

2024 -- S 2170

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO TAXATION -- INVESTMENT TAX CREDIT

Introduced By: Senators Zurier, DiPalma, Ciccone, Sosnowski, Cano, and Acosta

Date Introduced: January 24, 2024

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 44-31-1 of the General Laws in Chapter 44-31 entitled "Investment
2 Tax Credit" is hereby amended to read as follows:

3 **44-31-1. Investment tax credit.**

4 (a) A taxpayer shall be allowed a credit, to be computed as provided in this chapter, against
5 the tax imposed by chapters 11, 14, 17, and 30 of this title. The amount of the credit shall be two
6 percent (2%) of the cost or other basis for federal income tax purposes of tangible personal property
7 and other tangible property, including buildings and structural components of buildings, described
8 in subsection (b) of this section, acquired, constructed, reconstructed, or erected after December
9 31, 1973. Provided, that the amount of the credit shall be four percent (4%) of the: (i) cost or other
10 basis for federal income tax purposes of tangible personal property and other tangible property,
11 including buildings and structural components of buildings, described in subdivision (b)(1) of this
12 section, acquired, constructed, reconstructed or erected after December 31, 1993; and (ii) qualified
13 amounts for leased assets of tangible personal property and other tangible property described in
14 subdivision (b)(1) of this section, acquired, constructed, reconstructed, or erected after January 1,
15 1998, and the amount of the credit shall be ten percent (10%) of the cost or other basis for federal
16 income tax purposes, and the qualified amounts for leased assets, of tangible personal property and
17 other tangible property described in subdivision (b)(3) of this section, acquired, constructed,
18 reconstructed, or erected after January 1, 1998, and with respect to buildings and structural
19 components which are acquired, constructed, reconstructed or erected after July 1, 2001, as

1 described in subdivision (b)(3) of this section.

2 (b)(1) A credit shall be allowed under this section with respect to tangible personal property
3 and other tangible property, including buildings and structural components of buildings, which are
4 depreciable pursuant to 26 U.S.C. § 167, have a useful life of four (4) years or more, are acquired
5 by purchase as defined in 26 U.S.C. § 179(d) or are acquired by lease as prescribed in paragraph
6 (3)(iv) of this subsection, have a situs in this state and are principally used by the taxpayer in the
7 production of goods by manufacturing, process, or assembling. The credit shall be allowable in the
8 year the property is first placed in service by the taxpayer, which is the year in which, under the
9 taxpayer's depreciation practice, the period for depreciation with respect to the property begins, or
10 the year in which the property is placed in a condition or state of readiness and availability for a
11 specifically assigned function, whichever is earlier. For purposes of this paragraph,
12 "manufacturing" means the process of working raw materials into wares suitable for use or which
13 gives new shapes, new quality or new combinations to matter that already has gone through some
14 artificial process by the use of machinery, tools, appliances, and other similar equipment. Property
15 used in the production of goods includes machinery, equipment, or other tangible property which
16 is principally used in the repair and service of other machinery, equipment, or other tangible
17 property used principally in the production of goods and includes all facilities used in the
18 production operation, including storage of material to be used in production and of the products
19 that are produced.

20 (2) Within the meaning of subdivision (1) of this subsection, the term "manufacturing"
21 means the activities of a "manufacturer" as defined in § 44-3-3(20)(iii) and (iv).

22 (3)(i) A credit shall be allowed under this section with respect to tangible personal property
23 and other tangible property, (excluding motor vehicles, furniture, buildings and structural
24 components of buildings, except as provided in this section), which are depreciable pursuant to 26
25 U.S.C. § 167, have a useful life of four (4) years or more, are acquired by purchase as defined in
26 26 U.S.C. § 179(d) or acquired by lease as prescribed in paragraph (iv) of this subdivision, have a
27 situs in this state and to the extent the property is used by a qualified taxpayer, as that term is
28 defined in paragraph (v) of this subdivision, and that is engaged exclusively in manufacturing
29 activities as defined in §44-3-3(20)(iii) and (iv) and in any of the businesses described in major
30 groups 20 through 39, 50 and 51, ~~60 through 67, 73, 76, 80 through 82, 87 and 89~~ in the standard
31 industrial classification manual prepared by the technical committee on industrial classification,
32 office of the statistical standards, executive office of the president, United States Bureau of the
33 Budget, as revised from time to time ("SIC Code") and/or any of the businesses described in the
34 three (3) digit SIC Code 781.

1 (ii) A credit shall be allowed under this section with respect to buildings and structural
2 components that are acquired, constructed, reconstructed, or erected after July 1, 2001, which are
3 depreciable pursuant to 26 U.S.C. § 167, have a useful life of four (4) years or more, are acquired
4 by purchase as defined in 26 U.S.C. § 179(d) or acquired by lease for a term of twenty (20) years
5 or more, excluding renewal periods, have a situs in this state and to the extent the property is used
6 by a high performance manufacturer. The term “high performance manufacturer” means a taxpayer:
7 (A) engaged in any of the businesses described in the major groups 28, 30, 34, to 36, and 38 of the
8 SIC Codes, (B) that pays its full-time equivalent employees a median annual wage above the
9 average annual wage paid by all taxpayers in the state which share the same two-digit SIC Code,
10 unless the high performance manufacturer is the only high performance manufacturer in the state
11 conducting business in that two-digit SIC Code, in which case this requirement shall not apply, and
12 (C)(I) whose expenses for training or retraining its employees exceeds two percent (2%) of its total
13 payroll costs, or (II) that pays its full-time equivalent employees a median annual wage equal to or
14 greater than one hundred twenty-five percent (125%) of the average annual wage paid in this state
15 by employers to employees, or (III) that pays its full-time equivalent employees classified as
16 production workers by the Rhode Island department of labor and training an average annual wage
17 above the average annual wage paid to the production workers of all taxpayers in the state which
18 share the same two-digit SIC Code.

19 (iii) To the extent allowable, the credit allowed under this section is allowed for computers,
20 software and telecommunications hardware used by a taxpayer even if the property has a useful life
21 of less than four (4) years;

22 (iv) The credit for property acquired by lease is based on the fair market value of the
23 property at the inception of the lease times the portion of the depreciable life of the property
24 represented by the term of the lease, excluding renewal options. The credit described in this
25 subdivision for high performance manufacturers that lease buildings and their structural
26 components for a term of twenty (20) years or more, excluding renewal periods, shall be calculated
27 in the same manner as for property acquired by purchase; and

28 (v) For purposes of this subsection, a “qualified taxpayer” means a taxpayer that is engaged
29 exclusively in manufacturing activities as defined in §44-3-3(20)(iii) and (iv) and in any of the
30 businesses described in major groups 20 through 39, 50 and 51, ~~60 through 67, 73, 76, 80 through~~
31 ~~82, 87 and 89~~ of the SIC Code, and/or any of the businesses described in the three (3) digit SIC
32 Code 781, and which meet the following criteria:

33 (A) The median annual wage paid to a qualified taxpayer’s full-time equivalent employees
34 must be above the average annual wage paid by all taxpayers in the state which share the same two-

1 digit SIC Code, unless that qualified taxpayer is the only qualified taxpayer in the state conducting
2 business in that two-digit SIC Code, in which case this requirement does not apply; and

3 (B) With respect to major groups 50 and 51, ~~60 through 67, 73, 76, 80 through 82, 87 and~~
4 ~~89~~ and/or the three (3) digit SIC Code 781(except for those qualified taxpayers whose businesses
5 are described in any of the four (4) digit SIC Codes 7371, 7372 and 7373) only:

6 (I) More than one-half (½) of its gross revenues are a result of sales to customers outside
7 of the state; or

8 (II) More than one-half (½) of its gross revenues are a result of sales to the federal
9 government; or

10 (III) More than one-half (½) of its gross revenues are a result of a combination of sales
11 described in items (I) and (II) of this subparagraph.

12 (4) For purposes of this section, “sales to customers outside the state” means sales to
13 individuals, businesses and other entities, as well as divisions and/or branches of businesses and
14 other entities, residing or located outside of the state. The requirement of subparagraph (v)(A) of
15 this subdivision does not apply to any qualified taxpayer: (i) whose expenses for training or
16 retraining its employees exceeds two percent (2%) of these qualified taxpayer’s total payroll costs;
17 or (ii) whose median annual wage paid to its full-time equivalent employees is equal to or greater
18 than one hundred twenty-five percent (125%) of the average annual wage paid in this state by
19 employers to employees; or (iii), with respect to major groups 20 through 39 only, the average
20 annual wage paid to these qualified taxpayer’s full-time equivalent employees, classified as
21 production workers by the Rhode Island department of labor and training, is above the average
22 annual wage paid to the production workers of all these taxpayers in the state which share the same
23 two-digit SIC Code. At the election of a taxpayer, which is made at any time and in any manner
24 that may be determined by the tax administrator, the taxpayer’s ability in a particular fiscal year to
25 qualify as a qualified taxpayer may be based on the expenses and gross receipts of the taxpayer for
26 either the prior fiscal year or the immediately proceeding fiscal year rather than on the expenses
27 and gross receipts for that fiscal year. For purposes of this chapter, the director of the Rhode Island
28 human resource investment council shall certify as to legitimate training and retraining expenses in
29 accordance with the guidelines established in chapter 64.6 of title 42, and any rules and regulations
30 promulgated under this chapter. For purposes of this subsection, a “full-time equivalent employee”
31 means an employee who works a minimum of thirty (30) hours per week within the state or two
32 (2) part-time employees who together work a minimum of thirty (30) hours per week within the
33 state. For purposes of this subsection, the director of the Rhode Island department of labor and
34 training, upon receipt of an application from a qualified taxpayer, shall certify whether this

1 qualified taxpayer meets the requirement in subparagraph (v)(A) of this subdivision or is exempt
2 from this requirement because the median annual wage it pays its full-time equivalent employees
3 is equal to or greater than one hundred twenty-five (125%) percent of the average annual wage paid
4 in this state by employers to employees or, with respect to major groups 20 through 39 only, the
5 average annual wage paid to this qualified taxpayer's full-time equivalent employees, classified as
6 production workers by the Rhode Island department of labor and training, is above the average
7 annual wage paid to the production workers of all these taxpayers in the state which share the same
8 two-digit SIC Code. The director of the Rhode Island department of labor and training shall
9 promulgate rules and regulations as required for the implementation of this requirement.

10 (5) To the extent otherwise allowable, the credit provided by paragraphs (3)(i) and (ii) of
11 this subsection are also allowed for the property having a situs in Rhode Island and used, however
12 acquired, by a property and casualty insurance company.

13 (c) Subject to the provisions of subdivision (b)(3) of this section, a taxpayer is not allowed
14 a credit under subsection (a) of this section with respect to tangible personal property and other
15 tangible property, including buildings and structural components of buildings, which it leases to
16 any other person or corporation and is not allowed a credit under subsection (a) of this section with
17 respect to buildings and structural components of buildings it leases from any other person or
18 corporation. For the purposes of the preceding sentence, any contract or agreement to lease or rent
19 or for a license to use the property is considered a lease, unless a contract or agreement is treated
20 for federal income tax purposes as an installment purchase rather than a lease.

21 (d) The credit allowed under this section for any taxable year does not reduce the tax due
22 for the year by more than fifty percent (50%) of the tax liability that would be payable, and further
23 in the case of corporations, to less than the minimum tax as prescribed in § 44-11-2(e); provided,
24 that in the case of the credit allowed to high performance manufacturers under subdivision (b)(3)
25 of this section, the fifty percent (50%) limitation shall not apply. If the amount of credit allowable
26 under this section for any taxable year is less than the amount of credit available to the taxpayer,
27 any amount of credit not deductible in the taxable year may be carried over to the following year
28 or years (not to exceed seven (7) years) and may be deducted from the taxpayer's tax for the year
29 or years.

30 (e) At the option of the taxpayer, air or water pollution control facilities which qualify for
31 elective amortization deduction may be treated as property principally used by the taxpayer in the
32 production of goods by manufacturing, processing, or assembling; provided, that if the property
33 qualifies under subsection (b) of this section, in which event, an amortization deduction is not
34 allowed.

1 (f) With respect to property which is disposed of or ceases to be in qualified use prior to
2 the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that
3 portion of the credit provided for in subsection (a) of this section, which represents the ratio which
4 the months of qualified use bear to the months of useful life. If property on which credit has been
5 taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference
6 between the credit taken and the credit allowed for actual use must be added back in the year of
7 disposition. If this property is disposed of or ceases to be in qualified use after it has been in
8 qualified use for more than twelve (12) consecutive years, it is not necessary to add back the credit
9 as provided in this subsection. A credit allowed to a qualified taxpayer is not recaptured merely
10 because the taxpayer subsequently fails to retain the classification as a qualified taxpayer. The
11 amount of credit allowed for actual use shall be determined by multiplying the original credit by
12 the ratio, which the months of qualified use bear to the months of useful life. For purposes of this
13 subsection, "useful life of property" is the same as the taxpayer (or in the case of property acquired
14 by lease, the owner of the property) uses for depreciation purposes when computing his or her
15 federal income tax liability. Comparable rules are used in the case of property acquired by lease to
16 determine the amount of credit, if any, that will be recaptured if the lease terminates prematurely
17 or if the property covered by the lease otherwise fails to be in qualified use.

18 (g) The credit allowed under this section is only allowed against the tax of that corporation
19 included in a consolidated return that qualifies for the credit and not against the tax of other
20 corporations that may join in the filing of a consolidated tax return.

21 SECTION 2. Section 44-31-2 of the General Laws in Chapter 44-31 entitled "Investment
22 Tax Credit" is hereby repealed.

23 **44-31-2. Specialized investment tax credit.**

24 ~~(a) A certified building owner, as provided in chapter 64.7 of title 42, may be allowed a~~
25 ~~specialized investment tax credit against the tax imposed by chapters 11, 14, 17 and 30 of this title.~~

26 ~~(b) The taxpayer may claim credit for the rehabilitation and reconstruction costs of a~~
27 ~~certified building, which has been substantially rehabilitated. Once substantial rehabilitation is~~
28 ~~established by the taxpayer, the taxpayer may claim credit for all rehabilitation and reconstruction~~
29 ~~costs incurred with respect to the certified building within five (5) years from the date of final~~
30 ~~designation of the certified building by the council pursuant to § 42-64.7-6.~~

31 ~~(c) The credit shall be ten percent (10%) of the rehabilitation and reconstruction costs of~~
32 ~~the certified building. The credit shall be allowable in the year the substantially rehabilitated~~
33 ~~certified building is first placed into service, which is the year in which, under the taxpayer's~~
34 ~~depreciation practice, the period for depreciation with respect to such property begins, or the year~~

1 ~~in which the property is placed in a condition or state of readiness and availability for its specifically~~
2 ~~assigned function, whichever is earlier.~~

3 ~~(d) The credit shall not offset any tax liability in taxable years other than the year or years~~
4 ~~in which the taxpayer qualifies for the credit. The credit shall not reduce the tax below the~~
5 ~~minimum. Amounts of unused credit for this taxpayer may be carried over and offset against this~~
6 ~~taxpayer's tax for a period not to exceed the following seven (7) taxable years.~~

7 ~~(e) In the case of a corporation, this credit is only allowed against the tax of that of a~~
8 ~~corporation included in a consolidated return that qualifies for the credit and not against the tax of~~
9 ~~other corporations that may join in the filing of a consolidated tax return.~~

10 SECTION 3. Section 44-48.2-5 of the General Laws in Chapter 44-48.2 entitled "Rhode
11 Island Economic Development Tax Incentives Evaluation Act of 2013" is hereby amended to read
12 as follows:

13 **44-48.2-5. Economic development tax incentive evaluations — Analysis.**

14 (a) The additional analysis as required by § 44-48.2-4 shall include, but not be limited to:

15 (1) A baseline assessment of the tax incentive, including, if applicable, the number of
16 aggregate jobs associated with the taxpayers receiving such tax incentive and the aggregate annual
17 revenue that such taxpayers generate for the state through the direct taxes applied to them and
18 through taxes applied to their employees;

19 (2) The statutory and programmatic goals and intent of the tax incentive, if said goals and
20 intentions are included in the incentive's enabling statute or legislation;

21 (3) The number of taxpayers granted the tax incentive during the previous twelve-month
22 (12) period;

23 (4) The value of the tax incentive granted, and ultimately claimed, listed by the North
24 American Industrial Classification System (NAICS) Code associated with the taxpayers receiving
25 such benefit, if such NAICS Code is available;

26 (5) An assessment and five-year (5) projection of the potential impact on the state's revenue
27 stream from carry forwards allowed under such tax incentive;

28 (6) An estimate of the economic impact of the tax incentive including, but not limited to:

29 (i) A cost-benefit comparison of the revenue foregone by allowing the tax incentive
30 compared to tax revenue generated by the taxpayer receiving the credit, including direct taxes
31 applied to them and taxes applied to their employees; and

32 (ii) An estimate of the number of jobs that were the direct result of the incentive;

33 (iii) [Deleted by P.L. 2023, ch. 294, § 7 and P.L. 2023, ch. 295, § 7.]

34 (7) The estimated cost to the state to administer the tax incentive if such information is

1 available;

2 (8) An estimate of the extent to which benefits of the tax incentive remained in state or
3 flowed outside the state, if such information is available;

4 (9) In the case of economic development tax incentives where measuring the economic
5 impact is significantly limited due to data constraints, whether any changes in statute would
6 facilitate data collection in a way that would allow for better analysis;

7 (10) Whether the effectiveness of the tax incentive could be determined more definitively
8 if the general assembly were to clarify or modify the tax incentive's goals and intended purpose;

9 (11) A recommendation as to whether the tax incentive should be continued, modified, or
10 terminated; the basis for such recommendation; and the expected impact of such recommendation
11 on the state's economy;

12 (12) The methodology and assumptions used in carrying out the assessments, projections,
13 and analyses required pursuant to subsections (a)(1) through (a)(8) of this section;

14 (13) The determination of the economic goals, objective and effectiveness of the
15 investment tax credit; and

16 (14) Enhanced data reporting from the recipients of the investment tax credit as required
17 by the division of taxation's tax credit and incentive report.

18 (b) All departments, offices, boards, and agencies of the state shall cooperate with the chief
19 of the office of revenue analysis and shall provide to the office of revenue analysis any records,
20 information (documentary and otherwise), data, and data analysis as may be necessary to complete
21 the report required pursuant to this section.

22 SECTION 4. This act shall take effect upon passage and shall expire and sunset on
23 December 31, 2028.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION -- INVESTMENT TAX CREDIT

1 This act would limit the investment tax credit to manufacturers as defined in the general
2 laws and federal SIC Code. This act would also require the determination of the economic
3 effectiveness of the credit and require enhanced data reporting as determined by the division of
4 taxation. This act would also repeal the specialized investment tax credit.

5 This act would take effect upon passage and shall expire and sunset on December 31, 2028.

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