified business to an employee stock ownership plan.

(d)

(1) In the case of a qualified business that is a C corporation or a limited liability company, the credit is allowed to the qualified business.

(2) In the case of a qualified business that is a partnership, a sole proprietorship, or an S corporation, the credit is allowed to the owner.

(e) To request a credit, the taxpayer shall file an application with the commissioner on a form prescribed by the commissioner, and include a cost certification of the estimated conversion costs. The taxpayer must claim a tax credit under this section at the time of filing its excise tax return.

(f) The commissioner may conduct audits or require the filing of additional information necessary to substantiate or adjust the amount of the credit allowed by this

section, and to determine that the taxpayer has complied with all statutory requirements for the credit.

(g) The commissioner shall review the documentation submitted by the taxpayer and notify the taxpayer of the approved credit.

(h) Unused credit may be carried forward in any tax period until the credit is taken; provided, however, that the credit must not be carried forward for more than fifteen (15) years.

(i) Tax credits issued under this section to a partnership or an S corporation must be passed through to the partners, members, or owners, including a nonprofit entity that is a partner, member, or owner, respectively, on a pro rata basis according to their ownership percentage.

(j) The department shall conduct statewide outreach efforts, within existing resources, to minority-owned businesses, as defined in § 4-28-102, about the availability of the tax credit allowed in this section.

(k) The commissioner is authorized to promulgate rules to effectuate the purposes of this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(l) On or before January 1, 2024, the department shall submit a one-time report to the finance, ways and means committees of the house of representatives and the senate, setting forth the clear, relevant, and ascertainable metrics and data requirements that the department will track under this section in order to allow the general assembly to measure the effectiveness of the tax expenditure allowed in this section in achieving the purposes set forth in subsection (a).

(m) This section is repealed on December 31, 2035.

SECTION 3. Tennessee Code Annotated, Section 67-4-712, is amended by adding the following as a new subsection:

(g) The tax imposed by this part does not apply to a worker-owned cooperative, an employee ownership trust, or an employee stock ownership plan, as defined in § 67-4-2024.

SECTION 4. Tennessee Code Annotated, Section 12-3-1102, is amended by adding the following as new, appropriately designated subdivisions:

() "Employee ownership trust" means an indirect form of employee ownership in which a trust holds a controlling stake in a qualified business and benefits all employees on an equal basis;

() "Tennessee employee-owned business" means a business that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by:

(A) An employee ownership trust;

(B) An employee stock ownership plan as defined in 26 U.S.C. § 4975(e)(7); or

(C) A worker-owned cooperative as defined in 26 U.S.C. § 1042(c)(2).

SECTION 5. Tennessee Code Annotated, Section 12-3-1103(a), is amended by inserting the language "Tennessee employee-owned businesses," immediately before the language "and small businesses".

SECTION 6. Tennessee Code Annotated, Section 12-3-1104, is amended by inserting the language "Tennessee employee-owned business," immediately before the language "or small business" wherever it appears in subdivision (a)(1) and subsections (b) and (c).

SECTION 7. Tennessee Code Annotated, Section 12-3-1104(a)(2), is amended by inserting the language "Tennessee employee-owned businesses," immediately after the

language "disabilities," wherever it appears; and by deleting the language "five (5) subcategories of businesses" and substituting instead the language "six (6) subcategories of businesses".

SECTION 8. Tennessee Code Annotated, Title 12, Chapter 3, Part 11, is amended by inserting the language "Tennessee employee-owned business," immediately before the language "or small business" wherever it appears in Sections 12-3-1105, 12-3-1106, and 12-3-1107.

SECTION 9. Section 3 of this act takes effect January 1, 2024, the public welfare requiring it, and applies to tax periods that begin on or after January 1, 2024. Sections 4, 5, 6, 7, and 8 of this act take effect July 1, 2023, the public welfare requiring it. All remaining sections of this act take effect upon becoming a law, the public welfare requiring it, and apply to tax periods that begin on or after January 1, 2024.