

961640260

HOUSE BILL NO. 810

Offered January 22, 1996

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.2, relating to creation of a tax credit for qualified equity and subordinated debt investments in qualified Virginia small business ventures.

Patrons—Hall, Brickley, Cantor, Diamonstein, Hamilton, McEachin and Nixon; Senators: Howell, Lambert and Martin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.2 as follows:

§ 58.1-339.2. Tax credit for qualified equity and subordinated debt investments.

A. For taxable years beginning on or after January 1, 1996, through December 31, 1999, an individual shall be entitled to a credit against the tax levied pursuant to § 58.1-320, and a corporation shall be entitled to a credit against the tax levied pursuant to § 58.1-400, in an amount equal to twenty-five percent of such taxpayer's qualified equity investment or qualified subordinated debt investment in a qualified Virginia small business venture.

B. The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. For purposes of this section:

"Qualified equity investment" means common stock or preferred stock, regardless of class or series, of a corporation; a limited liability 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 subordinated debt investment" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms requires 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 nationally or state-chartered banking or savings and loan institutions.

An "equity investment" or "subordinated debt investment" shall not be qualified if the taxpayer that holds such investment, or any of such taxpayer's family members, or any corporation or other entity affiliated with such taxpayer, receives compensation from the issuer of the investment in exchange for services provided to the issuer as an employee, officer, director, manager, independent contractor or otherwise; however, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

A taxpayer shall be deemed to have made a qualified equity or qualified subordinated debt investment to the extent of the cash or fair market value of property provided in exchange for such investment.

"Qualified Virginia small business venture" means a corporation, general or limited partnership or limited liability company that (i) has, and represents that it will retain for at least three years, its headquarters and principal business operations within the Commonwealth; (ii) does not primarily engage in one or more of the businesses listed below, and is not organized for purposes of primarily engaging in any such business; (iii) has annual gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars or less on a consolidated basis.

A business may not be a "qualified Virginia small business venture" if it primarily engages, or is organized primarily to engage, in any: (i) business or occupation licensed or regulated under Title 54.1 (professions and occupations), Title 38.2 (insurance), or Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 (stockbrokers, investment advisors, etc.); (ii) purchase; sale or development; or purchasing, selling or holding for investment, of securities or real property; (iii) construction or construction contracting; (iv) business consulting or business brokering; or (v) acquisition of the ownership interests in or assets of one or more existing businesses.

D. The State Corporation Commission shall certify annually to the Department of Taxation that a taxpayer claiming the credit has made a qualified equity or qualified subordinated debt investment in a qualified Virginia small business venture; no such credit may be claimed unless the certification has been obtained. The Commission may require that a taxpayer requesting certification submit records and

INTRODUCED

HB810

60 other documents indicating that the requirements of this section and applicable regulations have been
61 satisfied.

62 E. Failure to obtain one or more recertifications shall result in forfeiture of unused tax credits, but
63 shall not result in forfeiture of tax credits not previously taken.

64 A taxpayer's failure to hold a qualified equity investment for at least five years, or a qualified
65 subordinated debt investment for at least three years, shall result in the forfeiture of both used and
66 unused tax credits, unless the taxpayer transfers the investment as a result of the liquidation of the
67 issuer; the merger, consolidation or other acquisition of the issuer by a party not affiliated with the
68 issuer; or the death or liquidation of the taxpayer.

69 F. The amount of the credit for each taxpayer per qualified equity or qualified subordinated debt
70 investment in a qualified Virginia small business venture shall not exceed the lesser of (i) the tax
71 imposed for such taxable year or (ii) \$25,000 for an individual and \$50,000 for a corporation. Any
72 credit not usable for the taxable year the credit was allowed may be, to the extent usable, carried over
73 for the next five succeeding taxable years until the total amount of the tax credit has been taken.

74 G. The amount of tax credits available under this section for a fiscal year shall be five million
75 dollars. If the total amount of certifications for credits exceeds five million dollars, the Department of
76 Taxation shall allocate the credit under this section among all certified taxpayers on a proportional
77 basis based on the size of the credit each taxpayer is entitled to take.

78 I. The State Corporation Commission shall promulgate regulations relating to (i) the requirements
79 for claiming the credit hereunder, (ii) the requirements and procedures applicable to the annual
80 certification process, (iii) the procedure for giving notice to certified taxpayers of an allocation of the
81 credit, and (iii) any other regulations which more fully implement the intent of this section, and may
82 adopt such additional requirements and procedures relating to the credit not inconsistent with this
83 section.