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SENATE BILL NO. 344

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 23, 2012)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.13, relating to income tax; small business investment tax credits.

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 58.1-339.13 as follows:

§ 58.1-339.13. Small business investment tax credit.

A. As used in this section, unless the context requires a different meaning:

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320. The term shall not include an individual who 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.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"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 the 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.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year, (ii) 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 national or state-chartered banking or savings and loan institutions, (v) has no more than 50 employees who are employed within the Commonwealth, and (vi) has been designated as such by the Department pursuant to the provisions of this section.

"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, 2012, but before January 1, 2015, an eligible investor that makes a qualified investment in a small business that has been certified by the Department pursuant to subsection C shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to 10 percent of the qualified investment. An eligible investor shall be allowed a tax credit for each qualified investment that is made to one or more small businesses during the taxable year. Any credit not used for the taxable year may be refunded to the taxpayer.

C. A small business shall apply with the Department to be certified as a small business in order to receive qualified investments eligible for the credit pursuant to this section and shall provide to the Department such information as the Department deems necessary to demonstrate that it meets the qualifications set forth in subsection A. A small business shall apply each year in order to be certified as a small business. No credit shall be allocated to an eligible investor pursuant to a small business not first certified by the Department.

D. Any eligible investor seeking to claim a credit pursuant to this section shall submit an application to the Department. Alternatively, a small business may apply to the Department on behalf of an eligible investor. The Department shall determine the amount of the credit allowable to the eligible investor for the taxable year. In issuing credits under this section, the Department shall provide a written certification to the eligible investor, which shall include the amount of the credit approved by the Department. The eligible investor shall attach the certification to his income tax return.

E. Unless the eligible investor transfers the equity received in connection with a qualified investment as a result of (i) the liquidation of the small 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 eligible investor, any eligible investor that fails to hold such equity for at least two years

60 shall forfeit both used and unused tax credits and shall pay the Department interest on the total allowed
61 credits at the rate of one percent per month, compounded monthly, from the date the tax credits were
62 allocated to the taxpayer. The Department shall deposit any amounts received under this subsection into
63 the general fund of the Commonwealth.

64 F. The total aggregate amount of credits available for each fiscal year of the Commonwealth
65 pursuant to this section shall not exceed \$1.5 million. All credits shall be issued in the order that each
66 completed application is received by the Department.

67 G. An eligible investor shall not be allowed a tax credit pursuant to this section for any investment
68 in a small business for which the eligible investor has been allowed a credit pursuant to § 58.1-339.4.

69 H. For purposes of this section, the amount of any credit attributable to a partnership, electing small
70 business corporation (S corporation), or limited liability company shall be allocated to the individual
71 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such
72 business or entity.

73 I. The Department shall establish policies and procedures relating to (i) the certification of small
74 businesses, (ii) the application for the allocation of credits, (iii) the recapture of credits claimed with
75 interest in the event that the qualified investment is not held for the requisite period set forth in
76 subsection E, and (iv) the allocation of credits among eligible investors in the order in which
77 applications are received. Such procedures may include provisions permitting an application for credits
78 received after all of the credits allowable for the year have been allocated to be allocated credits that
79 may be claimed in a subsequent taxable year, up to the maximum amount of credits allowable for such
80 subsequent taxable year. Such policies and procedures shall be exempt from the Administrative Process
81 Act (§ 2.2-4000 et seq.).