

SENATE BILL 1549

By Berke

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, relative to credits against franchise and excise tax liability and to enact the Tennessee New Entrepreneur Tax Credit Act of 2011.

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

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding Sections 2 through 8 as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee New Entrepreneur Tax Credit Act of 2011."

SECTION 3. This part shall be administered by the department of revenue. The purpose of this part is to provide tax credits to applicants for creating or expanding microbusinesses that contribute to the revitalization of the state's economy through the creation of new or improved income, self-employment, or other new jobs in the state.

SECTION 4. For purposes of this part, unless the context otherwise requires:

(1) "Actively engaged in the operation of a microbusiness" means personal involvement on a continuous basis in the daily management and operation of the business;

(2) "Commissioner" means the commissioner of revenue;

(3) "Department" means the department of revenue;

(4) "Equivalent employees" means the number of employees computed by dividing the total hours paid in a year by the product of forty (40) times the number of weeks in a year;

(5) "Microbusiness" means any business employing five (5) or fewer equivalent employees at the time of application. "Microbusiness" does not include a farm or livestock operation unless:

(A) The person actively engaged in the operation of the microbusiness has a net worth of not more than three hundred fifty thousand dollars (\$350,000), including any holdings by a spouse or dependent, based on fair market value; or

(B) The investment or employment is in the processing or marketing of agricultural products, aquaculture, agricultural tourism, or the production of fruits, herbs, tree products, vegetables, tree nuts, dried fruits, organic crops, or nursery crops;

(6) "New employment" means the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Tennessee residents exceeds the total compensation paid plus the employer cost for health insurance for employees to or for employees who are Tennessee residents in the tax year prior to application. "New employment" does not include compensation to any employee that is in excess of one hundred fifty percent (150%) of the state average weekly wage;

(7) "New investment" means the increase during the tax year over the year prior to the application in the applicant's:

(A) Purchases of buildings and depreciable personal property located in this state and expenditures on repairs and maintenance on property located in this state; provided, that vehicles required to be registered for operation on the roads and highways of this state shall be excluded from the purchases and expenditures, and if the buildings or depreciable personal property are leased, the amount of new investment shall be the increase in average net annual rents

multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten (10) years; and

(B) Expenditures on advertising, legal, and professional services;

(8) "Related persons" means any:

(A) Corporation, partnership, limited liability company, cooperative, including cooperatives exempt under § 521 of the Internal Revenue Code of 1986, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, or any person who is considered to be a related person under either § 267(b) and (c) or § 707(b) of the Internal Revenue Code of 1986; and

(B) Individual who is a spouse, parent if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(9) "Taxpayer" means any person subject to the taxes imposed by this part, and by the Excise Tax Law of 1999, compiled in part 20 of this chapter, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under § 521 of the Internal Revenue Code of 1986, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent (90%) of the entity are, subject to the taxes, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under § 521 of the Internal Revenue Code of 1986, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent (90%) of the entity are subject to the taxes.

SECTION 5.

(a) The department shall accept applications for tax credits from taxpayers who are actively engaged in the operation of a microbusiness in this state or who will establish a microbusiness that they will actively operate in this state within the current or subsequent tax year. Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(b) The department may convene an advisory committee of individuals with expertise in small business development, lending, and community development to evaluate applications and advise the department in authorizing tentative tax credits.

(c) The application shall be on a form and in a manner prescribed by the department and shall contain:

- (1) A description of the microbusiness;
- (2) The projected income and expenditures;
- (3) The market to be served by the microbusiness and the way the expansion addresses the market;
- (4) The amount of projected investment or employment increase that would generate the credit;
- (5) The projected improvement in income or creation of new self employment or other jobs in this state;
- (6) The nature of the applicant's engagement in the operation of the microbusiness; and
- (7) Other documents, plans, and specifications as required by the department.

SECTION 6.

(a) Applications for tax credits shall be considered in the order in which they are received. If the department determines that the application meets the requirements of Section 5, that the investment or employment is eligible for the credit, and that subsection (b) is satisfied, then the department shall approve the application, authorize tentative tax credits to the applicant within the limits set forth in this section, and certify the amount of tentative tax credits approved for the applicant.

(b) To qualify for the credit provided in this part, each of the following shall be met:

(1) The applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment;

(2) The majority of the assets of the microbusiness are located in this state or will be upon its establishment;

(3) The applicant will make new investment or employment in the microbusiness; and

(4) The new investment or employment will create new income or jobs in this state.

(c) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2012, through December 31, 2021. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars (\$2,000,000) plus tentative tax credits that were not granted by the end of the preceding year.

SECTION 7.

Taxpayers shall be entitled to refundable tax credits against the taxes imposed by this part, and by the Excise Tax Law of 1999, compiled in part 20 of this chapter, equal to twenty percent (20%) of the taxpayer's new investment or employment in the microbusiness during the tax year not to exceed the amount of tentative tax credits approved by the department under Section 6. A taxpayer shall claim the tax credit by filing a form in the manner prescribed by the commissioner and attaching the tentative tax credit certification granted by the department. Tentative tax credits expire after the end of the tax year following the year the tentative tax credit was certified. The total lifetime tax credits claimed by any one (1) taxpayer and any related person under the this act shall be limited to ten thousand dollars (\$10,000).

SECTION 8.

(a) The commissioner shall prepare a report identifying the following aggregate amounts for the previous calendar year:

- (1) Amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted;
- (2) Actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous calendar year;
- (3) Tax credits used; and
- (4) Tentative tax credits that expired.

(b) The report required by subsection (a) shall be submitted to the finance, ways and means committees of the senate and house of representatives on or before July 1, 2013, and each subsequent July 1. No information shall be provided in the report that is protected by state or federal confidentiality laws, including any provisions of law set forth in chapter 1, part 17 of this title.

SECTION 9. This act shall take effect July 1, 2011, the public welfare requiring it.