DEPARTMENT OF TAXATION
2013 Fiscal Impact Statement

1. Patron Jennifer L. McClellan

2. Bill Number HB 1872
House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Investments Eligible for Tax Credits

5. Summary/Purpose:

This bill would prohibit an investment transacted via an online general solicitation, or via an online broker or funding portal, from being eligible for any income tax credit unless the investment is made via a qualified website that is registered with the Department of Taxation ("the Department"). This bill would be effective on or after January 1, 2014.

6. Budget amendment necessary: Yes
Item 273, Department of Taxation

7. No Fiscal Impact (See Line 8.)
7a. Expenditure Impact:

Fiscal Year	***Dollars***	***Positions***	***Fund***
2012-13	$0	0	GF
2013-14	$75,800	1	GF
2014-15	$73,100	1	GF
2015-16	$73,100	1	GF
2016-17	$73,100	1	GF
2017-18	$73,100	1	GF
2018-19	$73,100	1	GF

8. Fiscal implications:

Administrative Costs

The Department would require additional funding of $75,800 in Fiscal Year 2014 and $73,100 in each fiscal year thereafter in order to implement the provisions of this bill. Such funding would include funding for one FTE to administer the registration of qualified websites.

Revenue Impact

This bill would have no impact on General Fund revenue.

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

   Department of Taxation

10. **Technical amendment necessary:** No.

11. **Other comments:**

   Qualified Equity and Subordinated Debt Investments Tax Credit

   The Qualified Equity and Subordinated Debt Investments Tax Credit allows an individual income tax credit equal to 50 percent of a taxpayer's qualified investments. No such tax credit is 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 tax credit as a partner, shareholder, member, or owner of an entity that engages in such business.

   The aggregate amount of the tax credit for each taxpayer may not exceed the lesser of the amount of tax imposed on them for such taxable year or $50,000. Any tax credit that is not usable in the taxable year in which the tax credit was first allowed, may be carried over for the next fifteen succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

   The total amount of tax credits is capped at $4 million for Taxable Year 2013. One-half of the amount of available tax credits must be allocated exclusively for tax credits for commercialization investments. However, if the amount of tax credits requested for commercialization investments is less than one-half of the total amount of available tax credits, then the balance of such tax credits must be allocated for non-commercialization investments.

   If a taxpayer fails to hold equity received in connection with a qualified investment for at least three full calendar years following the calendar year for which a tax credit for a qualified investment is allocated, then the taxpayer will be required to forfeit both the used and unused tax credits and to pay the Department of Taxation interest on the total allowed tax credits from the date the tax credits were allocated to the taxpayer. Exceptions include transfers of such equity that were the 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.

   Proposed Legislation

   This bill would prohibit an investment transacted via an online general solicitation, or via an online broker or a funding portal, from being eligible for any income tax credit unless the investment is made via a qualified website that is registered with the Department. This bill would be effective on or after January 1, 2014.

   "Qualified website" would be defined as a website that (i) allows accredited investors to participate in general solicitation transactions by an issuer that meet the requirements of §

4(a)(6) of the Securities Act of 1933, P.L. 112-106, or (ii) is an online broker or funding portal registered with the federal Securities Exchange Commission pursuant to § 4A(a) of the Securities Act of 1993, P.L. 112-106.

This bill would require a qualified website to register with the Department of Taxation on a form provided by the Department in order for investments made through the qualified website to qualify for the tax credit. The Department would be required to publish a list of qualified websites through which investments eligible for any tax credit may be made by taxpayers.

In addition to meeting the requirements of any and all federal laws and regulations concerning general solicitations, or online brokers or funding portals, in order to register, qualified websites would be required to meet additional requirements set forth by the Department in guidelines. This bill would require the Department to publish guidelines that would be exempt from the Administrative Process Act, by November 15, 2013. The guidelines would include, at a minimum, a requirement that the qualified website collect and make available to potential investors information concerning the entity seeking investments through the qualified website, such as (i) contact information for the entity, (ii) information concerning the business structure and history of the entity, (iii) the entity's fundraising goals and the types of funding sought by the entity, (iv) any terms relating to potential investments, (v) product or service details concerning how the entity plans to utilize the investments, and (vi) other information deemed relevant to the entity's business model or marketing strategy. The Department would be required to act within 45 days of receiving an application to include the qualified website on the list or to deny the application. If an application is denied, such denial would be required to be in writing and required to include the reasons for denial.

An investment would be required to meet all of the criteria set forth in the specific statute authorizing the tax credit in order for the taxpayer making the investment to receive the tax credit. The use of a qualified website registered with the Department to conduct a transaction would not make an investment eligible or ineligible for any tax credit.

cc : Secretary of Finance

Date: 1/17/2013 MTH
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