

SENATE BILL 2158

By Johnson

AN ACT to amend Tennessee Code Annotated, Section 67-4-2009, relative to tax credits for brownfield properties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2009(8)(A), is amended by deleting the language "Except as otherwise provided in subdivision (8)(D), there" and substituting instead "There".

SECTION 2. Tennessee Code Annotated, Section 67-4-2009(8)(B)(ii), is amended by deleting the language "a business investment" and substituting instead "an investment".

SECTION 3. Tennessee Code Annotated, Section 67-4-2009(8)(B)(ii), is amended by deleting the language "construction" and substituting instead "construction of the real or personal property".

SECTION 4. Tennessee Code Annotated, Section 67-4-2009(8)(B)(v), is amended by deleting the language "utilizing at least five (5) acres of brownfield property, or non-prime agricultural property as provided in subdivision (8)(G)" and substituting instead "located on a brownfield property".

SECTION 5. Tennessee Code Annotated, Section 67-4-2009(8)(B)(v), is amended by deleting the language "(8)(E) or (8)(G)" and substituting instead "(8)(E)".

SECTION 6. Tennessee Code Annotated, Section 67-4-2009(8)(B)(iv), is amended by deleting the subdivision.

SECTION 7. Tennessee Code Annotated, Section 67-4-2009(8)(D), is amended by deleting the subdivision.

SECTION 8. Tennessee Code Annotated, Section 67-4-2009(8)(E)(i), is amended by deleting the language "or the enhanced credit provided in subdivision (8)(D);" and substituting instead a period.

SECTION 9. Tennessee Code Annotated, Section 67-4-2009(8)(E)(i), is amended by adding the following language before the semicolon at the end of the subdivision:

. The plan must describe the capital investment to be made toward the qualified development project within the investment period and also include a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development pursuant to subdivision (8)(H) that the credit is in the best interest of the state

SECTION 10. Tennessee Code Annotated, Section 67-4-2009(8)(E)(ii), is amended by deleting the subdivision.

SECTION 11. Tennessee Code Annotated, Section 67-4-2009(8)(F), is amended by deleting the subdivision and substituting instead the following:

(F) In order to receive the credit, the taxpayer must submit a claim for the credit, along with documentation as required by the commissioner showing that the capital investment was made toward the qualified development project during the investment period. The taxpayer shall not be eligible to receive the credit until the minimum capital investment required by subdivision (8)(B)(v) has been met;

SECTION 12. Tennessee Code Annotated, Section 67-4-2009(8)(G), is amended by deleting the subdivision and substituting instead the following:

(G) The commissioner shall review the claim for the credit and notify the taxpayer of the approved tax credit amount. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the approved amount;

SECTION 13. Tennessee Code Annotated, Section 67-4-2009(8)(H), is amended by deleting the subdivision and substituting instead the following:

(H) Notwithstanding any provision of this subdivision (8) to the contrary, no credit shall be allowed unless the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development determine, in their sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision (8)(H), "best interest of the state" means a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development that the qualified development project is a result of the credit provided in subdivision (8)(A) and that the economic benefits to this state resulting from the qualified development project outweigh the anticipated amount of the credit; and

SECTION 14. Tennessee Code Annotated, Section 67-4-2009(8), is amended by adding the following as a new subdivision (I):

(I) For a qualified development project in which the taxpayer receives the brownfield property from a county, municipality, or industrial development board as defined in § 7-53-101 for a sale price of less than one dollar (\$1.00), the amount of any credit authorized under this subdivision (8) is fifty percent (50%) of the most recent purchase price of the brownfield property that was paid by the county, municipality, or industrial development board; and

SECTION 15. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following as a new subdivision (9):

(9)

(A) Notwithstanding subdivision (8), there shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to seventy-five percent (75%) of the purchase price of brownfield property

purchased in a tier 3 or tier 4 enhancement county in this state during the tax period covered by the return for the purpose of a qualified development project;

(B) For the purposes of this subdivision (9), unless the context otherwise requires:

(i) "Brownfield property" means real property that is the subject of an investigation or remediation as a brownfield project under a voluntary agreement or consent order pursuant to § 68-212-224;

(ii) "Capital investment" means an investment in real property, tangible personal property, or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the earlier of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for lease, purchase, or construction of the real or personal property;

(iii) "Investment period" means a period not to exceed five (5) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made; and

(iv) "Qualified development project" means a project consisting of a capital investment of at least five million dollars (\$5,000,000), located on a brownfield property, and having a business plan approved by the commissioner of revenue in accordance with the applicable provisions of subdivision (9)(D);

(C) The credit allowed pursuant to this subdivision (9) shall apply against the excise tax imposed by this part and the franchise tax imposed by part 21 of

this chapter; provided, however, that such credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed seventy-five percent (75%) of the combined franchise and excise tax liability shown on the return before any credit is taken. Any credit authorized under this subdivision (9)(C) that is unused may be carried forward in any tax period until the credit is taken; provided, that the credit may not be carried forward for more than fifteen (15) years;

(D)

(i) The taxpayer shall file a business plan for the qualified development project with the commissioner of revenue prior to the investment period in order to qualify for the credit provided in subdivision (9)(A). The plan shall describe the capital investment to be made toward the qualified development project within the investment period and shall also include a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development pursuant to subdivision (9)(G) that the credit is in the best interest of the state;

(ii) Qualifying plans shall be approved by the commissioner of revenue. At such time, an approval letter authorizing the credit, the value of the credit, and the terms of the credit shall be issued. A copy of the approval letter must be filed by the taxpayer with the department of revenue in any year in which the taxpayer utilizes the credit; and

(iii) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the information contained in the business plan and

to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit pursuant to this subdivision (9);

(E) In order to receive the credit, the taxpayer must submit a claim for the credit, along with documentation as required by the commissioner showing that the capital investment was made toward the qualified development project during the investment period. The taxpayer shall not be eligible to receive the credit until the minimum capital investment required by subdivision (9)(B)(iv) has been met;

(F) The commissioner shall review the claim for the credit and notify the taxpayer of the approved tax credit amount. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the approved amount;

(G) Notwithstanding any provision of this subdivision (9) to the contrary, no credit shall be allowed unless the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development determine, in their sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision (9)(G), "best interest of the state" means a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development that the qualified development project is a result of the credit provided in subdivision (9)(A) and that the economic benefits to this state resulting from the qualified development project outweigh the anticipated amount of the credit; and

(H) For a qualified development project in which the taxpayer receives the brownfield property from a county, municipality, or industrial development

board as defined in § 7-53-101 for a sale price of less than one dollar (\$1.00), the amount of any credit authorized under this subdivision (9) is seventy-five percent (75%) of the most recent purchase price of the brownfield property that was paid by the county, municipality, or industrial development board.

SECTION 16. This act shall take effect July 1, 2020, the public welfare requiring it.