

Guidelines for the Worker Retraining Tax Credit

Introduction

During the 1997 Session, the Virginia General Assembly enacted House Bill 2367 (1997 *Acts of Assembly*, Chapter 726), which established the Worker Retraining Tax Credit. This is a tax credit for employers that provide eligible worker retraining to qualified employees.

During the 2018 Session, the Virginia General Assembly enacted House Bill 129 (2018 *Acts of Assembly*, Chapter 500), which modified the Worker Retraining Tax Credit by allowing a taxpayer primarily engaged in manufacturing to claim the credit for direct costs incurred in conducting orientation, instruction, and training of certain students in Virginia relating to the manufacturing activities undertaken by such taxpayer.

These guidelines are published by the Department of Taxation (“the Department”) to provide guidance to taxpayers regarding the Worker Retraining Tax Credit. These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) and are being published in accordance with the Tax Commissioner’s general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. As necessary, additional information regarding the credit will be published and posted on the Department’s website, www.tax.virginia.gov.

These guidelines represent the Department’s interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

General Overview

Effective for Taxable Year 2018 and thereafter, taxpayers may claim the Worker Retraining Tax Credit using two different bases:

- For expenditures paid or incurred for eligible worker retraining;
- For direct costs incurred during the taxable year in conducting orientation, instruction, and training of certain students in Virginia relating to the manufacturing activities undertaken by the business.

Taxpayers may claim credits using both bases in the same taxable year, to the extent they qualify.

Prior to Taxable Year 2018, the credit was allowed only for expenditures paid or incurred for eligible worker retraining.

Credits Based on Eligible Worker Retraining

An employer may claim a credit against the individual income tax, estate and trust income tax, corporate income tax, bank franchise tax, insurance premiums license tax, and license tax on

Guidelines for the Worker Retraining Tax Credit

telegraph, telephone, water, heat, light, power, and pipeline companies in an amount equal to 30 percent of all expenditures paid or incurred by the employer during the taxable year for providing eligible worker retraining to qualified employees. If the eligible worker retraining consists of courses conducted at a private school, the amount of the credit may not exceed \$200 per qualified employee. If the eligible worker retraining conducted at a private school includes retraining in a STEM or STEAM discipline, including but not limited to industry-recognized credentials, certificates, and certifications, the amount of the credit may not exceed \$300 per qualified employee.

An employer is allowed to claim credits only for those courses at a comprehensive community college or a private school that have been certified as eligible worker retraining to the Department by the Virginia Economic Development Partnership Authority (“VEDP”). Upon review of a request for certification submitted by employers, VEDP will advise the Department whether a course or program qualifies as eligible worker retraining and, if it qualifies, whether the course or program is in a STEM or STEAM discipline. Worker retraining undertaken by any program operated, administered, or paid for by Virginia is ineligible for the credit.

“Eligible worker retraining” means the retraining of a qualified employee that promotes economic development. Retraining of a qualified employee will promote economic development when the employment brings new income into Virginia, stimulates additional employment, improves existing processes, products or services, or is the basis for further economic growth. The retraining can be accomplished through: (i) noncredit courses at any Virginia community college or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the Virginia Apprenticeship Council.

“Noncredit courses” include, but are not limited to:

- Specific job-related skills and studies;
- Computer training due to process or equipment change of entry-level computer skills (ongoing computer software upgrades are not included);
- Continuous improvements such as team building and quality training;
- Management and supervisory training;
- Safety and environmental training programs; and
- Credit or noncredit approved apprenticeship courses.

“Qualified employee” means an employee of an employer eligible for the credit who works in a full-time position requiring a minimum of 1,680 hours in the normal year of the employer’s operation if the standard fringe benefits are offered to the employee by the employer. Employees in seasonal or temporary positions are not qualified for this program. Employees eligible to take credit or noncredit courses undertaken through a registered apprenticeship agreement must be employed in a full-time position requiring a minimum of 1,924 hours in the normal year of the employer’s operation unless otherwise approved by the Virginia Apprenticeship Council. A qualified employee shall not be a spouse, child, grandchild, parent, or

Guidelines for the Worker Retraining Tax Credit

sibling of an employer, or in the case of a corporation, an individual that owns, directly or indirectly, 5 percent or more of the corporation's stock. Qualified employees also include employees undertaking credit or non-credit worker retraining courses through an apprenticeship agreement approved by the Virginia Apprenticeship Council.

"Retraining" means an upgrade in training for existing employees, which is identified as essential to the production or distribution of a product, rendering services, or retraining provided through an apprenticeship agreement approved by the Virginia Apprenticeship Council.

"STEM or STEAM discipline" means a science, technology, engineering, mathematics, or applied mathematics related discipline as determined by the VEDP in consultation with the Superintendent of Public Instruction. This also includes health-care related disciplines.

"Training costs" means instruction, instructional materials, facilities fees, and other costs determined to be necessary to the delivery of the training. Trainee wages and curriculum development costs are not covered.

Credits Based on Manufacturing Orientation, Instruction, and Training

For Taxable Year 2018 and thereafter, a business primarily engaged in manufacturing may claim a credit against the individual or corporate income tax in an amount equal to 35 percent of its direct costs incurred during the taxable year in conducting orientation, instruction, and training of certain students in Virginia relating to the manufacturing activities undertaken by the business. No taxpayer is permitted to claim credits on this basis in excess of \$2,000 per taxable year.

A business is allowed the credit only for an orientation, instruction, or training program that has been approved by the local school division and certified as eligible by VEDP. The credit cannot be claimed for manufacturing orientation, instruction, and training undertaken by any program operated, administered, or paid for by Virginia.

The credit is only allowed for programs that:

- Provide orientation, instruction, and training solely to students in grades 6 through 12;
- Are coordinated with the local school division; and
- Are conducted either at a plant or facility owned, leased, rented, or otherwise used by the business or at a public middle or high school in Virginia.

For purposes of the credit, direct costs only include:

- Salary and wages paid to instructors and trainers, prorated for the period of instruction or training;
- Costs for orientation, instruction, and training materials;
- Amounts paid for machinery and equipment used primarily for such instruction and training; and
- The cost of leased or rented space used primarily for conducting the program.

Guidelines for the Worker Retraining Tax Credit

“Manufacturing” means processing, manufacturing, refining, mining, or converting products for sale or resale.

“Manufacturing orientation, instruction, and training” means informational and educational programs provided for middle and high school students by manufacturing businesses in order to introduce the students to their respective industries, to encourage them to consider careers in manufacturing, and to help foster the types of skills utilized in such careers.

“Primarily engaged in manufacturing” means that either fifty percent or more of the gross receipts are derived from the sale of goods that are manufactured by the taxpayer, or fifty percent or more of the employees are engaged in manufacturing activities.

Annual Credit Cap

Effective for Taxable Years 2018 and thereafter, the Worker Retraining Tax Credit is capped at \$1 million per fiscal year. If the total amount of all approved credits exceeds the \$1 million credit cap, each taxpayer will be granted a pro rata amount of credits as determined by the Department. The amount of the prorated credit will be determined by multiplying the amount of approved credits requested by an eligible taxpayer for the taxable year by a fraction, the numerator of which is the \$1 million credit cap, and denominator of which is the total amount of approved credits requested by all eligible taxpayers for such taxable year.

Prior to Taxable Year 2018, the Worker Retraining Tax Credit was capped at \$2.5 million per fiscal year.

Application and Filing Requirements

To receive the Worker Retraining tax Credit, taxpayers must first submit a Worker Retraining Tax Credit Application, Form WRC, and any supporting documentation by April 1 of the year following the credit year to either VEDP or the Department, as specified in the Form WRC instructions.

VEDP or the Department will review all applications for completeness and notify taxpayers of any errors by May 1.

If any additional information is required, it must be provided to VEDP or the Department no later than May 15 to be considered for the credit. All eligible taxpayers will then be notified as to the amount of credits that they may claim.

Upon receiving notification of the credit amount, the taxpayer may claim the credit on the appropriate Virginia tax return. In the event that a taxpayer does not receive notification of the allowable credit amount before its Virginia tax return is due, the taxpayer may file the return during the applicable extension period, or may file the original return without claiming the credit and then file an amended tax return once notification of the allowable credit amount is received.

Pass-Through Entities

A pass-through entity that is granted Worker Retraining Tax Credits is required to submit a completed Form PTE to the Department allocating credits to its partners, members, or shareholders in proportion to their ownership interest in the entity.

Guidelines for the Worker Retraining Tax Credit

Carryover Credits

Any credit not usable for the taxable year for which the credit was first allowed may be carried over for credit against the income taxes of the taxpayer in the next three succeeding taxable years, or until the total amount of the credit has been taken, whichever is sooner.

Additional Information

These guidelines are available online under the Guidance Documents section of the Department's website, located at <https://tax.virginia.gov/guidance-documents>. For additional information, please contact the Department at (804) 766-2992.

Approved:

A handwritten signature in black ink, reading "Craig M. Burns", is written above a horizontal line.

Craig M. Burns
Tax Commissioner