

**VEDP Policies and Procedures for Certification
of Companies Eligible to Decrease Income Taxed by Virginia by
Modifying Apportionment Factor(s)
Approved by VEDP Board of Directors on October 25, 2018**

PURPOSE

Pursuant to Section 58.1-405.1 of the Code of Virginia of 1950, as amended (the Virginia Code), certain multistate and instate companies are eligible to decrease the amount of income taxed by Virginia when they start doing business in qualified localities. An eligible company is one that meets specific capital investment and/or job creation requirements, is a traded-sector company, and is certified by the Virginia Economic Development Partnership Authority (VEDP) as generating a positive fiscal impact.

These Policies and Procedural Guidelines establish the process for VEDP to certify whether a company qualifies as an “eligible company.”

BENEFITS OF CERTIFICATION AS AN ELIGIBLE COMPANY

A company certified by VEDP as an “eligible company” may decrease the amount of income taxed by Virginia. For multistate companies, this is accomplished by allowing them to make certain modifications to the apportionment factor(s) described in Sections 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1 or 58.1-422.2 of the Virginia Code. For in-state companies, this is accomplished differently. As a general rule, in-state companies do not utilize apportionment factors because they pay tax to Virginia on all of their Virginia taxable income. However, Section 58.1-405 of the Code of Virginia allows eligible in-state companies to utilize apportionment factors based on their Virginia activities in qualified localities and outside qualified localities and thereby decrease their Virginia tax liability. Additional information regarding these tax provisions will be made available on the Virginia Department of Taxation website, www.tax.virginia.gov.

A company certified by VEDP as an “eligible company” may apply to VEDP for consideration for a discretionary grant from the Commonwealth’s Development Opportunity Fund as described in Virginia Code Section 2.2-115. Additional information may be obtained from VEDP by contacting:

Johan Salén
Vice President
Division of Incentives
VEDP
804.545.5652

GENERAL ELIGIBILITY

To be certified as an eligible company, each of the following criteria must be met:

- Corporation or Pass-Through Entity: A company must be a corporation or pass-through entity, as defined in Section 58.1-390.1 of the Virginia Code.
 - "Pass-through entity" means any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust or a Subchapter S corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns.
- No Existing Property or Payroll: A company must have no existing property or payroll in the Commonwealth of Virginia (the "Commonwealth") as of January 1, 2018.
- New Capital Investment and New Jobs Requirements: A company must on or after January 1, 2018, but before January 1, 2025, either (a) spend at least \$5 million in new capital investment in a qualified locality or qualified localities and create at least 10 new jobs in a qualified locality or qualified localities, or (b) create at least 50 new jobs in a qualified locality or qualified localities.
- Traded-Sector Companies Only: A company must be one that provides new or additional income into the Commonwealth and adds to the gross state product by directly or indirectly deriving more than 50 percent of its revenue from outside the Commonwealth.
- Positive Fiscal Impact: A Company must generate a positive fiscal impact. In accordance with Section 58.1-405.1 B.1. of the Virginia Code, VEDP's determination of whether a company generates a positive fiscal impact will be based on the following factors: (i) job creation; (ii) private capital investment; (iii) anticipated additional state and local tax revenue; and (iv) the additional revenue the Commonwealth likely would expend in and for the localities if the economy in the localities continues to erode.

VEDP will deny certification to any company it determines has engaged in a merger, acquisition, similar business combination, name change, change in business form, or other transaction the primary purpose of which is to obtain status as an eligible company.

POLICY REGARDING JOB CREATION

- Definition of New Job: In accordance with Section 58.1-405.1 A. of the Virginia Code, "new job" means a permanent, full-time position of indefinite duration that pays at least 150 percent of the minimum wage, as defined in the Virginia Minimum Wage Act, and that requires a minimum of (i) 35 hours of an employee's time a week for the entire normal year of the eligible company's operations, which normal

year shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Each new job must be created on or after January 1, 2018, but before January 1, 2025.

- Seasonal and Other Positions: Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to a qualified locality or qualified localities, positions with construction contractors, suppliers, and similar multiplier or spin-off jobs may not qualify as new jobs.

POLICY REGARDING CAPITAL INVESTMENT

- Definition of New Capital Investment: In accordance with Section 58.1-405.1 A. of the Virginia Code, “new capital investment” means real property acquired in a qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025, and any improvements to real property in a qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025.
- Capital Leases: New capital investment will include the value of the construction or improvement of real property leased under a capital lease.

POLICY REGARDING QUALIFIED LOCALITIES

- New Capital Investment and New Jobs in Qualified Locality or Qualified Localities: The new capital investment must be made and new jobs must be created in a qualified locality or qualified localities.
- Qualified Locality or Qualified Localities: In accordance with Section 58.1-405.1 A. of the Virginia Code, “qualified locality” means (i) the County of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, or Wythe or the City of Bristol, Galax, or Norton; (ii) the County of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, or Prince Edward or the City of Danville or Martinsville; (iii) the County of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, or Westmoreland; or (iv) the County of Brunswick or Dinwiddie or the City of Petersburg.
- Qualified Development Site: A qualified locality may be deemed to include a qualified development site. In accordance with Section 58.1-405.1 A. of the Virginia Code, “qualified development site” means real property that is in a locality adjacent to a qualified locality and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an industrial development authority of which a qualified locality is a member or (ii) was owned or partly owned by a locality or industrial development authority, was leased to a private party, and was subject to a revenue-sharing agreement providing that a portion of the revenues from the lease would be distributed to a qualified locality. A qualified development site does

not include real property that is not owned by the Commonwealth or a political subdivision thereof.

POLICY REGARDING POSITIVE FISCAL IMPACT

- Considerations: As noted above, (i) job creation; (ii) private capital investment; (iii) anticipated additional state and local tax revenue; and (iv) the additional revenue the Commonwealth likely would expend in and for the localities if the economy in the localities continues to erode will be considered in a determination of whether a company will generate a positive fiscal impact. Additional factors to be considered include: (i) the company average annual wage in comparison to the local average annual wage; (ii) the local unemployment level; (iii) local poverty level; (iv) the value of other economic development incentives and by-right incentives the company receives or has received; and (v) community impact and support.

APPLICATION PROCESS

- Annual Application: For each taxable year for the period beginning January 1, 2018, and ending January 1, 2025, a company may file with VEDP an application for certification or re-certification that the company is an eligible company. Applications will be accepted during the period beginning on January 1 and ending April 1 of the calendar year immediately following the taxable year for which certification is sought. To remain an eligible company for any taxable year, a company must obtain certification or re-certification annually.
- Application: The application is expected to include:
 - The full legal name of the company and a description of whether the company is a corporation or pass-through entity.
 - The name of the qualified locality or qualified localities in which the company is located.
 - The history of the company including any activities, assets, or employees in Virginia prior to January 1, 2018.
 - General corporate information including the names of officers, directors, owners, partners, or members as may be applicable.
 - Either (i) the amount of total new capital investment by the company in a qualified locality or qualified localities on or after January 1, 2018, and a summary breakdown of new capital investment into categories such as land, purchase of existing building, or real property improvements, or (ii) in the case of re-certification, whether the capital investment has been substantially retained or the additional amount of new capital investment made since the company's previous application.
 - A copy of the company's real estate tax record from the Commissioner of the Revenue, or equivalent official, in the applicable qualified locality or qualified localities where the company's facility is located.
 - If the company's real estate tax record does not accurately reflect the new capital investment made, copies of invoices related to the new capital

investment paid by or on behalf of the company accompanied by a summary of the invoices and a certification by the company that such copies are true, accurate, and complete.

- Either (i) the number of new jobs created in a qualified locality or qualified localities beginning on or after January 1, 2018, a list of the new jobs, and the wage associated with each such new job, or (ii) in the case of re-certification, whether the new jobs have been substantially maintained.
- A copy of the company's four most recent Employer's Quarterly Tax Report (Form FC-20) filed with the Virginia Employment Commission.
- A certification and evidence that the company is a traded-sector company.

VERIFICATION OF REPORTED NEW CAPITAL INVESTMENT AND NEW JOBS AND APPLICATION EVALUATION

- Verification of Reported New Capital Investment: In accordance with Section 58.1-3122.3 of the Virginia Code, VEDP is entitled to receive a company's real estate tax information. Any tax information provided to VEDP shall be confidential and not divulged by VEDP. Such tax information will be used by VEDP solely for the purpose of verifying reported new capital investment.
- Verification of Reported New Jobs: In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level information. Any such VEC information provided to VEDP shall be confidential and only disclosed to employees and Directors of VEDP who are public officials for the performance of their official duties. No public official or employee can re-disclose any such confidential information to non-legislative citizen members of the VEDP Board of Directors or the public. Such VEC information will be used by VEDP solely for the purpose of verifying reported new jobs and wages.
- Right to Audit: VEDP reserves the right to require such other documentation as may be necessary to evidence the new capital investment and new jobs, as well as to require the company to submit to audits by a mutually agreed-upon certified public accounting firm, at the company's expense, as may be required to properly verify new capital investment and new jobs and wages.
- Consultation with TAX: VEDP will consult with the Virginia Department of Taxation ("TAX") regarding the additional state and local tax revenue expected to be generated by the company.

**Application for Certification
of Companies Eligible to Decrease Income Taxed by Virginia by
Modifying Apportionment Factor(s)**

Please include:

- Name
- FEIN
- Street address
- Entity type corporation pass through entity
- North American Industry Classification System (NAICS) Code
- Industry description
- General corporate information including the names of officers, directors, owners, partners, or members as may be applicable
- Copy of articles of incorporation, articles of organization, or other corporate formation document as applicable
- Copy of certificate of good standing, certificate of fact, or certificate of fact of registration from the Virginia State Corporation Commission as applicable
- Certify no existing property or payroll yes no
- Taxable year for which certification is sought
- Has the company been certified an eligible company previously yes no
- In which years has the company been certified an eligible company
- Qualified locality or qualified localities where new capital investment made or new jobs created
- Amount of new capital investment or amount of capital investment substantially retained
- Summary breakdown of new capital investment
- Real estate tax record attached yes no
- Copies of invoices attached
- Certification that the invoices are true, accurate, and complete yes no
- Number of new jobs or number of new jobs substantially maintained
- List of each new job position
- Wage associated with each new job
- FC-20s attached yes no
- Certification that the company is a traded-sector company yes no