

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** G. Manoli Loupassi

3. **Committee** House Finance

4. **Title** Income Tax: Small Business Investment Tax
Credit

2. **Bill Number** HB 2 _____

House of Origin:

☒ **Introduced**

☐ **Substitute**

☐ **Engrossed**

Second House:

☐ **In Committee**

☐ **Substitute**

☐ **Enrolled**

5. **Summary/Purpose:**

This bill would provide a tax credit for small businesses that make eligible investments of at least \$10,000. The investments would be required to be for the purposes of (i) acquiring personal property for use only by the business, and (ii) constructing, improving, or upgrading, real estate used by the business. The credit would be equal to 10% of the taxpayer's eligible investments made on or after July 1, 2010, but before July 1, 2011. This credit would be allowed to be carried forward for up to five taxable years.

This bill would also provide that "eligible investments" would not include (i) the acquisition of or expenses paid for motor vehicles used in the business, or (ii) the purchase or rental of real estate.

This bill would be effective for taxable years beginning on or after January 1, 2010.

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

7. **Budget amendment necessary:** Yes.
Page1, Revenue Estimate

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

The revenue impact of this bill is unknown, but potentially significant. In order to create an estimate, preliminary 2009 data from the US Bureau of Labor Statistics Quarterly Census of Employment and Wages was used; and assumptions were made regarding the percentage of businesses willing and able to make eligible investments during the year and the amount of the average investments. Analysis of this data yields a likely estimated revenue loss of between \$30 million and \$90 million.

This bill was analyzed under the assumption that it will be amended to change the “and” to “or” on Line 17. In addition, it is important to note that this analysis ignores the revenue impact of large businesses and/or high net worth individuals creating special purpose entities to take advantage of the credit. Because this credit may flow through to individual partners, members and shareholders, it is possible that this will occur. If so, the revenue impact of this bill would increase.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

To clarify that “eligible investments” could include either (i) acquiring personal property for use only by the business, or (ii) constructing, improving, or upgrading, real estate used by the business, the following technical amendment is suggested:

Page 1, Line 17, after the business,

Strike: and

Insert: or

11. Other comments:

Federal Small Business Administration Definitions

According to the Small Business Administration (“SBA”), a small business is defined as a business establishment or enterprise that is organized for profit, with a place of business in the United States, and which operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. Further, the business establishment or enterprise cannot be dominant in its field, on a national basis. Finally, the business establishment or enterprise must meet the numerical small business size standard for its industry.

The SBA has established a size standard for most industries in the U.S. economy. The most common size standards are as follow:

- 500 employees for most manufacturing and mining industries
- 100 employees for all wholesale trade industries

- \$6.5 million for most retail and service industries
- \$31 million for most general & heavy construction industries
- \$13 million for all special trade contractors
- \$0.75 million for most agricultural industries

About one-fourth of industries have a size standard that is different from these levels. They vary from \$0.75 million to \$32.5 million for size standards based on average annual revenues and from 100 to 1500 employees for size standards based on number of employees.

Proposed Legislation

This bill would provide a tax credit for eligible investments of at least \$10,000 that are made by small businesses. The credit would be equal to 10% of the taxpayer's eligible investments made on or after July 1, 2010, but before July 1, 2011. This credit would be allowed to be carried forward for up to five taxable years.

"Eligible investments" would mean investments made in the Commonwealth by small businesses beginning July 1, 2010, but before July 1, 2011, for the purpose of (i) acquiring personal property for use only by the business, and (ii) constructing, improving, or upgrading, real estate used by the business.

"Small business" would mean any business having 500 or fewer employees.

This bill would also provide that "eligible investments" would not include (i) the acquisition of or expenses paid for motor vehicles used in the business, or (ii) the purchase or rental of real estate.

Finally, this bill would provide that credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

This bill would be effective for taxable years beginning on or after January 1, 2010.

Similar Legislation

House Bill 1359 would provide a tax credit to a small business that makes a "new investment" in machinery and equipment. The credit would be equal to 20% of the small business's new investment for the taxable year, not to exceed \$10,000 in a taxable year.

cc : Secretary of Finance
Date: 1/24/2010 TLG
HB2F161