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1997 Survey of Rhode Island Law: Legislation: Taxation: An Act Relating to Taxation - The Investment Tax Credit

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Taxation. *An Act Relating to Taxation—The Investment Tax Credit.* Provides that banks and insurance companies are now included under the Act. Additionally, the Act allows for leased assets to be qualified for tax credit under the Act. Effective, July 1, 1997. 1997 R.I. Pub. Laws ch. 57.

This legislation (the Act) allows for a taxpayer's leased assets of tangible personal property erected after January 1, 1998 to qualify the taxpayer for an investment tax credit (the Credit). The Act states that the amount of the Credit shall be ten percent of the cost or other basis for federal income-tax purposes.¹ In addition, the Act makes allowances for "qualified amounts for leased assets, of tangible personal property and other tangible property excluding buildings and structural components of buildings, motor vehicles and furniture that have a useful life of four years or more."²

The Act provides for the inclusion of computers, software and telecommunications hardware, provided the useful life of the property is at least four years.³ In determining the Credit for leased property, the fair market value of the property at the inception of the lease multiplied by the portion of the depreciable life of the property outlined in the term of the lease shall be the Credit.⁴

Thirdly, the Act further defines a "qualified taxpayer" as any business described in certain portions of the Technical Committee on Industrial Classification, Office of the Statistical Standards, Executive Office of the President, United States Bureau of the Budget (SIC Code). The portions enumerated under the Act are: groups 20 through 39, 50 and 51; 60 through 67, 73, 76; 80 through 82 and 87 and 89 as well as group 781.⁵

1. R.I. Gen. Laws § 44-31-1(a) (Supp. 1997).

2. The Act also allows a deduction for property purchased under 26 U.S.C. § 179(d) or acquired by lease as described in subsection (b)(3) of the Act.

3. R.I. Gen. Laws § 44-31-1(3)(b) (Supp. 1997).

4. *See id.* § 44-31-1(3)(c).

5. The United States Standard Industrial Classifications recognized in the Act include: "(1) 2. . . Manufacturing with subsections consisting of: 20. .food and kindred products, 21. .tobacco products, 22. .textile mill products, 23. .apparel and other finished products made from fabrics, 24. .lumber, 25. .furniture, 26. .paper, 27. .printing and publishing, 28. .chemical, 29. .petroleum and refining, 30. .rubber, 31. .leather, 32. .stone and clay products, 33. .primary metal industries, 34. .fabricated metal, 35. .industrial and commercial machinery, 36. .electronic products, 37. .transportation equipment, 38. .measuring and analyzing equipment and 39. .miscellaneous manufacturing industries; (2) 5. . .Wholesale Trade which includes: 50. .durable and 51. .nondurable goods; (3) 6. . .Finance, Insurance and

The businesses must meet several minimum-wage and gross-revenue criteria in order to be eligible for the Credit under the Act.⁶ The Act also places minimum requirements on out-of-state gross revenues for certain SIC Code groupings.⁷ The Act does not allow the Credit to apply to buildings or structural components of buildings.⁸

Finally, with respect to favorable results under the new provisions, the Act states that tax liability cannot be decreased more than fifty percent of what otherwise would be allowed before the Act.⁹ Corporations may not lessen their liability below the minimum requirements of section 44-11-2(e) of the Rhode Island General Laws.¹⁰ The Act still retains a seven-year pour-over provision which allows the taxpayer to carryover any additional tax benefit in excess of the statutory provision for up to seven years.¹¹ However, if a taxpayer is disqualified because of a change in payer status, then the taxpayer may not recapture a lost tax credit.¹² Finally, the Act provides that similar rules for leased property will be applied as in other parts of the Act when determining the amount of recapture when a lease terminates prematurely.¹³

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Real Estate consisting of: 60. .depository and 61. .nondepository institutions, 62. .security and commodity brokers, 63. .insurance carriers, 64. .real estate and holding and 65. .other investment offices; (4) 7. .Services including: 73. .business services, 76. .miscellaneous repair services, 781.motion picture production and services, 80. .health services, 81. .legal services, 87. .engineering , accounting, research management and related, 89. .services not elsewhere classified." *All Canada Business Registry, U.S. Standard Industrial Classifications* (visited Mar. 11, 1998) <<http://www.acbr.com/sic.htm>>.

6. R.I. Gen. Laws § 44-31-1(3)(d) (Supp. 1997).

7. *Id.* § 44-31-1(3)(d)(2)(A). The Act places requirements on groups 50, 51, 60 through 67, 73, 76, 80 through 82, 89 and 781. *Id.*

8. *Id.* § 44-31-1(c).

9. *Id.* § 44-31-1(d).

10. *See id.* Section 44-11-2 of the Rhode Island General Laws generally states that each corporation shall annually pay nine percent of its net income to the state. R.I. Gen. Laws § 44-11-2 (1956) (1995 Reenactment).

11. *Id.*

12. *See id.* § 44-31-1(f).

13. *Id.*