Port Volume Increase Tax Credit Guidelines

Introduction

During the 2011 session, the Virginia General Assembly enacted House Bill 2531 and Senate Bill 1481 (2011 Acts of Assembly, Chapters 831 and 872), which established the Port Volume Increase Tax Credit. This is an individual and corporate income tax credit for taxpayers engaged in the manufacturing of goods or the distribution of manufactured goods that use Virginia port facilities and increase port cargo volume through these facilities. The amount of the credit is equal to $50 for each 20-foot equivalent unit ("TEU") above the base year port cargo volume, or $50 for each TEU transported through a port facility during a major facility's first calendar year. To receive this credit, taxpayers must apply to the Virginia Port Authority.

Two additional port-related tax credits were enacted during the 2011 General Assembly Session: the Barge and Rail Usage Tax Credit (*Va. Code* § 58.1-439.12:09) and the International Trade Facility Tax Credit (*Va. Code* § 58.1-439.12:06). 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 Port Volume Increase Tax Credit. These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) and are being published in accordance with the Tax Commissioner's general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. 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.

Criteria for Claiming the Credit

The Port Volume Increase Tax Credit is an individual and corporate income tax credit for taxpayers engaged in the manufacturing of goods or the distribution of manufactured goods that use Virginia port facilities and increase port cargo volume through these facilities. To be eligible for the Port Volume Increase Tax Credit, a taxpayer must:

- Be engaged in the manufacturing of goods or the distribution of manufactured goods;
- Use port facilities in Virginia;
- Increase its port cargo at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume; and
- Own the cargo at the time the port facilities are used.

For purposes of this credit, a taxpayer is "engaged in the manufacturing of goods" if it transforms materials into a product of substantially different character. To qualify as manufacturing, there must be a substantial, well-signified transformation in form, usability, quality, and adaptability rendering the original material more valuable for use than it was before. A taxpayer is engaged in "the distribution of manufactured goods" if the taxpayer distributes goods that are a result of a manufacturing process.

The manufacturing of goods does not include the growing and transportation of unprocessed agricultural commodities. However, the manufacturing of goods may include processed agricultural products. For instance, although the growing and transportation of corn would not be considered the manufacturing of goods, the production of corn oil would qualify as the manufacturing of goods. Likewise, the transportation of pigs would not be the distribution of manufactured goods, but the distribution of sausage would be considered the distribution of manufactured goods.

A taxpayer may only claim the Port Volume Increase Tax Credit for cargo that was actually owned by the taxpayer at the time the port facilities were used (including upon shipment or on delivery) and for which the taxpayer controlled the method of transportation. Ownership is determined by the terms of the shipping contract and is evidenced by the bill of lading. When cargo originates in Virginia, there is a presumption that the company exporting the cargo out of Virginia controls the method of transportation. When a shipment terminates in Virginia, there is a presumption that the company receiving the import in Virginia controls the method of transportation.

Port cargo volume is defined as the total amount of net tons of noncontainerized cargo or containers measured in TEUs of cargo transported by way of a waterborne ship or vehicle through a port facility. Base year port cargo volume means the total amount of net tons of noncontainerized cargo or TEUs of cargo actually transported by way of a waterborne ship or vehicle through a port facility during the period from January 1, 2010 through December 31, 2010. Base year port cargo volume must be recalculated each calendar year after the initial base year.

Example 1: Computing Base Year Port Cargo Volume

Company A is engaged in the manufacturing of goods and uses port facilities in Virginia. During the 2010 calendar year, Company A actually transports 100 TEUs of cargo through Virginia port facilities. For the 2011 calendar year, Company A's base year port cargo volume is 100 TEUs. If, during the 2011 calendar year, Company A transports 104 TEUs of cargo through Virginia port facilities, Company A would not qualify for the Port Volume Increase Tax Credit because it did not increase port cargo volume by five percent. If, however, Company A transports 105 TEUs of cargo through Virginia port facilities during 2011, it would qualify for the Port Volume Increase Tax Credit because it increased its port cargo volume by five percent. It could apply for a credit equal to the increased number of TEUs multiplied by $50 per TEU, or $250.

To be eligible for this credit, the taxpayer's base year port cargo volume must be a minimum of either 75 net (short) tons of noncontainerized cargo or ten loaded TEUs. Each taxpayer must meet one of these two thresholds. For purposes of meeting the base year port cargo volume requirement, noncontainerized cargo and TEUs cannot be aggregated and no tonnage conversion formula shall apply. For taxpayers that do not ship that amount during the 2010 calendar year, including any taxpayer that locates in Virginia after December 31, 2010, the taxpayer's base cargo volume will be measured by the initial calendar year in which it meets the requirement of either 75 net tons of noncontainerized cargo or ten loaded TEUs.

Computation and Carryover of Credits

The Port Volume Increase Tax Credit is generally equal to $50 for each TEU above the base year port cargo volume, or $50 for each TEU transported through a port facility during a major facility's first calendar year. For shipments of 40-foot or 45-foot containers, one loaded container is equivalent to two TEUs. For purposes of calculating the amount of the Port Volume Increase Tax Credit for taxpayers that ship noncontainerized cargo, one TEU is equivalent to 16 net tons of noncontainerized cargo. One net ton is equivalent to one short ton, or 2,200 pounds.

For purposes of determining port cargo volume, only a full container load qualifies as a TEU. 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.

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 or as noncontainerized cargo for purposes of this credit.

<u>*Example 2: Computing the Port Volume Increase Tax Credit*</u>
During 2010, Company B ships 100 TEUs and 320 net tons of noncontainerized cargo through Virginia port facilities. In 2011, Company B ships 110 TEUs and 400 net tons of noncontainerized cargo. Company B's base year port cargo volume is 120 TEUs, computed as follows:

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$$(100 \text{ TEUs}) + \left(\frac{320 \text{ tons}}{16}\right) = 120 \text{ TEUs}$$

Company B's Port Volume Increase Tax Credit is $750, computed as follows:

$$\left[(110 \text{ TEUs}) + \left(\frac{400 \text{ tons}}{16}\right) - (120 \text{ TEUs})\right] \times \$50 = 15 \text{ TEUs} \times \$50 = \$750$$

Special Rules for Major Facilities

Although taxpayers must generally increase port cargo volume by a minimum of five percent over base year port cargo volume to claim the Port Volume Increase Tax Credit, this requirement may be waived for any taxpayer that qualifies as a major facility. For purposes of this credit, a major facility is defined as a new facility to be located in Virginia that is projected to import or export cargo through a port in excess of 25,000 TEUs in its first calendar year. The amount of credit for a major facility is equal to $50 for each TEU transported through a port facility during the major facility's first calendar year.

Allocation of Credits in Excess of $250,000

The maximum amount of Port Volume Increase Tax Credits for all qualifying taxpayers is limited to $3.2 million for each calendar year. Generally, a qualifying taxpayer may not receive more than $250,000 worth of Port Volume Increase Tax Credits for each calendar year. However, if on March 15 of each year, the $3.2 million amount of credit has not been fully allocated among all qualifying taxpayers, then those taxpayers who have been allocated a credit for the prior year shall be allowed a pro rata share of the remaining allocated credit, up to $3.2 million total. In this case, a qualifying taxpayer may receive a credit amount that is greater than $250,000.

Administration of the Credit

To be granted a credit, taxpayers must submit Form PVI to the Virginia Port Authority by March 1 of the year after the calendar year in which the increase in port cargo volume occurs. Each taxpayer must attach a schedule to Form PVI that contains the following information:

- A description of how the base year port cargo volume and the increase in port cargo volume were determined; and
- The amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo and TEUs of cargo

Every taxpayer that applies for the Port Volume Increase Tax Credit must verify containers or cargo that moved through a Virginia Port Authority-operated marine facility on the Virginia Port Authority's website (www.portofvirginia.com). A tax year verification summary sheet must then be attached to Form PVI. If containers or cargo were moved through another facility in Virginia, the taxpayer must provide additional schedules with information regarding base year and current year cargo volume. Taxpayers must also provide any other information requested by the Virginia Port Authority or the Department.

If, on March 15 of the year after the calendar year in which the increase in port cargo volume occurs, the cumulative amount of tax credits requested by qualifying taxpayers for the prior year exceeds $3.2 million, then credits will be prorated among the qualifying taxpayers who requested the credit.

The Virginia Port Authority will review all applications for completeness and notify taxpayers of any errors by April 5 of the calendar year in which the credit application was submitted. If any additional information is needed, it must be provided no later than May 5 of that year to be considered for the tax credit. All eligible taxpayers will be notified of the amount of allocated credits by May 30.

To actually claim the credit, a taxpayer must claim the granted credit amount on its income tax return. Any credit amount that exceeds the taxpayer's tax liability for the taxable year may be carried forward for five taxable years.

> *Example 3: Applying for the Port Volume Increase Tax Credit*
> Company K is a company that is engaged in the distribution of manufactured goods and has increased its port cargo volume over its base year cargo volume by 100 TEUs. Accordingly, Company K wants to apply for a Port Volume Increase Tax Credit equal to $5,000 for 2012.
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> To receive this credit, Company K must apply to the Virginia Port Authority on or before March 1, 2013. If, on March 15, 2013, the cumulative amount of tax credits requested by qualifying taxpayers for the 2012 calendar year is $6.4 million, then all taxpayers will be allocated a credit equal to 50 percent of the requested amount. In this case, Company K would be allocated a credit equal to $2,500.
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> Company K can then claim the amount of credit issued on its 2012 income tax return. If Company K files its income tax return for the 2012 taxable year before it receives notification from the Virginia Port Authority, it can claim the Port Volume Increase Tax Credit by filing an amended return for the 2012 taxable year.

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 and cargo verification process, contact the Virginia Port Authority at (757) 391-6235 or Helpdeskvit.org.

Approved:

Craig M. Burns
Tax Commissioner