

## DEPARTMENT OF TAXATION 2016 Fiscal Impact Statement

1. **Patron** Ryan T. McDougle

3. **Committee** Senate Finance

4. **Title** Income Tax; Modify the Qualified Equity and Subordinated Debt Investments Tax Credit

2. **Bill Number** SB 749

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would increase the annual cap on the Qualified Equity and Subordinated Debt Investments Tax Credit from \$5 million to \$9 million. This bill would also impose a January 1, 2021 sunset date on the credit.

This bill would require the Department of Taxation ("the Department") to compile and maintain a list containing certain information regarding all businesses that the Department approves as "qualified businesses" for purposes of the credit for the preceding taxable year. This provision would be effective for taxable years beginning on or after January 1, 2017.

Beginning in 2017, this bill would require the Department to annually report certain information regarding the credit to the Governor and any member of the General Assembly upon request.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact:** (See Line 8.)

### 8. **Fiscal implications:**

#### Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

#### Revenue Impact

This bill would have an annual negative General Fund revenue impact of \$4 million beginning in Fiscal Year 2017, as a result of increasing the annual credit cap. No budget amendment is needed because the General Fund revenue impact is assumed in the Introduced Executive Budget. Imposing a sunset date on the Qualified Equity and

Subordinated Debt Investments Tax Credit would have no revenue impact because the extension of such credit is assumed in the General Fund revenue forecast.

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

Department of Taxation

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

To correct a drafting error, the Department recommends the following technical amendment:

Page 2, Line 102, after credit  
Strike: that

**11. Other comments:**

The Qualified Equity and Subordinated Debt Investments Tax Credit

Virginia currently allows Qualified Equity and Subordinated Debt Investments Tax Credits in an amount equal to 50 percent of a taxpayer's qualified investments. The credit may be claimed against the individual income tax or the income tax imposed on trusts and estates. The credit is not currently subject to a sunset date.

For purposes of the credit, a "qualified investment" is defined as a cash investment in a qualified business in the form of equity or subordinated debt. A "qualified business" is a business which:

- Has no more than \$3 million of gross revenues in the most recent fiscal year;
- Has its principal office or facility in Virginia;
- Is engaged in business primarily in or does substantially all of its production in Virginia;
- Has not during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments; and
- Is primarily engaged in or is primarily organized to engage in one or more of the following high technology-related fields:
  - 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 as determined by regulations promulgated by the Department.

Credits cannot be claimed by 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 by any taxpayer that is allocated a credit as a partner, shareholder, member or owner of an entity that engages in such business.

The credit is currently capped at \$5 million per year. However, beginning with 2006, budget actions imposed a lower credit cap for certain years. See the chart below for information about the annual credit cap imposed from 2006 through 2014.

<b>Year</b>	<b>Annual Credit Cap</b>
2006-2009	\$3 million
2010	\$5 million
2011	\$3 million
2012	\$4 million
2013	\$4.5 million
2014 and after	\$5 million

One-half of the amount of credits available each year must be allocated exclusively for credits for commercialization investments. For purposes of the credit, a “commercialization investment” is a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education. If the amount of credits requested for commercialization investments is less than one-half of the credit cap, the balance of credits remaining must be allocated for qualified investments in any qualified business.

No taxpayer is permitted to claim more than \$50,000 in credits for a taxable year. Any credit not useable 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 credit has been taken, whichever occurs first.

Credit applications have exceeded the credit cap, resulting in a reduction in the amount of credit each taxpayer is allocated. See the chart below for information regarding the amount of credits requested from 2011 through 2014.

<b>Year</b>	<b>Number of Taxpayers</b>	<b>Number of Investments</b>	<b>Amount Approved</b>	<b>Annual Cap</b>
2011	200	235	\$8,089,740	\$3,000,000
2012	65	83	\$2,534,882	\$4,000,000
2013	140	245	\$7,291,256	\$4,500,000
2014	127	228	\$9,029,024	\$5,000,000

## Proposed Legislation

This bill would increase the annual cap on the Qualified Equity and Subordinated Debt Investments Tax Credit from \$5 million to \$9 million. This provision would be effective for taxable years beginning on or after January 1, 2016.

This bill would impose a January 1, 2021 sunset date on the credit. The credit is not currently subject to a sunset date.

This bill would require the Department to compile and maintain a list that includes the name and industry classification of all businesses that the Department approves as “qualified businesses” for purposes of the credit for the preceding taxable year. The list would be required to be updated annually and published on the Department’s website. This provision would be effective for taxable years beginning on or after January 1, 2017.

Beginning in 2017, this bill would require the Department to annually report the following information to the Governor and any member of the General Assembly upon request:

- The total number of entities that submit an application for designation as a qualified business;
- The total number of entities that make an application for designation as a qualified business seeking commercialization investment;
- The total number of entities that the Department certifies as qualified businesses;
- The number of entities that the Department determines are not qualified businesses;
- The number of entities in which at least one taxpayer has been issued the credit for a qualified investment;
- The number of taxpayers who qualify for the credit;
- The total number of qualified investments taxpayers utilize for purposes of applying for the credit;
- The amount of credits taxpayers apply for on applications submitted to the Department;
- The average and median amount of credits taxpayers apply for on applications submitted to the Department;
- The extent to which credit allocations are prorated by the Department;
- The number of taxpayers who qualify for the credit for a commercialization investment; and
- The total number and amount of credits claimed each year.

Such info would be required to be reported regardless of the number of taxpayers who apply for the credit for a taxable year.

## Similar Bills

**Senate Bill 200** would increase the annual cap on the Qualified Equity and Subordinated Debt Investments Tax Credit from \$5 million to \$9 million and increase the maximum amount of credits each taxpayer may claim per taxable year from \$50,000 to \$100,000.

**House Bill 799** would increase the annual cap on the Qualified Equity and Subordinated Debt Investments Tax Credit from \$5 million to \$7.5 million, reserve \$2.5 million of the annual cap exclusively for investments in cybersecurity businesses, and allow a business with no more than 50 full-time employees to qualify even if it has more than \$3 million of annual gross revenues.

**Item 3-6.04 of the Introduced Executive Budget** would allocate \$2 million of the amount of Qualified Equity and Subordinated Debt Investments Tax Credits exclusively for investments in biotechnology companies.

cc : Secretary of Finance

Date: 2/8/2016 MTH  
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