

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 614

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

[H 282]

Approved April 12, 2004

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~~ *three* years from the date of issuance.

"Qualified business" means a business which (i) has annual gross revenues of no more than ~~five~~ \$3 million ~~dollars~~ in its most recent fiscal year, (ii) ~~is domiciled~~ *has its principal office or facility* in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) ~~has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and~~ (v) 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~~ 50 percent of such taxpayer's qualified investments during such taxable year. *No credit shall be allowed to any taxpayer that has committed capital under management in excess of \$10 million and engages in the business of making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member or owner of an entity that engages in such business.*

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. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next ~~fifteen~~ 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

E. The amount of tax credits available under this section for a calendar year shall be ~~five~~ \$5 million dollars.

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

G. Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the available amount of credits in any one calendar year. *Notwithstanding the foregoing, the Department of Taxation shall permit an application for certification as a qualified business to be filed at any time during the calendar year regardless of when the investment was made during the calendar year.*

2. That the provisions of this act shall be effective for taxable years beginning on or after January 1, 2005, except as otherwise provided in this act.