



# *COMMONWEALTH of VIRGINIA*

*Department of Taxation*

September 29, 2011

## Combined Report on Corporate Tax Preferences and the Major Business Facility Job Tax Credit

Dear Legislator:

*Virginia Code* § 58.1-202 requires the Tax Commissioner to submit an annual report detailing the total amount of corporate income tax relief provided in the Commonwealth by October 1 of each year. Acts of Assembly 2010, Chapter 379, amended *Va. Code* § 58.1-202 to require the Tax Commissioner to include summary information regarding the types of taxpayers who claim corporate income tax relief. In addition, this legislation now requires the Tax Commissioner to include the information previously reported on the Major Business Facility Job Tax Credit with the October 1 corporate preferences report.

This report identifies the types of corporate taxpayers claiming corporate preferences during Taxable Year 2009 ("TY 2009"), including the filing status and the North American Industry Classification System ("NAICS") code of such taxpayers. This report also identifies each tax credit claimed by corporations and includes the total dollar amount of income tax subtractions claimed cumulatively by corporations on TY 2009 returns processed by September 1, 2011. In addition to information about corporate preferences claimed for the 2009 taxable year, this report also identifies the number of corporate and individual taxpayers claiming the Major Business Facility Job Tax Credit for TY 2009 and the amount of such credit claimed through August 2011.

Because some corporations file on a fiscal year basis, this report includes most, but not all, corporations that filed on a fiscal year basis for TY 2009. For example, a fiscal year beginning December 1, 2009 would end November 30, 2010, and the return may be filed under extension as late as September 15, 2011.

The Department of Taxation ("the Department") needs several months to process returns and resolve errors before complete data for a taxable year are available. The data capturing process includes various tests for data integrity and the Department must manually review and correct any discrepancies before the information is available. The information contained in this report is based on data reported by taxpayers on their

annual tax returns. Some of these returns may be subject to audit in the future and the credits and subtractions claimed by some taxpayers may be adjusted. Accordingly, the data in this report may differ from that included in other reports, such as the Department's Annual Report, where the data reported takes into account audit adjustments, amended returns, and other relevant changes.

### Types of Returns

Of the taxpayers that claimed corporate tax preferences on a TY 2009 Corporate Income Tax return that was processed on or before September 1, 2011, approximately 91.6% filed a separate return; approximately 6.58% filed a consolidated return; and approximately 1.81% filed a combined return.

## **SUBTRACTIONS**

### Types of Taxpayers

The types of taxpayers claiming subtractions on TY 2009 corporate returns were broken down into industries using NAICS codes. Of the corporate taxpayers that claimed subtractions on a TY 2009 return that was processed by September 1, 2011, the largest percentage were self-reported to be in the professional, scientific, and technical services (16.67%); manufacturing (15.93%); real estate and rental and leasing (9.91%); construction (9.06%); and finance and insurance (8.10%) sectors. Appendix A contains a table listing the NAICS codes provided by corporate taxpayers and the number of corporate taxpayers that reported each code.

### Amount of Subtractions Claimed

Corporations claimed approximately \$150 billion in subtractions on their TY 2009 Virginia Corporate Income Tax returns processed by September 1, 2011. The fiscal impact of these subtractions, \$521.71 million, is much less than the amount of subtractions claimed multiplied by the 6% tax rate for several reasons:

- The amount claimed as subtractions is the amount deducted from federal taxable income, which may represent world-wide income. Corporations operating across Virginia's borders must allocate and apportion income to determine the portion of their income attributable to activity in Virginia. The Virginia corporate income tax rate is 6% of the taxable income, which is after

allocation and apportionment in the case of a multistate corporation. The subtractions are claimed before allocation and apportionment.

- Corporations may not be profitable. If so, their Virginia subtractions have no fiscal impact this year, but may have a fiscal impact in the taxable year to which the losses may be carried under federal net operating loss carryover rules.
- Certain electric suppliers and telecommunications companies may be required to pay a minimum tax. If so, their Virginia subtractions may have no fiscal impact if the minimum tax is higher than the income tax.

## CREDITS

### Types of Taxpayers

The types of taxpayers claiming credits on TY 2009 corporate returns were broken down into industries using NAICS codes. Of the corporate taxpayers that claimed credits on a TY 2009 return filed by September 1, 2011, the largest percentage were self-reported to be in the manufacturing (15.34%); agriculture, forestry, fishing, and hunting (11.11%); real estate and rental and leasing (10.05%); wholesale trade (9.52%); and retail trade (9.52%) sectors.

Appendix B contains a table listing the NAICS codes provided by corporate taxpayers claiming tax credits for TY 2009 and the number of corporate taxpayers that reported each code. Please note that data for certain NAICS sectors are unavailable for release because fewer than four returns have been processed for that sector. Accordingly, these sectors have been grouped into a category entitled "Other NAICS Codes."

### Amount of Tax Credits Claimed

The fiscal impact of the tax credits claimed on TY 2009 returns processed as of September 1, 2011, is \$28.82 million. Of this amount, \$7.91 million is attributable to non-refundable credits. The fiscal impact of the nonrefundable credits may be less than the credit actually earned by corporations for this taxable year. Corporations that do not have sufficient income to use all of their credits may carry the excess amount over to subsequent years. The amount of credits earned but carried over to other taxable years

is not readily available because the Department's system does not capture this information from the tax returns.

Appendix C contains a table listing the credits available and the amount claimed for each on the processed returns. In order to prevent the release of information that would allow the public to identify taxpayers, especially those in a small industry, who have claimed a credit and the amount of credit claimed by such taxpayers, the Department does not release any category of information unless there are at least four taxpayers in the group. Therefore, information on certain credits has been omitted from the table in Appendix C.

As of September 1, 2011, over 99% of the total fiscal impact of the corporate tax credits for TY 2009 came from seven of the credits offered by the Commonwealth of Virginia. For four of the credits, taxpayers claimed less than \$25,000. Eleven of the available credits were not claimed by any taxpayer.

The fiscal impact for both subtractions and credits claimed by September 1, 2011, for TY 2009 is:

Subtractions	\$	521.71 million
Credits	\$	<u>28.82 million</u>
Total Fiscal Impact	\$	550.53 million

### **MAJOR BUSINESS FACILITY JOB TAX CREDIT**

Based on TY 2009 tax returns processed through August 2011, 99 taxpayers claimed a total of \$2,573,154 Major Business Facility Job Tax Credits. Of the total amount, 83 individual taxpayers claimed credits totaling \$9,178 and 16 corporations\* claimed a total of \$2,563,976 in credits.

To calculate the Major Business Facility Job Tax Credit, a company multiplies the number of full-time employees at a new or expanded major business facility that exceed the threshold amount by \$1,000. The threshold amount is 100 employees, except in economically distressed areas and enterprise zones, where it is 50. The credit is typically claimed at the rate of one-third annually and may not exceed the taxpayer's

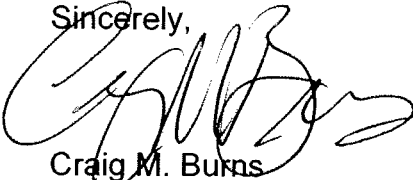
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\* Banks and insurance companies are entitled to claim this credit against the bank franchise and insurance premiums taxes, but are included as corporations because fewer than four of the taxpayers subject to these taxes claimed major business facility job tax credits.

liability. For Taxable Years 2009 through 2012, however, the credit may be claimed over two years instead of three. Unused credits may be carried forward for ten years.

Please note that for qualified full-time employees first hired on or after January 1, 2010, the threshold amount for the credit has changed. The amount is now 50 employees, except in economically distressed areas and enterprise zones, where it is 25.

Please let me know if you have any questions.

Sincerely,  
  
Craig M. Burns  
Tax Commissioner

CC: The Honorable Richard D. Brown  
Attachments

## Appendix A

<b>Corporations with TY 2009 Subtractions by NAICS Sector (Returns Processed By September 1, 2011)</b>			
<u>NAICS Code</u>	<u>Taxpayers</u>	<u>Percentage</u>	
11	Agriculture, Forestry, Fishing, and Hunting	69	1.15%
21	Mining, Quarrying, and Oil and Gas Extraction	38	0.63%
22	Utilities	21	0.35%
23	Construction	545	9.06%
31-33	Manufacturing	958	15.93%
42	Wholesale Trade	384	6.38%
44-45	Retail Trade	420	6.98%
48-49	Transportation and Warehousing	165	2.74%
51	Information	192	3.19%
52	Finance and Insurance	487	8.10%
53	Real Estate and Rental and Leasing	596	9.91%
54	Professional, Scientific, and Technical Services	1,003	16.67%
55	Management of Companies and Enterprises	277	4.61%
56	Administrative, Support, Waste Management, and Remediation Services	210	3.49%
61	Educational Services	37	0.62%
62	Health Care and Social Assistance	205	3.41%
71	Arts, Entertainment, and Recreation	60	1.00%
72	Accommodation and Food Services	101	1.68%
81	Other Services (except Public Administration)	181	3.01%
	Unknown*	66	1.10%
	<b>TOTAL</b>	<b>6,015</b>	<b>100.00%</b>

\* Some corporations do not provide an NAICS code. These corporations are categorized as "Unknown."

## Appendix B

<b>Corporations Claiming Credits in TY 2009 by NAICS Sector (Returns Processed By September 1, 2011)</b>			
	<u>NAICS Code</u>	<u>Taxpayers</u>	<u>Percentage</u>
11	Agriculture, Forestry, Fishing, and Hunting	21	11.11%
21	Mining, Quarrying, and Oil and Gas Extraction	10	5.29%
23	Construction	13	6.88%
31-33	Manufacturing	29	15.34%
42	Wholesale Trade	18	9.52%
44-45	Retail Trade	18	9.52%
48-49	Transportation and Warehousing	5	2.65%
52	Finance and Insurance	8	4.23%
53	Real Estate and Rental and Leasing	19	10.05%
54	Professional, Scientific, and Technical Services	17	8.99%
55	Management of Companies and Enterprises	9	4.76%
56	Administrative, Support, Waste Management, and Remediation Services	6	3.17%
62	Health Care and Social Assistance	4	2.12%
81	Other Services (except Public Administration)	5	2.65%
	Other NAICS Codes*	7	3.71%
	<b>TOTAL</b>	<b>189</b>	<b>100.00%</b>

*\* Data for some NAICS sectors are not available for release because fewer than four returns in that sector have been processed or because the taxpayer failed to report its NAICS code. Accordingly, these credits have been grouped into a category entitled "Other NAICS Codes."*

### Appendix C

#### Tax Credits Claimed on TY 2009 Returns Processed By September 1, 2011

<u>Code Section</u>	<u>Credit</u>	<u>Fiscal Impact</u>
§ 58.1-339.2	Historic Rehabilitation Tax Credit	\$2,694,878
§ 58.1-339.9	Rent Reductions Tax Credit	\$0
§ 58.1-400.3	Electric Suppliers Minimum Tax Credit	\$0
§ 58.1-432	Conservation Tillage Equipment Tax Credit	\$9,098
§ 58.1-433.1	Coal Employment and Production Incentive Tax Credit	\$0
§ 58.1-435	Low-Income Housing Tax Credit	\$0
§ 58.1-436	Advanced Technology Pesticide and Fertilizer Application Equipment Tax Credit	<i>Not Available*</i>
§ 58.1-438.1	Vehicle Emissions Testing Equipment, Clean-Fuel Vehicle and Certain Refueling Property Tax Credit	\$0
§ 58.1-439	Major Business Facility Job Tax Credit	\$2,557,976
§ 58.1-439.1	Clean Fuel Vehicle and Advanced Cellulosic Biofuels Job Creation Tax Credit	\$0
§ 58.1-439.2	Coalfield Employment Enhancement Tax Credit (Refundable)	\$20,904,960
§ 58.1-439.4	Day-Care Facility Investment Tax Credit	\$0
§ 58.1-439.5	Agricultural Best Management Practices Tax Credit	\$9,844
§ 58.1-439.6	Worker Retraining Tax Credit	<i>Not Available*</i>
§ 58.1-439.7	Recyclable Materials Processing Equipment Tax Credit	\$178,931
§ 58.1-439.10	Waste Motor Oil Burning Equipment Tax Credit	\$13,828
§ 58.1-439.12	Riparian Forest Buffer Protection for Waterways Tax Credit	\$0
§ 58.1-439.12:01	Cigarette Export Tax Credit	\$0
§ 58.1-439.12:02	Biodiesel and Green Diesel Fuels Producers Tax Credit	\$0
§ 58.1-439.18 et seq.	Neighborhood Assistance Act Tax Credit	\$487,834
§ 58.1-512	Land Preservation Tax Credit	\$1,571,415
§ 59.1-280	Enterprise Zone Business Tax Credit	\$210,551
§ 59.1-280.1	Enterprise Zone Real Property Investment Tax Credit (Refundable)	\$0

*\* Data for some credits are not available for release because fewer than four returns claiming the credit have been processed.*