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HOUSE BILL NO. 401

House Amendments in [] — February 17, 2000

A BILL to amend and reenact § 58.1-339.4 of the Code of Virginia, relating to qualified equity and subordinated debt investments tax credit.

Patrons—Bennett, Clement, Diamonstein, May, Plum and Purkey; Senators: Hawkins, Howell and Ticer

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-339.4 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within five years from the date of issuance.

"Qualified business" means a business which (i) has annual gross revenues of no more than five million dollars in its most recent fiscal year, (ii) is domiciled in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, and (iv) is not primarily engaged, or is not primarily organized to engage, in any of the following types of businesses:

1. Banks;
2. Savings and loan institutions;
3. Credit or finance;
4. Financial, broker or investment;
5. Businesses organized for the primary purpose of rendering professional services as defined in Chapter 7 (§13.1-542 et seq.) of Title 13.1;
6. Accounting;
7. Government, charitable, religious or trade institutions or organizations;
8. Conventional coal, oil and gas, and mineral exploration;
9. Insurance;
10. Real estate design or engineering;
11. Construction or construction contracting;
12. Business consulting or business brokering;
13. Residential housing, real estate brokerage, sale or leasing businesses, or real estate development;

or

14. Any other business which the Department of Taxation determines by regulation to be against the public interest, the purposes of this section or in violation of the law.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to ~~fifty~~ twenty-five percent of such taxpayer's qualified investments during such taxable year.

C. The amount of any credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.

D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) ~~\$50,000~~ an amount equal to ten percent of the amount of tax credits available in a calendar year as provided in subsection E. Any credit not usable for the taxable

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60 year in which the credit was allowed may be, to the extent usable, carried over for the next fifteen
61 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs
62 first.

63 E. The amount of tax credits available under this section for a calendar year shall be ~~five~~ *twenty*
64 million dollars.

65 F. Unless the taxpayer transfers the equity received in connection with a qualified investment as a
66 result of (i) the liquidation of the qualified business issuing such equity, (ii) the merger, consolidation or
67 other acquisition of such business with or by a party not affiliated with such business, or (iii) the death
68 of the taxpayer, any taxpayer that fails to hold such equity for at least ~~five~~ *two* full calendar years
69 following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this
70 section shall forfeit both used and unused tax credits and shall pay the Department of Taxation a penalty
71 equal to all of the tax credits allowed to such taxpayer pursuant to this section, with interest at the rate
72 of one percent per month, compounded monthly, from the date the tax credits were allocated to the
73 taxpayer. The Department of Taxation may abate such penalty upon written request if the taxpayer
74 establishes reasonable cause for the failure to hold such equity for at least five years. The Department of
75 Taxation shall deposit any amounts received under this subsection into the general fund of the
76 Commonwealth.

77 G. ~~Prior to December 31, 1998, The Department of Taxation shall [promulgate regulations in~~
78 ~~accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) adopt guidelines]~~ (i) establishing
79 procedures for claiming the tax credit provided by this section and (ii) ~~providing for the allocation of~~
80 ~~tax credits among taxpayers requesting credits in the event the amount of credits for which requests are~~
81 ~~made exceeds the available amount of credits in any one calendar year, [In preparing such guidelines,~~
82 ~~the Department shall not be subject to the provisions of the Administrative Process Act (§ 9-6.14:1 et~~
83 ~~seq.)] .~~

84 H. *Within 280 days of enactment of the provisions of this subsection, the Department of Taxation*
85 *shall adopt [~~regulations~~ guidelines] which implement the following: (i) the credit shall be made*
86 *available in quarterly installments of twenty-five percent of the total annual credit, as of the first*
87 *business day of each calendar quarter; (ii) a taxpayer claiming credit under this section shall be*
88 *entitled to receive a credit for a particular quarter on a first-come, first-served basis, but the amount a*
89 *taxpayer shall be entitled to claim in a quarter shall not to exceed the amount equal to 2.5 percent of*
90 *the total annual credit available as provided in subsection E; however, to the extent a taxpayer's credit*
91 *exceeds such amount in a quarter, such exceeded credit may be applied in the succeeding quarter; and*
92 *(iii) if all of the credits available in a particular quarter are not claimed by taxpayers, such credits*
93 *shall be lost.*

94 [**2. That the provisions of this act shall be effective for taxable years beginning on and after**
95 **January 1, 2001.]**