

Barge and Rail Usage Tax Credit Guidelines

Introduction

During the 2011 session, the Virginia General Assembly enacted House Bill 2385 and Senate Bill 1282 (2011 Acts of Assembly, Chapters 820 and 861), which established the Barge and Rail Usage Tax Credit. This legislation allows an international trade facility (as defined by *Va. Code* § 58.1-439.12:09(A)) that transports containers by barge or rail, rather than by using trucks or other motor vehicles on Virginia's highways, to claim an income tax credit equal to \$25 per 20-foot equivalent unit ("TEU") transported by barge or rail rather than by truck or other motor vehicle on Virginia's highways.

Two additional port tax credits were enacted during the 2011 General Assembly Session: the International Trade Facility Tax Credit (*Va. Code* § 58.1-439.12:06) and the Port Volume Increase Tax Credit (*Va. Code* § 58.1-439.12:10). These credits provide separate tax incentives for certain companies that use Virginia port facilities. Although all three credits offer incentives related to port activities, each credit is mutually exclusive, and separate definitions and requirements apply to each credit. A taxpayer may qualify for more than one credit in the same taxable year, but cannot claim more than one credit for the same activity or activities.

These guidelines are issued by the Department of Taxation ("the Department") to provide guidance to taxpayers regarding the Barge and Rail Usage Tax Credit as required by *Va. Code* § 58.1-439.12:09. These guidelines are exempt from the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) according to the provisions outlined in *Va. Code* § 58.1-439.12:09. As necessary, additional guidelines will be published and posted on the Department's website, www.tax.virginia.gov.

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

Requirements for an International Trade Facility

The Barge and Rail Usage Tax Credit is available for "international trade facilities" that transport containers by barge or rail, rather than by using trucks or other motor vehicles on Virginia's highways. For purposes of this credit, an "international trade facility" is defined as a company that:

- Is doing business in Virginia;

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- Is engaged in port-related activities;
- Has the sole discretion and authority to choose the method used to move cargo in containers originating or terminating in Virginia;
- Uses maritime port facilities located in Virginia; and
- Uses barges and rail systems to move cargo containers through port facilities in Virginia rather than trucks or other motor vehicles on Virginia's highways.¹

For purposes of this credit, the term "international trade facility" refers to the company itself, rather than the facility where port-related activities are being conducted by the company. Each company that qualifies as an international trade facility will calculate one base year amount and one credit amount each year, regardless of the number of facilities owned, operated, or used by that company. Accordingly, if the number of TEUs transported by barge or rail at one facility decreases, this will affect the amount of credit that may be claimed overall, but may be offset by an increase in the number of TEUs that the company transports by barge or rail at another facility.

Although both the Barge and Rail Usage Tax Credit and the International Trade Facility Tax Credit require a taxpayer to be an "international trade facility," the definitions vary slightly and so taxpayers should apply the definition for each particular credit separately.

"Port-related activities" are defined as any activities related to shipping through a Virginia port. Examples of port-related activities include warehousing, distribution, freight forwarding and handling, and goods processing.

Qualifying for the Barge and Rail Usage Tax Credit

Containers qualifying for this credit must result from a diversion of shipments from Virginia's highways. Accordingly, the credit may only be claimed for the number of containers shipped by barge or rail in excess of the number of containers shipped by barge or rail by the taxpayer during the immediately preceding taxable year. For purposes of this credit, the base year for computing the number of containers shipped by barge or rail is the 2010 calendar year. Taxpayers are responsible for retaining documentation regarding the number of containers shipped by barge and rail during each taxable year and must make them available to the Department upon request. Because the Barge and Rail Usage Tax Credit is granted at the company level, base year barge and rail volume is computed at the company level, rather than per facility.

Example 1: Computing Base Year Barge and Rail Volume

Company A is a company that is engaged in port-related activities and uses two different maritime port facilities located in Virginia ("Facility 1" and "Facility 2"). During the 2010 taxable year, Company A transports 150 TEUs by barge or rail through Facility 1 and 100 TEUs by barge or rail through Facility 2. Accordingly, Company A's base year barge and rail volume is 250 TEUs.

¹ See Va. Code § 58.1-439.12:09(A)).

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To qualify for this credit, the international trade facility must act on behalf of a person or company that has an ownership interest in the cargo being transported.

This credit can only be claimed once for each individual container, as determined by the alphanumeric identifier assigned to each container. The company entitled to claim the credit is the company that (1) has ownership of the cargo at some point while it is being transported through Virginia (including upon shipment or on delivery) and (2) has control over the method used to move the cargo in Virginia. Ownership is determined by the terms of the contract between the two parties and is evidenced by the bill of lading. When cargo is moved using containers originating in Virginia, there is a presumption that the company exporting the cargo out of Virginia controls the method of transportation in Virginia. When cargo is moved using containers terminating in Virginia, there is a presumption that the company receiving the import in Virginia controls the method of transportation in Virginia.

Example 2: Ownership of Cargo Containers - Imports

Company A is transporting one TEU of cargo through a Virginia maritime port to Company B. The cargo must be transported to Roanoke, Virginia. The terms of the contract state that the cargo will be shipped free on board (F.O.B.) destination. Accordingly, Company A will retain ownership until the cargo is delivered to Company B in Roanoke, and Company B will assume ownership upon delivery. The decision is made to ship the cargo by rail.

Both parties have ownership of the cargo at some point while it is being transported in Virginia. However, because the cargo is moved using containers that terminate in Virginia, there is a presumption that Company B controls the method of transportation in Virginia. Assuming that Company B qualifies as an international trade facility, Company B is entitled to count this cargo as one TEU moved by rail for purposes of the Barge and Rail Usage Tax Credit.

Example 3: Ownership of Cargo Containers - Exports

Company C is a Virginia company that is transporting one container of cargo through a Virginia maritime port to Company D, an international firm. The cargo must be transported from Richmond, Virginia to Norfolk, Virginia, and then from Norfolk International Terminals to the Port of Honfleur in France. The terms of the contract state that the cargo will be shipped F.O.B. Norfolk. Accordingly, Company C owns the cargo until shipment from Norfolk International Terminals, when Company D assumes ownership. The decision is made to transport the cargo by rail from Richmond to Norfolk.

Because the cargo is moved using containers that originate in Virginia, there is a presumption that Company C controls the method of transportation in Virginia. Assuming that Company C qualifies as an international trade facility, it is entitled

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to count this cargo as one TEU moved by barge or rail for purposes of the Barge and Rail Usage Tax Credit.

Only containers being shipped through maritime port facilities qualify for purposes of this credit. A maritime port facility is the port in Virginia where the cargo is first loaded to or unloaded from a ship or barge. Shipments through inland ports or any other facility where containers may be reshipped do not qualify for a second credit.

Finally, only international shipments qualify for the Barge and Rail Usage Tax Credit. Shipments to a Virginia port from another state or domestic exports from Virginia do not qualify for this credit.

Computation and Carryover of Credits

The Barge and Rail Usage Credit is equal to \$25 per 20-foot equivalent unit (TEU) transported by barge or rail rather than by truck or other motor vehicle on Virginia's highways. For purposes of determining the number of TEUs transported by barge and rail, only a full container load qualifies. A full container load (FCL) is a standard 20-foot, 40-foot, or 45-foot container that is loaded and discharged under the account of one shipper and is intended for one consignee. When computing the number of qualifying TEUs, one 40-foot container or 45-foot container is equivalent to two TEUs.

A less than container load (LCL) is cargo that is insufficient in either weight or volume to qualify for the freight rates that apply to a standard shipping container and is therefore combined with cargo owned by other shippers or with cargo intended for at least one other consignee. An LCL does not qualify as a TEU for purposes of this credit.

The amount of the Barge and Rail Usage Tax Credit claimed for the taxable year cannot exceed the tax imposed for that year. Any credit not usable for the taxable year may be carried over for the next five taxable years or until such credit is fully taken, whichever occurs first. If a taxpayer is allowed another income tax credit or has a credit carryover from a preceding taxable year, the taxpayer is considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, before using the Barge and Rail Usage Tax Credit for that year.

Example 4: Computation and Carryover of the Barge and Rail Usage Tax Credit

Company E is a calendar year filer that qualifies as an international trade facility (as defined by Va. Code § 58.1-439.12:09(A)). During the 2010 taxable year, Company E ships one hundred 20-foot containers and fifty 40-foot containers by barge and rail. Company E's base year barge and rail volume is computed as follows:

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$$\begin{array}{r} 20\text{-foot containers} = 100 \\ 40\text{-foot containers} = 50 (x 2) \\ \hline \text{Total} = 200 \text{ TEUs} \end{array}$$

During the 2011 taxable year, Company E ships three hundred 20-foot containers and one hundred 40-foot containers by barge and rail. Before applying the Barge and Rail Usage Tax Credit, Company E's tax liability for the 2011 taxable year is \$5,000.

Company E's current year barge and rail volume is computed as follows:

$$\begin{array}{r} 20\text{-foot containers} = 300 \\ 40\text{-foot containers} = 100 (x 2) \\ \hline \text{Total} = 500 \text{ TEUs} \end{array}$$

The amount of Company E's Barge & Rail Usage Tax Credit is computed by subtracting the base year barge and rail volume from the current year barge and rail volume, then multiplying by the credit amount, as follows:

$$\begin{array}{r} 500 \text{ TEUs} - 200 \text{ TEUs} = 300 \text{ TEUs} \\ 300 \text{ TEUs} \times \$25 = \$7,500 \end{array}$$

Accordingly, Company E may apply for a credit equal to \$7,500 by filing Virginia Form BRU. Assuming that Company E is granted the full \$7,500 credit, it can only use \$5,000 of credit in 2011. The remaining \$2,500 credit amount can be carried forward for the next five taxable years or until the credit is fully taken, whichever occurs first.

Administration of the Credit

To receive the Barge and Rail Usage Tax Credit, taxpayers must apply to the Department by completing Form BRU. This form and any supporting documentation must be completed and mailed no later than April 1 of the year following the taxable year during which credits were earned. Every taxpayer that applies for the Barge and Rail Usage Tax Credit must verify containers shipped through Virginia Port Authority-operated port facilities on the Virginia Port Authority's website (www.portofvirginia.com). A validation summary must then be attached to Form BRU. If any containers were shipped through non-Virginia Port Authority owned facilities, these containers should be listed on a schedule that must be attached to Form BRU.

The total amount of Barge and Rail Usage Tax Credits granted cannot exceed \$1.5 million in any fiscal year. If the amount of credits applied for exceeds \$1.5 million, the Department will allocate all credits on a pro rata basis. The Department will review all applications for completeness and notify taxpayers of any errors by June 1 of the calendar year in which Form BRU was submitted. If any additional information is

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needed, it must be provided no later than June 15 of that year to be considered for the tax credit. The Department will notify all eligible taxpayers of the amount of allocated credits by June 30 of the calendar year in which Form BRU was submitted.

Example 5: Applying for the Barge and Rail Usage Tax Credit

Company E is a calendar year filer that qualifies as an international trade facility (as defined by Va. Code § 58.1-439.12:09(A)). During the 2011 taxable year, Company A ships two hundred 20-foot containers and fifty 40-foot containers and is eligible for a Barge & Rail Usage Tax Credit equal to \$7,500.

To receive this credit, Company E must submit Virginia Form BRU to the Department on or before April 1, 2012. On or before June 1, 2012, the Department will notify Company E of the amount of credit received. If the total amount of credits requested by all taxpayers on applications received by April 1, 2012 is \$7.5 million, then all taxpayers will be allocated a credit equal to 20 percent of the requested amount. In this case, Company E would be allocated a credit equal to \$1,500.

Company E can then claim the amount of credit issued on its 2011 income tax return. If Company E files its income tax return for the 2011 taxable year before it receives notification from the Department, it can claim the Barge and Rail Usage Tax Credit by filing an amended return for the 2011 taxable year.

Upon receiving notification of the allowable credit amount, taxpayers may claim this amount on the applicable Virginia income tax return. Taxpayers are responsible for retaining documentation regarding the number of containers shipped by barge and rail during each taxable year, including a bill of lading for each container transferred by barge or rail. The bill of lading must contain the following information: port of entry, shipment date, container numbers, and origin and destination of shipments. Taxpayers are also responsible for retaining any other necessary supporting documentation. This information must be provided by the taxpayer upon request.

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Additional Information

These guidelines are available online in the Tax Policy Library section of the Department's website, located at www.policylibrary.tax.virginia.gov. For additional information, please contact the Department at (804) 367-8037 or the Virginia Port Authority at (800) 446-8098. For assistance with the container verification process, contact the Virginia Port Authority at (757) 391-6235 or Helpdeskvit.org.

Approved:

A handwritten signature in black ink that reads "Craig M. Burns". The signature is written in a cursive style with a long horizontal stroke at the end.

Craig M. Burns
Tax Commissioner