

2015 -- S 0222 SUBSTITUTE A

LC000802/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO TAXATION - RHODE ISLAND NEW QUALIFIED JOBS INCENTIVE ACT
OF 2015

Introduced By: Senators Sheehan, Felag, McCaffrey, Walaska, and Picard

Date Introduced: February 11, 2015

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 15. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 48.3

4 RHODE ISLAND NEW QUALIFIED JOBS INCENTIVE ACT 2015

5 **44-48.3-1. Short title.** -- This chapter shall be known and may be cited as the "Rhode
6 Island Qualified Jobs Incentive Act of 2015."

7 **44-48.3-2. Findings and declaration.** -- (a) It is hereby found and declared that due to
8 long-term and short-term negative economic trends in Rhode Island, businesses in the state have
9 found it difficult to make investments that would stimulate economic activity and create new
10 jobs. This situation has contributed to a rate of unemployment in Rhode Island that is higher than
11 our neighbors and among the highest in the nation. Consequently, a need exists to promote the
12 creation of new jobs, attract new business and industry, and stimulate growth in businesses that
13 are prepared to make meaningful investment and foster job creation in Rhode Island.

14 (b) Through the establishment of a jobs incentive program, Rhode Island can take steps to
15 stimulate business expansion and attraction, create well-paying jobs for its residents, and generate
16 revenues for necessary state and local governmental services.

17 **44-48.3-3. Definitions.** -- As used in this chapter, unless the context clearly indicates
18 otherwise, the following words and phrases shall have the following meanings:

1 (1) "Affiliate" or "affiliated entity" means an entity that directly or indirectly controls, is
2 under common control with, or is controlled by the business. Control exists in all cases in which
3 the entity is a member of an affiliated group of corporations as defined pursuant to § 1504 of the
4 Internal Revenue Code of 1986 (26 U.S.C. §1504) or the entity is an organization in a group of
5 organizations under common control as defined pursuant to subsection (b) or (c) of § 414 of the
6 Internal Revenue Code of 1986 (26 U.S.C. §414). A taxpayer may establish by clear and
7 convincing evidence, as determined by the commerce corporation, that control exists in situations
8 involving lesser percentages of ownership than required by those statutes. An affiliate of a
9 business may contribute to meeting full-time employee requirements of a business that applies for
10 a credit under this chapter.

11 (2) "Business" means an applicant that is a corporation, state bank, federal savings bank,
12 trust company, national banking association, bank holding company, loan and investment
13 company, mutual savings bank, credit union, building and loan association, insurance company,
14 investment company, broker-dealer company or surety company, limited liability company,
15 partnership or sole proprietorship.

16 (3) "Commerce corporation" means the Rhode Island commerce corporation established
17 pursuant to chapter 64 of title 44.

18 (4) "Commitment period" means the period of time that at a minimum is twenty percent
19 (20%) greater than the eligibility period.

20 (5) "Eligibility period" means the period in which a business may claim a tax credit under
21 the program, beginning at the end of the tax period in which the commerce corporation issues a
22 certification for the business that it has met the employment requirements of the program and
23 extending thereafter for a term of not more than ten (10) years.

24 (6) "Eligible position" or "full-time job" means a full-time position in a business which
25 has been filled with a full-time employee who earns no less than the median hourly wage as
26 reported by the United States Bureau of Labor Statistics for the state of Rhode Island, provided,
27 that for economically fragile industries such as manufacturing, the commerce corporation may
28 reduce the wage threshold. An economically fragile industry shall not include retail.

29 (7) "Full-time employee" means a person who is employed by a business for
30 consideration for at least thirty-five (35) hours a week, or who is employed by a professional
31 employer organization pursuant to an employee leasing agreement between the business and the
32 professional employer organization for at least thirty-five (35) hours a week, and whose wages
33 are subject to withholding.

34 (8) "Hope community" means municipalities with a percentage of families below the

1 poverty level that is greater than the percentage of families below the poverty level for the state as
2 a whole as determined by the United States Census Bureau's most recent American Community
3 Survey.

4 (9) "Incentive agreement" means the contract between the business and the commerce
5 corporation, which sets forth the terms and conditions under which the business shall be eligible
6 to receive the incentives authorized pursuant to the program.

7 (10) "Incentive effective date" means the date the commerce corporation issues a
8 certification for issuance of tax credit based on documentation submitted by a business pursuant
9 to § 44-48.3-7.

10 (11) "New full-time job" means an eligible position created by the business that did not
11 previously exist in this state and which is created after approval of an application to the
12 commerce corporation under the program. Such job position cannot be the result of an acquisition
13 of an existing company located in Rhode Island by purchase, merger, or otherwise. For the
14 purposes of determining the number of new full-time jobs, the eligible positions of an affiliate
15 shall be considered eligible positions of the business so long as such eligible position(s) otherwise
16 meets the requirements of this section.

17 (12) "Partnership" means an entity classified as a partnership for federal income tax
18 purposes.

19 (13) "Program" means the incentive program established pursuant to this chapter.

20 (14) "Targeted industry" means any industry identified in the economic development
21 vision and policy promulgated under § 42-64.17-1.

22 (15) "Taxpayer" means a business granted a tax credit under this chapter or such person
23 entitled to the tax credit because the business is a pass through entity such as a partnership, S
24 corporation, sole proprietorship or limited liability company taxed as a partnership.

25 (16) "Transit oriented development area" means an area in proximity to mass-transit
26 infrastructure including, but not limited to, an airport, rail or intermodal facility that will be
27 further defined by regulation of the commerce corporation in consultation with the Rhode Island
28 department of transportation.

29 **44-48.3-4. Rhode Island qualified jobs incentive program.** -- (a) The Rhode Island
30 qualified jobs incentive program is hereby established as a program under the jurisdiction of and
31 shall be administered by the commerce corporation. The program may provide tax credits to
32 eligible businesses for an eligibility period not to exceed ten (10) years.

33 (b) An eligible business under the program shall be entitled to a credit against taxes
34 imposed pursuant to chapters 11, 13, 14, 17 or 30 of title 44 as further provided under this

1 chapter.

2 (c) The minimum number of new full-time jobs required to be eligible for a tax credit
3 under this program shall be as follows:

4 (1) For a business in a targeted industry that employs not more than one hundred (100)
5 full-time employees on the date of application to the commerce corporation, the creation of at
6 least ten (10) new full-time jobs in this state;

7 (2) For a business in a targeted industry that employs more than one hundred (100) full-
8 time employees on the date of application to the commerce corporation, either the creation of new
9 full-time jobs in this state in an amount not less than ten percent (10%) of the business's existing
10 number of full-time employees or the creation of at least one hundred (100) new full-time jobs in
11 this state;

12 (3) For a business in a non-targeted industry that employs not more than two hundred
13 (200) full-time employees on the date of application to the commerce corporation, the creation of
14 at least twenty (20) new full-time jobs in this state; or

15 (4) For a business in a non-targeted industry that employs more than two hundred (200)
16 full-time employees on the date of application to the commerce corporation, either the creation of
17 new full-time jobs in this state in an amount not less than ten percent (10%) of the business's
18 existing number of full-time employees or the creation of at least one hundred (100) new full-
19 time jobs in this state.

20 (d) When a business applies for an incentive under this chapter, in order to assist the
21 commerce corporation in determining whether the business is eligible for the incentives under
22 this chapter, the business's chief executive officer, or equivalent officer, shall attest under oath:

23 (1) That any projected creation of new full-time jobs would not occur, or would not occur
24 in the state of Rhode Island, but for the provision of tax credits under the program;

25 (2) The business will create new full-time jobs in an amount equal to or greater than the
26 applicable number set forth in subsection (c) of this section;

27 (3) That the business's chief executive officer, or equivalent officer, has reviewed the
28 information submitted to the commerce corporation and that the representations contained therein
29 are accurate and complete.

30 (e)The commerce corporation shall establish, by regulation, the documentation an
31 applicant shall be required to provide under this subsection. Such documentation may include
32 documentation showing that the applicant could reasonably locate the new positions outside of
33 this state, or that the applicant is considering locating the positions outside of this state, or that it
34 would not be financially feasible for the applicant to create the positions without the tax credits

1 provided in this chapter.

2 (f) In the event that this attestation by the business's chief executive officer, or equivalent
3 officer, required under subsection (d) of this section is found to be willfully false, the commerce
4 corporation may revoke any award of tax credits in their entirety, which revocation shall be in
5 addition to any other criminal or civil penalties that the business and/or the officer may be subject
6 to under applicable law. Additionally, the commerce corporation may revoke any award of tax
7 credits in its entirety if the eligible business is convicted of bribery, fraud, theft, embezzlement,
8 misappropriation, and/or extortion involving the state, any state agency or political subdivision of
9 the state.

10 **44-48.3-5. Incentive agreement required prior to issuance of tax credits. -- (a) The**
11 commerce corporation shall require an eligible business to enter into an incentive agreement prior
12 to the issuance of tax credits. The incentive agreement shall include, but shall not be limited to,
13 the following:

14 (1) A detailed description of the proposed job creation including industry sectors and the
15 number of new full-time jobs that are sought to be approved for tax credits;

16 (2) The eligibility period of the tax credits, including the first year for which the tax
17 credits may be claimed;

18 (3) A requirement that the applicant maintain the project at a location in Rhode Island for
19 the commitment period, with at least the minimum number of full-time employees as required by
20 this program;

21 (4) A method for the business to annually certify that it has met the employment
22 requirements of the program for each year of the commitment period;

23 (5) A provision permitting an audit of the payroll records of the business from time to
24 time, as the commerce corporation deems necessary;

25 (6) A provision establishing the conditions under which the agreement may be
26 terminated;

27 (7) A provision that if, in any tax period, the business reduces the total number of full-
28 time employees in its statewide workforce in the last tax period prior to the credit amount
29 approval under this program by more than twenty percent (20%) of jobs for which a credit was
30 granted under this chapter as described in the business's incentive agreement(s), then the business
31 shall forfeit all credit amounts described in the business's incentive agreement(s) for that tax
32 period and each subsequent tax period, until the first tax period for which documentation
33 demonstrating the restoration of the business's statewide workforce to the threshold levels
34 required by the incentive agreement(s) has been reviewed and approved by the commerce

1 corporation, for which tax period and each subsequent tax period the full amount of the credit
2 shall be allowed; and

3 (8) A provision that during the commitment period, if the business ceases operations in
4 the state or transfers more than fifty percent (50%) of the jobs for which a credit was granted
5 under this chapter to another state, the tax credit shall cease pursuant to this section and the
6 business shall be liable to the state for, at a minimum, twenty percent (20%) of all tax benefits
7 granted to the business under this chapter calculated from the date of the incentive agreement.

8 **44-48.3-6. Total amount of tax credit for eligible business. --** (a) The base amount of
9 the tax credit for an eligible business for each new full-time job shall be up to two thousand five
10 hundred dollars (\$2,500) annually.

11 (b) The total tax credit amount shall be calculated and credited to the business annually
12 for each year of the eligibility period after the commerce corporation, in consultation with the
13 division of taxation, has verified that the jobs covered by the tax credit have generated sufficient
14 personal income taxes to comply with subsection (e) of this section.

15 (c) In addition to the base amount of the tax credit, the amount of the tax credit to be
16 awarded for each new full-time job may be increased, pursuant to the provisions of subsection (d)
17 of this section, if the business meets any of the following criteria or such other additional criteria
18 determined by the commerce corporation from time to time in response to evolving economic or
19 market conditions:

20 (1) For a business located within a hope community;

21 (2) For a targeted industry;

22 (3) For a business located within a transit oriented development area; and

23 (4) For an out-of-state business that relocates a business unit or units or creates a
24 significant number of new full-time jobs during the commitment period.

25 (d) For any application made to the commerce corporation from 2015 through 2018, the
26 tax credit for an eligible business for each new full-time job shall not exceed seven thousand five
27 hundred dollars (\$7,500) annually.

28 (e) Notwithstanding the provisions of subsections (a) through (d) of this section, for each
29 application approved by the commerce corporation, the amount of tax credits available to be
30 obtained by the business annually shall not exceed the reasonable W-2 withholding received by
31 the state for each new full-time job created by a business for applications received by the
32 commerce corporation in 2015 through 2018.

33 (f) The commerce corporation shall establish regulations regarding the conditions under
34 which a business may submit more than one application for tax credits over time. The commerce

1 corporation may place limits on repeat applications.

2 **44-48.3-7. Documentation. --** (a) A business shall submit documentation indicating that
3 it has met the employment requirements specified in the incentive agreement for certification of
4 its tax credit amount within three (3) years following the date of approval of its application by the
5 commerce corporation. The commerce corporation, after a finding of good cause, may grant two
6 (2) six (6) month extensions of this deadline. In no event shall the incentive effective date occur
7 later than four (4) years following the date of approval of an application by the commerce
8 corporation.

9 (b) Full-time employment for an accounting or privilege period shall be determined as the
10 average of the monthly full-time employment for the period.

11 (c) In conducting its annual review of a business, the commerce corporation may require
12 a business to submit any information determined by the commerce corporation to be necessary
13 and relevant to its review.

14 (d) The credit amount for any tax period for which the documentation of a business's
15 credit amount remains uncertified as of a date one year after the closing date of that period shall
16 be forfeited, although credit amounts for the remainder of the years of the eligibility period shall
17 remain available to the business.

18 **44-48.3-8. Carry forward, transfer or redemption of tax credits, redemption fund. --**

19 (a) If the amount of the tax credit allowed under this chapter exceeds the taxpayer's total tax
20 liability for the year in which the credit is allowed, the amount of such credit that exceeds the
21 taxpayer's tax liability may be carried forward and applied against the taxes imposed for the
22 succeeding four (4) years, or until the full credit is used, whichever occurs first. Credits allowed
23 to a partnership, a limited liability company taxed as a partnership, or multiple owners of property
24 shall be passed through to the persons designated as partners, members or owners respectively
25 pro rata or pursuant to an executed agreement among such persons designated as partners,
26 members or owners documenting an alternate distribution method without regard to their sharing
27 of other tax or economic attributes of such entity.

28 (b) The commerce corporation shall establish, by regulation, the process for the
29 assignment, transfer or conveyance of tax credits.

30 (c) For purposes of this chapter, any assignment or sales proceeds received by the
31 taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be
32 exempt from taxation under title 44. If a tax credit is subsequently revoked or adjusted, the
33 seller's tax calculation for the year of revocation or adjustment shall be increased by the total
34 amount of the sales proceeds, without proration, as a modification under chapter 30 of title 44 of

1 the general laws. In the event that the seller is not a natural person, the seller's tax calculation
2 under chapters 11, 13, 14, or 17 of title 44, as applicable, for the year of revocation, or
3 adjustment, shall be increased by including the total amount of the sales proceeds without
4 proration.

5 (d) The tax credit allowed under this chapter may be used as a credit against corporate
6 income taxes imposed under chapters 11, 13, 14, or 17 of title 44, or as determined by the
7 commerce corporation may be used as a credit against personal income taxes imposed under
8 chapter 30 of title 44. No more than the amount of tax credits equal to the total credit amount
9 divided by the duration of the eligibility period in years may be taken in any tax period.

10 (e) Prior to assignment or transfer of a tax credit granted under this chapter, the division
11 of taxation shall, at the request of the business, redeem such credit in whole or in part for ninety
12 percent (90%) of the value of the tax credit with monies in the jobs tax credit redemption fund
13 created under subsection (f) of this section. The division of taxation shall establish by regulation a
14 redemption process for tax credits.

15 (f) The division of taxation is hereby authorized and empowered to segregate taxes
16 collected as a result of the creation of new full-time jobs under this chapter and transfer such
17 amounts to the general treasurer for deposit in a restricted account known as the jobs tax credit
18 redemption fund. The jobs tax credit redemption fund shall be used solely to pay for the
19 redemption of tax credits granted under this chapter. The director of the department of revenue
20 shall annually determine if a surplus exists in the job tax credit redemption fund over amounts
21 necessary to redeem tax credits in a fiscal year and may authorize the general treasurer to transfer
22 any surplus to the general fund.

23 (g) The unexpended balance of such sum of money received and appropriated for the jobs
24 tax credit redemption fund remaining in the treasury at the close of each fiscal year, shall be
25 continued to and is hereby annually appropriated for the same account for the ensuing year.

26 (h) The commerce corporation shall have no obligation to make any award or grant any
27 benefits under this chapter.

28 **44-48.3-9. Administration.** -- (a) The commerce corporation may adopt implementation
29 guidelines, directives, criteria, rules and regulations pursuant to chapter 35 of title 42
30 ("administrative procedures act") as are necessary to implement this chapter, including, but not
31 limited to: the enumeration of specific targeted industries; specific delineation of the incentive
32 areas; the promulgation of procedures and forms necessary to apply for a tax credit, including the
33 enumeration of the certification procedures and allocation of tax credits; and provisions for tax
34 credit applicants to be charged an initial application fee, and ongoing service fees, to cover the

1 administrative costs related to the tax credit.

2 (b) For businesses adding jobs on the basis of a future federal procurement, the
3 commerce corporation shall establish specific procedures.

4 (c) The division of taxation shall adopt rules as are necessary to implement this chapter.

5 **44-48.3-10. Limitations.** -- The incentives provided under this chapter shall not be
6 granted in combination with any other job specific benefit provided by the state, the commerce
7 corporation, or any other state agency, board, commission, quasi-public corporation or similar
8 entity without the express authorization of the commerce corporation.

9 **44-48.3-11. Program integrity.** -- Program integrity being of paramount importance, the
10 commerce corporation shall establish procedures to ensure ongoing compliance with the terms
11 and conditions of the program established herein, including procedures to safeguard the
12 expenditure of public funds and to ensure that the funds further the objectives of the program. At
13 a minimum these procedures will include an audit, at least every three (3) years, of the process
14 the commerce corporation followed in the administration of the program.

15 **44-48.3-12. Discontinuance of further rate reductions and future beneficiaries under**
16 **the jobs development act.** -- (a) The rate reduction(s) provided pursuant to chapter 64.5 of title
17 42 of the general laws shall be discontinued effective July 1, 2015, except as provided in
18 subsection (b) of this section.

19 (b) Any company that has qualified for a rate reduction pursuant to chapter 64.5 of title
20 42 prior to July 1, 2015, shall be entitled to maintain the rate reduction in effect as of June 30,
21 2015, and no additional rate reduction shall be permitted. All obligations of the company required
22 under chapter 64.5 of title 42 to retain a rate reduction shall remain in full force and effect.

23 **44-48.3-13. Reporting requirements.** -- (a) By August 1st of each year, each applicant
24 approved for credits under this chapter shall report to the commerce corporation and the division
25 of taxation the following information:

26 (1) The number of total jobs created;

27 (2) The applicable north American industry classification survey annual system code of
28 each job created;

29 (3) The annual salary of each job created;

30 (4) The address of each new employee;

31 (b) By September 1, 2016 and each year thereafter, the commerce corporation shall report
32 the name, address, and amount of tax credit approved for each credit recipient during the previous
33 state fiscal year to the governor, the speaker of the house of representatives, the president of the
34 senate, the chairpersons of the house and senate finance committees, the house and senate fiscal

1 advisors, and the department of revenue.

2 (c) By October 1, 2016 and each year thereafter, the commerce corporation shall report
3 for the year (i) the total number of businesses awarded credits in the previous fiscal year and (ii)
4 the name and address of each credit recipient . This report shall be available to the public for
5 inspection by any person and shall be published by the chief executive of the commerce
6 corporation on the commerce corporation and executive office of commerce websites.

7 (d) By October 1st of each year the division of taxation shall report the name, address,
8 and amount of tax credit received for each credit recipient during the previous state fiscal year to
9 the governor, the chairpersons of the house and senate finance committees, the house and senate
10 fiscal advisors, and the department of labor and training.

11 (e) By November 1st of each year the division of taxation shall report in the aggregate the
12 information required under subsection 42-64.20-8(a). This report shall be available to the public
13 for inspection by any person and shall be published by the tax administrator on the tax division
14 website.

15 **44-48.3-14. Sunset. -- No credits shall be authorized to be reserved pursuant to this**
16 **chapter after December 31, 2018.**

17 SECTION 16. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TAXATION - RHODE ISLAND NEW QUALIFIED JOBS INCENTIVE ACT
OF 2015

- 1 This act would establish the Rhode Island Qualified Jobs Incentives Act which creates a
- 2 tax credit program for new jobs created in the state.
- 3 This act would take effect upon passage.

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