

**DEPARTMENT OF TAXATION  
2008 Fiscal Impact Statement**

**REVISED  
1/14/08**

**1. Patron** Harry R. Purkey

**3. Committee** House Finance

**4. Title** Income Tax: Nanotechnology Qualified  
Equity and Subordinated Debt Investments  
Tax Credit

**2. Bill Number** HB 125

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would create an income tax credit for individuals, estates, and trusts that make qualified investments in nanotechnology businesses. The credit would be equal to fifty percent of the qualified investment.

A "qualified investment" would be defined as a cash investment in a qualified business in the form of equity or subordinated debt. A "qualified business" would be defined as a business that (i) has its principal office or facility in the Commonwealth, (ii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, and (iii) is primarily engaged, or is primarily organized to engage, in the research, development, or commercialization of nanotechnology with applications in energy, conservation, and the environment, microelectronics, or lifespan biology and medicine.

The amount of the tax credit would be limited to the lesser of the tax imposed for the taxable year or \$50,000. Taxpayers would be allowed to carry over any unused credit amounts for fifteen years or until the total amount of the credit was taken, whichever occurred first. The total amount of credits that could be granted in any taxable year would be limited to \$15 million.

This bill would be effective for taxable years beginning on or after January 1, 2009.

**6. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

**7. Budget amendment necessary:** Yes. (See Line 8.)

Page 1, Revenue Estimates

## **8. Fiscal implications:**

### Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

### Revenue Impact

This bill would result in a general fund revenue loss of an unknown magnitude, but it would likely be less than \$2 million per fiscal year, starting in FY 2011. This estimate was determined through an analysis of the current nanotechnology businesses in Virginia and by using data regarding a credit of similar nature, the current Qualified Equity and Subordinated Debt Investment Tax Credit. The analysis revealed that currently no more than twenty-one companies meet the criteria for a "qualified business" as established by this bill. Please note that, because the total amount of credits that could be granted in any calendar year is limited, the maximum revenue impact of this bill would be \$15 million per year.

To implement this credit, a reduction of an equal amount of general fund support from other areas in the introduced budget would be required. Given the magnitude of funding involved, funding would need to be transferred from areas with significant general fund support.

## **9. Specific agency or political subdivisions affected:**

Department of Taxation

## **10. Technical amendment necessary: Yes.**

In order to clarify when a taxpayer may transfer the equity without penalty, the following technical amendments are suggested:

Page 1, Line 54, after F.

Strike: Any taxpayer that transfers the equity received in connection with a qualified and fails to hold such equity

Insert: Any taxpayer that fails to hold the equity received in connection with a qualified investment

In order to prevent taxpayers from claiming this credit and the Qualified Equity and Subordinated Debt Credit, the following technical amendment is suggested:

Page 2, Line 72, after year.

Insert: I. No taxpayer may claim a credit pursuant to this section for any investment for which a credit has been claimed under § 58.1-339.4.

## **11. Other comments:**

### Qualified Equity and Subordinated Debt Investment Tax Credit

The Qualified Equity and Subordinated Debt Investment Tax Credit (the "QESDITC") grants an income tax credit to individuals, trusts and estates in an amount equal to 50% of "qualified investments" made in a qualified Virginia small business venture. The credit provides an incentive for capital investment in small businesses located in Virginia.

The aggregate amount of the credit available to a taxpayer in a taxable year is limited to the lesser of the tax imposed for such taxable year or \$50,000. Unused credits can be carried forward to offset future income tax liability for up to 15 taxable years. While Va. Code § 58.1-339.4 states that the total amount of credits that may be granted in a calendar year is \$5 million, the budget currently limits that amount to \$3 million.

### Proposal

This bill would create an income tax credit for individuals, estates, and trusts that make qualified investments in qualified businesses. The credit would be equal to fifty percent of the qualified investment.

Except in certain specified cases, taxpayers who failed to hold the qualified investment for at least three years would be required to forfeit the used and unused credits and would have to pay TAX interest on the total allowed credits at the rate of 1% per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. TAX would be required to deposit any amounts received under this subsection into the general fund of the Commonwealth.

A "qualified investment" would be defined as a cash investment in a qualified business in the form of equity or subordinated debt. "Equity" and "subordinated debt" would have the same meanings as the terms are defined for the purposes of the QESDITC.

An investment would not qualify if the taxpayer who held the investment, or any of the taxpayer's family members, or any entity affiliated with the taxpayer, received or had received compensation from the qualified business in exchange for services provided to the business as an employee, officer, director, manager, or independent contractor within one year before or after the date of the investment. The reimbursement of reasonable expenses incurred would not be deemed to be compensation.

A "qualified business" would be defined as a business that (i) has its principal office or facility in the Commonwealth, (ii) is engaged in business primarily in or does substantially

all of its production in the Commonwealth, and (iii) is primarily engaged, or is primarily organized to engage, in the research, development, or commercialization of nanotechnology with applications in energy, conservation, and the environment, microelectronics, or lifespan biology and medicine.

The amount of the tax credit would be limited to the lesser of the tax imposed for the taxable year or \$50,000. Taxpayers would be allowed to carry over any unused credit amounts for fifteen years or until the total amount of the credit was taken, whichever occurred first. The total amount of credits that could be granted in any taxable year would be limited to \$15 million.

The amount of the credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company would be required to be allocated to the individual partners, shareholders, or members as they determined.

TAX would be required to promulgate regulations regarding the procedures for claiming this credit and the process for allocating the credit if the requests were to exceed \$15 million. These regulations would be required to be completed prior to December 31, 2008.

This bill would be effective for taxable years beginning on or after January 1, 2009.

cc : Secretary of Finance

Date: 1/14/2008 AMS  
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