General Assembly **Amendment**

January Session, 2009 LCO No. **7833**

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Offered by:

SEN. MCKINNEY, 28th Dist.
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To: Subst. Senate Bill No. **1033** File No. 986 Cal. No. 337

"AN ACT ESTABLISHING A TAX CREDIT FOR GREEN BUILDINGS."

After the last section, add the following and renumber sections and internal references accordingly:

"Sec. 501. Section 12-217ii of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009, and applicable to income years commencing on or after January 1, 2009*):

(a) As used in this section:

(1) "Commissioner" means the Commissioner of Economic and Community Development;

(2) "Income year" means, with respect to entities subject to the insurance premiums tax under chapter 207, the corporation business tax under this chapter or the utilities company tax under chapter 212,

the income year as determined under each of said chapters, as the case may be;

(3) "Taxpayer" means a person subject to tax under chapter 207, this chapter or chapter 212;

(4) "New job" means a full-time job which (A) did not exist in this state prior to a taxpayer's application to the commissioner for an eligibility certificate under this section for a job creation credit, and (B) is filled by a new employee;

(5) "New employee" means a person hired by the taxpayer to fill a new full-time job. A new employee does not include a person who was employed in Connecticut by a related person with respect to the taxpayer during the prior twelve months;

(6) "Full-time job" means a job in which an employee is required to work at least thirty-five or more hours per week. A full-time job does not include a temporary or seasonal job;

(7) "Related person" means (A) a corporation, limited liability company, partnership, association or trust controlled by the taxpayer, (B) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer, (C) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer, or (D) a member of the same controlled group as the taxpayer; and

(8) "Control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership, limited liability company or association or of a beneficial

interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, other than paragraph (3) of said Section 267(c).

(b) (1) There is established a jobs creation tax credit program whereby a taxpayer who creates at least [ten new jobs] one new job in Connecticut may be allowed a credit against the tax imposed under chapter 207, this chapter or chapter 212, in an amount [up to sixty per cent of the income tax deducted and withheld from the wages of new employees and paid over to the state pursuant to chapter 229] equal to fifteen hundred dollars per new employee.

(2) For each new employee, credits may be granted for five successive years.

(3) The credit shall be claimed in the income year in which it is earned. Any credits not used in a tax year shall expire.

(c) Any taxpayer planning to claim a credit under the provisions of this section shall apply to the commissioner in accordance with the provisions of this section. The application shall be on a form provided by the commissioner, and shall contain sufficient information concerning the number of new jobs to be created, feasibility studies or business plans for the increased number of jobs, projected state and local revenue that might derive as a result of the job growth and other information necessary to demonstrate that there will be net benefits to the economy of the municipality and the state. The commissioner shall impose a fee for such application as the commissioner deems appropriate.

(d) The commissioner shall determine whether (1) the taxpayer making the application is eligible for the tax credit, and (2) the proposed job growth (A) is economically viable only with use of the tax credit, (B) would provide a net benefit to economic development and employment opportunities in the state, and (C) conforms to the state plan of conservation and development prepared pursuant to section 16a-24. The commissioner may require the applicant to submit such additional information as may be necessary to evaluate the application.

(e) (1) The commissioner, upon consideration of the application and any additional information the commissioner requires, may approve the credit application, in whole or in part, if the commissioner concludes that the increase in the number of jobs is economically viable only with the use of the tax credit and that the revenue generated due to economic development and employment opportunities created in the state exceeds the credit and any other credits to be taken. If the commissioner disapproves an application, the commissioner shall specifically identify the defects in the application and specifically explain the reasons for the disapproval. The commissioner shall render a decision on an application not later than ninety days after the date of its receipt by the commissioner.

(2) The total amount of credits granted to all taxpayers <u>pursuant to this section and to section 502 of this act,</u> shall not exceed ten million dollars in any one fiscal year.

(3) A credit under this section may be **[**granted to**]** <u>claimed by</u> a taxpayer for not more than five successive income years.

[(4) The commissioner may combine approval of a credit application with the exercise of any of the commissioner's other powers, including, but not limited to, the provision of other forms of financial assistance.

(f) Upon approving a taxpayer's credit application, the commissioner shall issue a credit allocation notice certifying that the credits will be available to be claimed by the taxpayer if the taxpayer otherwise meets the requirements of this section. No later than thirty days after the close of the taxpayer's income year, the taxpayer shall provide information to the commissioner regarding the number of new jobs created for the year and the income tax deducted and withheld from the wages of such new employees and paid over to the state for such year. The commissioner shall issue a certificate of eligibility that includes the taxpayer's name, the number of new jobs created, and the amount of the credit certified for the year. The certificate shall be issued by the commissioner sixty days after the close of the taxpayer's income year or thirty days after the information is provided, whichever comes first.

(g) The commissioner shall, upon request, provide a copy of the certificate of eligibility issued under subsection (f) of this section to the Commissioner of Revenue Services.]

[(h)] (f) (1) If (A) the number of new employees on account of which a taxpayer claimed the credit allowed by this section decreases to less than the number for which the [commissioner issued an eligibility certificate] taxpayer claimed a credit pursuant to this section during any of the four years succeeding the first full income year following [the issuance of an eligibility certificate] such year in which the credit was first taken, and (B) those employees are not replaced by other employees who have not been shifted from an existing location of the taxpayer or a related person in this state, the taxpayer shall be required to recapture a percentage of the credit allowed under this section on its tax return, as determined under the provisions of subdivision (2) of this subsection. [The commissioner shall provide notice of the required recapture amount to both the taxpayer and the Commissioner of Revenue Services.]

(2) If the taxpayer is required under the provisions of subdivision (1) of this subsection to recapture a portion of the credit during (A) the first of such four years, then ninety per cent of the credit allowed shall be recaptured on the tax return required to be filed for such year, (B) the second of such four years, then sixty-five per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year, (C) the third of such four years, then fifty per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year, (D) the fourth of such four years, then thirty per cent of the

credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year.

(g) (1) On and after July 1, 2009, and for income years commencing on or after January 1, 2009, any credit allowed pursuant to this section may be sold, assigned or otherwise transferred, in whole or in part, to one or more taxpayers, provided no credit, after issuance, may be sold, assigned or otherwise transferred, in whole or in part, more than three times.

(2) If a taxpayer sells, assigns or otherwise transfers a credit under this section to another taxpayer, the transferor and the transferee shall jointly submit written notification of such transfer to the commissioner not later than thirty days after such transfer. If such transferee sells, assigns or otherwise transfers a credit under this section to a subsequent transferee, such transferee and such subsequent transferee shall jointly submit written notification of such transfer to the commission not later than thirty days after such transfer. The notification after each transfer shall include the credit voucher number, the date of transfer, the amount of such credit transferred, the tax credit balance before and after the transfer, the tax identification numbers for both the transferor and the transferee, and any other information required by the commissioner. Failure to comply with this subdivision will result in a disallowance of the tax credit until there is full compliance on the part of the transferor and the transferee, and for a second or third transfer, on the part of all subsequent transferors and transferees.

(h) The provisions of section 12-233 shall apply to any tax return claiming the credit authorized pursuant to this section.

Sec. 502. (NEW) (*Effective July 1, 2009, and applicable to taxable years commencing on or after January 1, 2009*) (a) As used in this section:

(1) "Commissioner" means the Commissioner of Economic and Community Development;

(2) "Taxpayer" means a person subject to tax under chapter 229 of the general statutes;

(3) "New job" means a full-time job which (A) did not exist in this state prior to a taxpayer's application to the commissioner for an eligibility certificate under this section for a job creation credit, and (B) is filled by a new employee;

(4) "New employee" means a person hired by the taxpayer to fill a new full-time job. A new employee does not include a person who was employed in Connecticut by a related person with respect to the taxpayer during the prior twelve months;

(5) "Full-time job" means a job in which an employee is required to work at least thirty-five or more hours per week. A full-time job does not include a temporary or seasonal job;

(6) "Related person" means (A) a corporation, limited liability company, partnership, association or trust controlled by the taxpayer, (B) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer, (C) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer, or (D) a member of the same controlled group as the taxpayer;

(7) "Control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership, limited liability company or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the Internal Revenue Code of 1986, or any subsequent corresponding

internal revenue code of the United States, as from time to time amended, other than paragraph (3) of said Section 267(c); and

(8) "Taxable year" means taxable year, for federal income tax purposes.

(b) (1) There is established a jobs creation tax credit program whereby a taxpayer who creates at least one new job in Connecticut may be allowed a credit against the tax imposed under chapter 229 of the general statutes, in an amount equal to fifteen hundred dollars per new employee.

(2) For each new employee, credits may be granted for five successive years.

(3) The credit shall be claimed in the taxable year in which it is earned. Any credits not used in a tax year shall expire.

(c) Any taxpayer planning to claim a credit under the provisions of this section shall apply to the commissioner in accordance with the provisions of this section. The application shall be on a form provided by the commissioner, and shall contain sufficient information concerning the number of new jobs to be created, feasibility studies or business plans for the increased number of jobs, projected state and local revenue that might derive as a result of the job growth and other information necessary to demonstrate that there will be net benefits to the economy of the municipality and the state. The commissioner shall impose a fee for such application as the commissioner deems appropriate.

(d) The commissioner shall determine whether (1) the taxpayer making the application is eligible for the tax credit, and (2) the proposed job growth (A) is economically viable only with use of the tax credit, (B) would provide a net benefit to economic development and employment opportunities in the state, and (C) conforms to the state plan of conservation and development prepared pursuant to section 16a-24 of the general statutes. The commissioner may require the applicant to submit such additional information as may be necessary to evaluate the application.

(e) (1) The commissioner, upon consideration of the application and any additional information the commissioner requires, may approve the credit application, in whole or in part, if the commissioner concludes that the increase in the number of jobs is economically viable only with the use of the tax credit and that the revenue generated due to economic development and employment opportunities created in the state exceeds the credit and any other credits to be taken. If the commissioner disapproves an application, the commissioner shall specifically identify the defects in the application and specifically explain the reasons for the disapproval. The commissioner shall render a decision on an application not later than ninety days after the date of its receipt by the commissioner.

(2) The total amount of credits granted to all taxpayers pursuant to this section and section 12-217ii of the general statutes, as amended by this act, shall not exceed ten million dollars in any one fiscal year.

(3) A credit under this section may be claimed by a taxpayer for not more than five successive taxable years.

(f) (1) If (A) the number of new employees on account of which a taxpayer claimed the credit allowed by this section decreases to less than the number for which the taxpayer claimed a credit pursuant to this section during any of the four years succeeding the first full taxable year following such year in which the credit was first taken, and (B) those employees are not replaced by other employees who have not been shifted from an existing location of the taxpayer or a related person in this state, the taxpayer shall be required to recapture a percentage of the credit allowed under this section on its tax return, as determined under the provisions of subdivision (2) of this subsection.

(2) If the taxpayer is required under the provisions of subdivision (1) of this subsection to recapture a portion of the credit during (A) the

first of such four years, then ninety per cent of the credit allowed shall be recaptured on the tax return required to be filed for such year, (B) the second of such four years, then sixty-five per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year, (C) the third of such four years, then fifty per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year, (D) the fourth of such four years, then thirty per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year.

(g) (1) On and after July 1, 2009, and for income years commencing on or after January 1, 2009, any credit allowed pursuant to this section may be sold, assigned or otherwise transferred, in whole or in part, to one or more taxpayers, provided no credit, after issuance, may be sold, assigned or otherwise transferred, in whole or in part, more than three times.

(2) If a taxpayer sells, assigns or otherwise transfers a credit under this section to another taxpayer, the transferor and the transferee shall jointly submit written notification of such transfer to the commissioner not later than thirty days after such transfer. If such transferee sells, assigns or otherwise transfers a credit under this section to a subsequent transferee, such transferee and such subsequent transferee shall jointly submit written notification of such transfer to the commission not later than thirty days after such transfer. The notification after each transfer shall include the credit voucher number, the date of transfer, the amount of such credit transferred, the tax credit balance before and after the transfer, the tax identification numbers for both the transferor and the transferee, and any other information required by the commissioner. Failure to comply with this subdivision will result in a disallowance of the tax credit until there is full compliance on the part of the transferor and the transferee, and for a second or third transfer, on the part of all subsequent transferors and transferees.

(h) The provisions of section 12-728 of the general statutes shall apply to any tax return claiming the credit authorized pursuant to this section."