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SENATE BILL NO. 749

Offered January 22, 2016

A BILL to amend and reenact § 58.1-339.4 of the Code of Virginia, relating to Qualified Equity and Subordinated Debt Investments Tax Credit.

Patron—McDougle

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-339.4 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership 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 three years from the date of issuance.

"Qualified business" means a business which (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 chartered banking or savings and loan institutions), and (v) is primarily engaged, or is primarily organized to engage, in the fields of advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"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 such 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.

"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, 1999, *but before January 1, 2021,* a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such taxpayer's qualified investments during such taxable year. No credit shall be 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 credit as a partner, shareholder, member or owner of an entity that engages in such business.

C. The amount of any credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.

D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) $50,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

E. The amount of tax credits available under this section for a calendar year shall be ~~$5 million~~ *(i) $5 million, or such amount as was provided in the general appropriation act, for years beginning prior to January 1, 2016, and (ii) $9 million for years beginning on and after January 1, 2016.*

F. Of the amount of available credits, one-half of the amount shall be allocated exclusively for credits for commercialization investments. Such allocation of tax credits shall constitute the minimum amount of tax credits to be allocated for commercialization investments. However, if the amount of tax credits requested for commercialization investments is less than one-half of the total amount of credits available under this section, the balance of such credits shall be allocated for qualified investments in any qualified business under this section.

~~F.~~ *G.* Unless the taxpayer transfers the equity received in connection with a qualified investment as a 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, any taxpayer that fails to hold such equity for at least three full calendar years following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of one percent per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. The Department of Taxation shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

~~G.~~ *H.* Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of Taxation shall permit an application for certification as a qualified business to be filed at any time during the calendar year regardless of when the investment was made during the calendar year.

I. For taxable years beginning on or after January 1, 2017, the Department of Taxation shall compile and maintain a list that includes the name and industry classification of all businesses that the Department of Taxation approves as "qualified businesses" for purposes of the credit allowed pursuant to this section for the preceding taxable year. The list shall be updated annually and shall be published on the Department of Taxation's website.

J. Beginning in 2017, the Department shall annually report the following information to the Governor and any member of the General Assembly upon request, regardless of the number of taxpayers who apply for the credit for a taxable year:

1. The total number of entities that submit an application for designation as a qualified business;

2. The total number of entities that make an application for designation as a qualified business seeking commercialization investment;

3. The total number of entities that the Department of Taxation certifies as qualified businesses;

4. The number of entities that the Department of Taxation determines are not qualified businesses;

5. The number of entities in which at least one taxpayer has been issued the credit for a qualified investment;

6. The number of taxpayers who qualify for the credit;

7. The total number of qualified investments taxpayers utilize for purposes of applying for the credit;

8. The amount of credits taxpayers apply for on applications submitted to the Department of Taxation;

9. The average and median amount of credits taxpayers apply for on applications submitted to the Department;

10. The extent to which credit allocations are prorated by the Department of Taxation;

11. The number of taxpayers who qualify for the credit that for a commercialization investment; and

12. The total number and amount of credits claimed each year.