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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- MANUFACTURING AND
ECONOMIC DEVELOPMENT--TAX INCENTIVES

Introduced By: Representatives Marszalkowski, and Shanley

Date Introduced: February 27, 2019

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 64.33

4 THE REFUNDABLE INVESTMENT TAX CREDIT ACT

5 **42-64.33-1. Short title.**

6 This chapter shall be known and may be cited as the "Refundable Investment Tax Credit
7 Act."

8 **42-64.33-2. Legislative findings.**

9 Although chapter 31 of title 44 of the Rhode Island general laws (the "investment tax
10 credit act") establishes tax credits for eligible taxpayers for certain investments for the
11 construction of facilities, the acquisition of tangible personal property, and the training of
12 employees, the investment tax credit act does not allow for the taking of these tax credits by
13 certain business entities, and further does not provide for refunds to the extent that the tax credits
14 exceed the eligible taxpayers' tax liability. Through the establishment of a refundable investment
15 tax credit program for manufacturers, Rhode Island can foster further investment by
16 manufacturing businesses, and thereby encourage businesses to contribute in a meaningful way to
17 the economic development of this state. In so doing, this program will further advance the
18 competitiveness of Rhode Island and its companies in the national and global economies and

1 result in the creation and retention of jobs and tax revenues for the state.

2 **42-64.33-3. Definitions.**

3 As used in this chapter:

4 (1) "Business" means a manufacturer that is a C corporation, S corporation, partnership,
5 limited partnership, limited liability partnership, limited liability company, or sole proprietorship;

6 (2) "Commerce corporation" means the Rhode Island commerce corporation established
7 pursuant to chapter 64 of title 42;

8 (3) "Eligible taxpayer" means a taxpayer eligible for an investment tax credit pursuant to
9 § 44-31-1;

10 (4) "Manufacturer" and "Manufacturing" shall have the same meanings as provided in §§
11 44-31-1(b)(1) and (b)(2) and shall further include any entity described in major groups 20 through
12 39 in the Standard Industrial Classification Manual prepared by the technical committee on
13 industrial classification, office of statistical standards, executive office of the president, United
14 States Bureau of Budget, as revised from time to time;

15 (5) "Refund or redemption" means the taking of a tax credit against a tax liability or
16 obtaining a refund for a tax credit or a portion thereof;

17 (6) "Targeted industries" shall have the same meaning as provided in § 42-64.20-3 (the
18 "rebuild Rhode Island tax credit act") and the regulations promulgated thereunder;

19 (7) "Tax liability" means:

20 (i) The amount of tax owed to the state of Rhode Island calculated as the Rhode Island
21 adjusted taxable income minus any Rhode Island tax credit on schedule B-CR other than credits
22 allowed under this chapter; or

23 (ii) The minimum tax for filers of Form RI 11120S; or

24 (iii) The Rhode Island annual fee for file.

25 **42-64.33-4. Establishment of program.**

26 A refundable investment tax credit program is hereby established as a program under the
27 jurisdiction of and administered by the commerce corporation.

28 **42-64.33-5. Refundable tax credits.**

29 (a) To be eligible to take and redeem tax credits under this chapter, a business must
30 submit a completed application to the commerce corporation for approval prior to making the
31 investment that will give rise to the requested tax credit. Such application shall be developed by
32 the commerce corporation.

33 (b) The commerce corporation may take into account the following factors in determining
34 whether to approve an application for a refundable investment tax credit pursuant to this chapter:

1 the nature and amount of the business's investment; the necessity of the investment and/or credit;
2 whether the business is engaged in a targeted industry; the number of jobs created by the
3 business's investment; whether the investment took place in a Hope community as defined in §
4 42-64.20-3 and the regulations promulgated thereunder; and such other factors as the commerce
5 corporation deems relevant.

6 (c) The refundable tax credit shall be available only to the extent that the business's
7 investment credit exceeds that business's tax liability for the tax year in which the credit is
8 available.

9 (d) The amount of the refundable tax credit available to any business in any given tax
10 year shall not exceed the sum of one hundred thousand dollars (\$100,000).

11 (e) Prior to approving an application for refundable credits, the commerce corporation
12 shall require the business to enter into an incentive agreement setting forth the business's
13 eligibility to use or redeem the tax credits and the terms and conditions governing the approval
14 and receipt of the refundable tax credits.

15 (f) To take or redeem a refundable tax credit authorized by the corporation, an eligible
16 business shall apply annually to the commerce corporation for a certification that the business has
17 met all the requirements of this chapter and the incentive agreement. The commerce corporation
18 shall either issue a certification to the business or provide a written response detailing any
19 deficiencies precluding certification. The commerce corporation may deny an applicant for
20 certification, or declare the incentive agreement null and void if the business does not meet all
21 requirements of this chapter and any additional terms and conditions of the incentive agreement.

22 (g) Upon issuance of a certification by the commerce corporation under subsection (f) of
23 this section, and at the request of the business, the division of taxation shall, on behalf of the state
24 of Rhode Island issue redemption tax certificate(s) as specified in the certification issued by the
25 commerce corporation pursuant to subsection (f) of this section.

26 (h) A taxpayer shall be entitled to take investment tax credits, up to the limit authorized
27 in this chapter, against taxes imposed pursuant to chapters 11 and 30 of title 44.

28 (i) Subject to annual appropriation in the state budget and upon written request of a
29 taxpayer, the state shall refund the amount of the tax credit provided under this chapter in whole
30 or in part up to one hundred percent (100%) of the value of the redemption certificates issued
31 under subsection (g) of this section reduced by the amount of the tax credit taken, if any;
32 provided, however, that taxpayer may only claim a refund of a credit amount, in whole or part,
33 for the year for which the tax credit was issued. Credits carried over pursuant to subsection (j) of
34 this section shall not be refundable.

1 (j) If the tax credit allowed under this chapter exceeds the taxpayer's total tax liability for
2 the year in which the credit is allowed, the amount that exceeds the taxpayer's tax liability after
3 taking account any credit taken under this chapter may either be refunded pursuant to subsection
4 (i) of this section or carried forward for credit against the tax liability for the succeeding years, or
5 until the tax credit is used in full, whichever occurs first.

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

10 (l) Credits allowed to a partnership, a limited liability company taxed as a partnership, or
11 multiple owners of property shall be passed through to the persons designated as partners,
12 members or owners respectively pro rata or pursuant to an executed agreement among such
13 persons designated as partners, members or owners documenting an alternate distribution method
14 without regard to their sharing of other tax or economic attributes of such entity.

15 (m) Any expenses used for calculating the tax credit under this chapter cannot be used in
16 calculating a tax credit under any other tax credit program in Rhode Island law.

17 (n) In the event any taxpayer seeking a refund under this chapter has outstanding Rhode
18 Island tax obligations, the division of taxation shall be permitted to apply said refund to the
19 outstanding tax obligations.

20 **42-64.33-6. Refundable investment tax credit fund.**

21 There is hereby established at the commerce corporation a restricted account known as
22 the refundable investment tax credit fund (the "fund") into which all amounts appropriated in the
23 state budget for the redemption of tax credits under this chapter shall be deposited. The fund shall
24 be used to pay for the redemption of investment tax credits pursuant to the provisions of this
25 chapter and for which a taxpayer is eligible under § 44-31-1. The fund shall be exempt from
26 attachment, levy or any other process at law or in equity. The director of the department of
27 revenue shall make a requisition to the commerce corporation for funding during any fiscal year
28 as may be necessary to pay for the redemption pursuant to this chapter. The commerce
29 corporation shall pay from the fund such amounts as requested by the director of the department
30 of revenue necessary to redeem tax credits pursuant to this chapter.

31 **42-64.33-7. Program integrity.**

32 (a) Program integrity being of paramount importance, the commerce corporation shall
33 establish procedures to ensure ongoing compliance with the terms and conditions of the program
34 established herein, including procedures to safeguard approval of redemption of the credits and to

1 ensure that authorized redemptions further the objectives of the program.

2 (b) The commerce corporation and division of taxation may promulgate such rules and
3 regulations pursuant to chapter 35 of title 42 (the "administrative procedures act") as deemed
4 necessary to carry out the intent, purpose and implementation of the program established under
5 this chapter.

6 **42-64.33-8. Reporting requirements.**

7 (a) By September 1, 2019 and each year thereafter, the commerce corporation shall report
8 the name and address of each business entering into an incentive agreement during the previous
9 state fiscal year to the division of taxation. The commerce corporation shall also make this
10 information publicly available on its website. In addition, the commerce corporation shall provide
11 the division of taxation a copy of each incentive agreement as they are executed.

12 (b) By December 1, 2019, and each year thereafter, the office of management and budget
13 shall provide the governor with the sum, if any, to be appropriated to fund the refundable
14 investment tax credit program.

15 SECTION 2. Sections 42-64.20-3 and 42-64.20-5 of the General Laws in Chapter 42-
16 64.20 entitled "Rebuild Rhode Island Tax Credit" are hereby amended to read as follows:

17 **42-64.20-3. Definitions.**

18 As used in this chapter:

19 (1) "Adaptive reuse" means the conversion of an existing structure from the use for which
20 it was constructed to a new use by maintaining elements of the structure and adapting such
21 elements to a new use.

22 (2) "Affiliate" means an entity that directly or indirectly controls, is under common
23 control with, or is controlled by the business. Control exists in all cases in which the entity is a
24 member of a controlled group of corporations as defined pursuant to § 1563 of the Internal
25 Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of
26 organizations under common control as defined pursuant to subsection (b) or (c) of § 414 of the
27 Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and
28 convincing evidence, as determined by the tax administrator, that control exists in situations
29 involving lesser percentages of ownership than required by those statutes. An affiliate of a
30 business may contribute to meeting either the capital investment or full-time employee
31 requirements of a business that applies for a credit under this chapter.

32 (3) "Affordable housing" means housing for sale or rent with combined rental costs or
33 combined mortgage loan debt service, property taxes, and required insurance that do not exceed
34 thirty percent (30%) of the gross annual income of a household earning up to eighty percent

1 (80%) of the area median income, as defined annually by the United States Department of
2 Housing and Urban Development.

3 (4) "Applicant" means a developer applying for a rebuild Rhode Island tax credit under
4 this chapter.

5 (5) "Business" means a corporation as defined in § 44-11-1(4), or a partnership, an S
6 corporation, a non-profit corporation, a sole proprietorship, or a limited liability corporation. A
7 business shall include an affiliate of the business if that business applies for a credit based upon
8 any capital investment made by an affiliate.

9 (6) "Capital investment" in a real estate project means expenses by a developer incurred
10 after application for:

11 (i) Site preparation and construction, repair, renovation, improvement, equipping, or
12 furnishing on real property or of a building, structure, facility, or improvement to real property;

13 (ii) Obtaining and installing furnishings and machinery, apparatus, or equipment,
14 including but not limited to material goods for the operation of a business on real property or in a
15 building, structure, facility, or improvement to real property.

16 In addition to the foregoing, if a developer acquires or leases a qualified development
17 project, the capital investment made or acquired by the seller or owner, as the case may be, if
18 pertaining primarily to the premises of the qualified development project, shall be considered a
19 capital investment by the developer and, if pertaining generally to the qualified development
20 project being acquired or leased, shall be allocated to the premises of the qualified development
21 project on the basis of the gross leasable area of the premises in relation to the total gross leasable
22 area in the qualified development project. The capital investment described herein shall be
23 defined through rules and regulations promulgated by the commerce corporation.

24 (7) "Certified historic structure" means a property which is located in the state of Rhode
25 Island and is

26 (i) Listed individually on the national register of historic places; or

27 (ii) Listed individually in the state register of historic places; or

28 (iii) Located in a registered historic district and certified by either the Rhode Island
29 historical preservation and heritage commission created pursuant to § 42-45-2 or the Secretary of
30 the Interior as being of historic significance to the district.

31 (8) "Commerce corporation" means the Rhode Island commerce corporation established
32 pursuant to § 42-64-1 et seq.

33 (9) "Commercial" shall mean non-residential development.

34 (10) "Developer" means a person, firm, business, partnership, association, political

1 subdivision, or other entity that proposes to divide, divides, or causes to be divided real property
2 into a subdivision or proposes to build, or builds a building or buildings or otherwise improves
3 land or existing structures, which division, building, or improvement qualifies for benefits under
4 this chapter.

5 (11) "Development" means the improvement of land through the carrying out of building,
6 engineering, or other operations in, on, over, or under land, or the making of any material change
7 in the use of any buildings or land for the purposes of accommodating land uses.

8 (12) "Eligibility period" means the period in which a developer may claim a tax credit
9 under this act, beginning with the tax period in which the commerce corporation accepts
10 certification from the developer that it has met the requirements of the act and extending
11 thereafter for a term of five (5) years.

12 (13) "Full-time employee" means a person who is employed by a business for
13 consideration for a minimum of at least thirty-five (35) hours per week, or who renders any other
14 standard of service generally accepted by custom or practice as full-time employment, or who is
15 employed by a professional employer organization pursuant to an employee leasing agreement
16 between the business and the professional employer organization for a minimum of thirty-five
17 (35) hours per week, or who renders any other standard of service generally accepted by custom
18 or practice as full-time employment, and whose wages are subject to withholding.

19 (14) "Hope community" means a municipality for which the five-year (5) average
20 percentage of families with income below the federal poverty level exceeds the state five-year (5)
21 average percentage, both as most recently reported by the U.S. Department of Commerce, Bureau
22 of the Census.

23 (15) "Manufacturer" means any entity that:

24 (i) Uses any premises within the state primarily for the purpose of transforming raw
25 materials into a finished product for trade through any or all of the following operations:
26 adapting, altering, finishing, making, processing, refining, metalworking, and ornamenting, but
27 shall not include fabricating processes incidental to warehousing or distribution of raw materials,
28 such as alteration of stock for the convenience of a customer; or

29 (ii) Is described in codes 31-33 of the North American Industry Classification System, as
30 revised from time to time.

31 ~~(15)~~(16) "Mixed use" means a development comprising both commercial and residential
32 components.

33 ~~(16)~~(17) "Partnership" means an entity classified as a partnership for federal income tax
34 purposes.

1 ~~(17)~~(18) "Placed in service" means the earlier of i) substantial construction or
2 rehabilitation work has been completed which would allow for occupancy of an entire structure or
3 some identifiable portion of a structure, as established in the application approved by the
4 commerce corporation board or ii) receipt by the developer of a certificate, permit or other
5 authorization allowing for occupancy of the project or some identifiable portion of the project by
6 the municipal authority having jurisdiction.

7 ~~(18)~~(19) "Project" means qualified development project as defined under subsection (22).

8 ~~(19)~~(20) "Project area" means land or lands under common ownership or control in which
9 a qualified development project is located.

10 ~~(20)~~(21) "Project cost" means the costs incurred in connection with the qualified
11 development project or qualified residential or mixed use project by the applicant until the
12 issuance of a permanent certificate of occupancy, or until such other time specified by the
13 commerce corporation, for a specific investment or improvement, as defined through rules and
14 regulations promulgated by the commerce corporation.

15 ~~(21)~~(22) "Project financing gap" means

16 (i) The part of the total project cost that remains to be financed after all other sources of
17 capital have been accounted for (such sources will include, but not be limited to, developer-
18 contributed capital), which shall be defined through rules and regulations promulgated by the
19 commerce corporation, or

20 (ii) The amount of funds that the state may invest in a project to gain a competitive
21 advantage over a viable and comparable location in another state by means described in this
22 chapter.

23 ~~(22)~~(23) "Qualified development project" means a specific construction project or
24 improvement, including lands, buildings, improvements, real and personal property or any
25 interest therein, including lands under water, riparian rights, space rights and air rights, acquired,
26 owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved,
27 undertaken by a developer, owner or tenant, or both, within a specific geographic area, meeting
28 the requirements of this chapter, as set forth in an application made to the commerce corporation.

29 ~~(23)~~(24) "Recognized historical structure" means a property which is located in the state
30 of Rhode Island and is commonly considered to be of historic or cultural significance as
31 determined by the commerce corporation in consultation with the state historic preservation
32 officer.

33 ~~(24)~~(25) "Residential" means a development of residential dwelling units.

34 ~~(25)~~(26) "Targeted industry" means any advanced, promising, or otherwise prioritized

1 industry identified in the economic development vision and policy promulgated pursuant to § 42-
2 64.17-1 or, until such time as any such economic development vision and policy is promulgated,
3 as identified by the commerce corporation.

4 ~~(26)~~(27) "Transit oriented development area" means an area in proximity to transit
5 infrastructure that will be further defined by regulation of the commerce corporation in
6 consultation with the Rhode Island department of transportation.

7 ~~(27)~~(28) "Workforce housing" means housing for sale or rent with combined rental costs
8 or combined mortgage loan debt service, property taxes, and required insurance that do not
9 exceed thirty percent (30%) of the gross annual income of a household earning between eighty
10 percent (80%) and one hundred and forty percent (140%) of the area median income, as defined
11 annually by the United States Department of Housing and Urban Development.

12 **42-64.20-5. Tax credits.**

13 (a) An applicant meeting the requirements of this chapter may be allowed a credit as set
14 forth hereinafter against taxes imposed upon such person under applicable provisions of title 44
15 of the general laws for a qualified development project.

16 (b) To be eligible as a qualified development project entitled to tax credits, an applicant's
17 chief executive officer or equivalent officer shall demonstrate to the commerce corporation, at the
18 time of application, that:

19 (1) The applicant has committed capital investment or owner equity of not less than
20 twenty percent (20%) of the total project cost;

21 (2) There is a project financing gap in which after taking into account all available private
22 and public funding sources, the project is not likely to be accomplished by private enterprise
23 without the tax credits described in this chapter; and

24 (3) The project fulfills the state's policy and planning objectives and priorities in that:

25 (i) The applicant will, at the discretion of the commerce corporation, obtain a tax
26 stabilization agreement from the municipality in which the real estate project is located on such
27 terms as the commerce corporation deems acceptable;

28 (ii) It (A) is a commercial development consisting of at least 25,000 square feet occupied
29 by at least one business employing at least 25 full-time employees after construction or such
30 additional full-time employees as the commerce corporation may determine; (B) is a multi-family
31 residential development in a new, adaptive reuse, certified historic structure, or recognized
32 historical structure consisting of at least 20,000 square feet and having at least 20 residential units
33 in a hope community; or (C) is a mixed-use development in a new, adaptive reuse, certified
34 historic structure, or recognized historical structure consisting of at least 25,000 square feet

1 occupied by at least one business, subject to further definition through rules and regulations
2 promulgated by the commerce corporation; and

3 (iii) Involves a total project cost of not less than \$5,000,000, except for a qualified
4 development project located in a hope community or redevelopment area designated under § 45-
5 32-4 in which event the commerce corporation shall have the discretion to modify the minimum
6 project cost requirement.

7 (c) Applicants qualifying for a tax credit pursuant to chapter 33.6 of title 44 shall be
8 exempt from the requirements of subparagraphs (b)(3)(ii) and (b)(3)(iii). The following procedure
9 shall apply to such applicants:

10 (1) The division of taxation shall remain responsible for determining the eligibility of an
11 applicant for tax credits awarded under chapter 33.6 of title 44;

12 (2) The commerce corporation shall retain sole authority for determining the eligibility of
13 an applicant for tax credits awarded under this chapter; and

14 (3) The commerce corporation shall not award in excess of fifteen percent (15%) of the
15 annual amount appropriated in any fiscal year to applicants seeking tax credits pursuant to
16 subsection (c).

17 (d) Applicants whose project is occupied by at least one manufacturer shall be exempt
18 from the requirements of subsections (b)(3)(ii) and (b)(3)(iii) of this section, and the commerce
19 corporation may establish minimum project cost amounts required for eligibility under this
20 section.

21 ~~(d)~~(e) Maximum project credit.

22 (i) For qualified development projects, the maximum tax credit allowed under this
23 chapter shall be the lesser of (1) thirty percent (30%) of the total project cost; or (2) the amount
24 needed to close a project financing gap (after taking into account all other private and public
25 funding sources available to the project), as determined by the commerce corporation.

26 (ii) The credit allowed pursuant to this chapter shall not exceed fifteen million dollars
27 (\$15,000,000) for any qualified development project under this chapter. No building or qualified
28 development project to be completed in phases or in multiple projects shall exceed the maximum
29 project credit of fifteen million dollars (\$15,000,000) for all phases or projects involved in the
30 rehabilitation of such building. Provided, however, that for purposes of this subsection and no
31 more than once in a given fiscal year, the commerce corporation may consider the development
32 of land and buildings by a developer on the "I-195 land" (as defined in § 42-64.24-3(6) of the
33 general laws) as a separate, qualified development project from a qualified development project
34 by a tenant or owner of a commercial condominium or similar legal interest including leasehold

1 improvement, fit out, and capital investment. Such qualified development project by a tenant or
2 owner of a commercial condominium or similar legal interest on the I-195 land may be exempted
3 from subparagraph (d)(i)(1).

4 ~~(e)~~(f) Credits available under this chapter shall not exceed twenty percent (20%) of the
5 project cost, provided, however, that the applicant shall be eligible for additional tax credits of not
6 more than ten percent (10%) of the project cost, if the qualified development project meets any of
7 the following criteria or other additional criteria determined by the commerce corporation from
8 time to time in response to evolving economic or market conditions:

9 (1) The project includes adaptive reuse or development of a recognized historical
10 structure;

11 (2) The project is undertaken by or for a targeted industry;

12 (3) The project is located in a transit-oriented development area;

13 (4) The project includes residential development of which at least twenty percent (20%)
14 of the residential units are designated as affordable housing or workforce housing;

15 (5) The project includes the adaptive reuse of property subject to the requirements of the
16 industrial property remediation and reuse act, § 23-19.14-1 et seq.; or

17 (6) The project includes commercial facilities constructed in accordance with the
18 minimum environmental and sustainability standards, as certified by the commerce corporation
19 pursuant to Leadership in Energy and Environmental Design or other equivalent standards.

20 ~~(f)~~(g) Maximum aggregate credits. The aggregate sum authorized pursuant to this chapter
21 shall not exceed one hundred and fifty million dollars (\$150,000,000).

22 ~~(g)~~(h) Tax credits shall not be allowed under this chapter prior to the taxable year in
23 which the project is placed in service.

24 ~~(h)~~(i) The amount of a tax credit allowed under this chapter shall be allowable to the
25 taxpayer in up to five, annual increments; no more than thirty percent (30%) and no less than
26 fifteen percent (15%) of the total credits allowed to a taxpayer under this chapter may be
27 allowable for any taxable year, except for projects with a project financing gap of less than five
28 hundred thousand dollars (\$500,000).

29 ~~(i)~~(j) If the portion of the tax credit allowed under this chapter exceeds the taxpayer's total
30 tax liability for the year in which the relevant portion of the credit is allowed, the amount that
31 exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for
32 the succeeding four (4) years, or until the full credit is used, whichever occurs first. Credits
33 allowed to a partnership, a limited liability company taxed as a partnership, or multiple owners of
34 property shall be passed through to the persons designated as partners, members, or owners

1 respectively pro rata or pursuant to an executed agreement among such persons designated as
2 partners, members, or owners documenting an alternate distribution method without regard to
3 their sharing of other tax or economic attributes of such entity.

4 ~~(k)~~(k) The commerce corporation in consultation with the division of taxation shall
5 establish, by regulation, the process for the assignment, transfer, or conveyance of tax credits.

6 ~~(l)~~(l) For purposes of this chapter, any assignment or sales proceeds received by the
7 taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be
8 exempt from taxation under title 44. If a tax credit is subsequently revoked or adjusted, the
9 seller's tax calculation for the year of revocation or adjustment shall be increased by the total
10 amount of the sales proceeds, without proration, as a modification under chapter 30 of title 44. In
11 the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 13,
12 14, or 17 of title 44 of the general laws, as applicable, for the year of revocation, or adjustment,
13 shall be increased by including the total amount of the sales proceeds without proration.

14 ~~(m)~~(m) The tax credit allowed under this chapter may be used as a credit against corporate
15 income taxes imposed under chapters 11, 13, 14, or 17, of title 44, or may be used as a credit
16 against personal income taxes imposed under chapter 30 of title 44 for owners of pass-through
17 entities such as a partnership, a limited liability company taxed as a partnership, or multiple
18 owners of property.

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

22 ~~(o)~~(o) Upon request of a taxpayer and subject to annual appropriation, the state shall
23 redeem such credit, in whole or in part, for ninety percent (90%) of the value of the tax credit.
24 The division of taxation, in consultation with the commerce corporation, shall establish by
25 regulation a redemption process for tax credits.

26 ~~(p)~~(p) Projects eligible to receive a tax credit under this chapter may, at the discretion of
27 the commerce corporation, be exempt from sales and use taxes imposed on the purchase of the
28 following classes of personal property only to the extent utilized directly and exclusively in such
29 project: (1) Furniture, fixtures and equipment, except automobiles, trucks, or other motor
30 vehicles; or (2) Such other materials, including construction materials and supplies, that are
31 depreciable and have a useful life of one year or more and are essential to the project.

32 ~~(q)~~(q) The commerce corporation shall promulgate rules and regulations for the
33 administration and certification of additional tax credit under subsection (e), including criteria for
34 the eligibility, evaluation, prioritization, and approval of projects that qualify for such additional

1 tax credit.

2 ~~(r)~~ The commerce corporation shall not have any obligation to make any award or
3 grant any benefits under this chapter.

4 SECTION 3. Sections 44-48.3-3 and 44-48.3-4 of the General Laws in Chapter 44-48.3
5 entitled "Rhode Island New Qualified Jobs Incentive Act 2015" are hereby amended to read as
6 follows:

7 **44-48.3-3. Definitions.**

8 As used in this chapter, unless the context clearly indicates otherwise, the following
9 words and phrases shall have the following meanings:

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

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

25 (3) "Commerce corporation" means the Rhode Island commerce corporation established
26 pursuant to chapter 64 of title 42.

27 (4) "Commitment period" means the period of time that at a minimum is twenty percent
28 (20%) greater than the eligibility period.

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

33 (6) "Eligible position" or "full-time job" means a full-time position in a business which
34 has been filled with a full-time employee who earns no less than the median hourly wage as

1 reported by the United States Bureau of Labor Statistics for the state of Rhode Island, provided,
2 that for economically fragile industries such as manufacturing, the commerce corporation may
3 reduce the wage threshold. An economically fragile industry shall not include retail.

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

9 (8) "Hope community" means municipalities with a percentage of families below the
10 poverty level that is greater than the percentage of families below the poverty level for the state as
11 a whole as determined by the United States Census Bureau's most recent American Community
12 Survey.

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

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

19 (11) "Manufacturer" means any entity that:

20 (i) Uses any premises within the state primarily for the purpose of transforming raw
21 materials into a finished product for trade through any or all of the following operations:
22 adapting, altering, finishing, making, processing, refining, metalworking, and ornamenting, but
23 shall not include fabricating processes incidental to warehousing or distribution of raw materials,
24 such as alteration of stock for the convenience of a customer; or

25 (ii) Is described in codes 31-33 of the North American Industry Classification System, as
26 revised from time to time.

27 ~~(11)~~(12) "New full-time job" means an eligible position created by the business that did
28 not previously exist in this state and which is created after approval of an application to the
29 commerce corporation under the program. Such job position cannot be the result of an acquisition
30 of an existing company located in Rhode Island by purchase, merger, or otherwise. For the
31 purposes of determining the number of new full-time jobs, the eligible positions of an affiliate
32 shall be considered eligible positions of the business so long as such eligible position(s) otherwise
33 meets the requirements of this section.

34 ~~(12)~~(13) "Partnership" means an entity classified as a partnership for federal income tax

1 purposes.

2 ~~(13)~~(14) "Program" means the incentive program established pursuant to this chapter.

3 ~~(14)~~(15) "Targeted industry" means any industry identified in the economic development
4 vision and policy promulgated under § 42-64.17-1 or, until such time as any economic
5 development vision and policy is promulgated, as identified by the commerce corporation.

6 ~~(15)~~(16) "Taxpayer" means a business granted a tax credit under this chapter or such
7 person entitled to the tax credit because the business is a pass through entity such as a partnership,
8 S corporation, sole proprietorship or limited liability company taxed as a partnership.

9 ~~(16)~~(17) "Transit oriented development area" means an area in proximity to mass-transit
10 infrastructure including, but not limited to, an airport, rail or intermodal facility that will be
11 further defined by regulation of the commerce corporation in consultation with the Rhode Island
12 department of transportation.

13 **44-48.3-4. Rhode Island qualified jobs incentive program.**

14 (a) The Rhode Island qualified jobs incentive program is hereby established as a program
15 under the jurisdiction of and shall be administered by the commerce corporation. The program
16 may provide tax credits to eligible businesses for an eligibility period not to exceed ten (10)
17 years.

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

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

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

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

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

34 (4) For a business in a non-targeted industry that employs more than two hundred (200)

1 full-time employees on the date of application to the commerce corporation, either the creation of
2 new full-time jobs in this state in an amount not less than ten percent (10%) of the business's
3 existing number of full-time employees or the creation of at least one hundred (100) new full-
4 time jobs in this state; or

5 (5) Notwithstanding subsections (c)(1) through (c)(4) of this section, for a manufacturer,
6 the creation of new full-time jobs in this state in an amount not less than ten percent (10%) of the
7 manufacturer's existing number of full-time employees, or the creation of at least one hundred
8 (100) new full-time jobs in this state.

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

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

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

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

19 (e) The commerce corporation shall establish, by regulation, the documentation an
20 applicant shall be required to provide under this subsection. Such documentation may include
21 documentation showing that the applicant could reasonably locate the new positions outside of
22 this state, or that the applicant is considering locating the positions outside of this state, or that it
23 would not be financially feasible for the applicant to create the positions without the tax credits
24 provided in this chapter.

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

33 (g) The definition of manufacturer in this chapter is limited to the eligibility for the
34 program in this chapter only and shall not modify or define the legal standing of a manufacturer

1 [for any other purpose set forth in title 44.](#)

2 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- MANUFACTURING AND
ECONOMIC DEVELOPMENT--TAX INCENTIVES

1 This act would establish the "refundable investment tax credit act" to provide for a
2 refundable investment tax credit for certain investments in the construction of facilities,
3 acquisition of tangible property, and the training of employees in the state. The refundable tax
4 credit program to be established by this act would be administered by the commerce corporation.

5 This act would take effect upon passage.

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