WEST VIRGINIA CODE: §5B-12-5

§5B-12-5. Tax credit established; recapture provisions.

(a) Upon making a capital investment in a growth fund, a growth investor shall have an earned and vested right to credits against such entity's state tax liability that may be utilized on each credit allowance date of such capital investment in an amount equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the growth fund for the capital investment. The amount of the credit claimed by a growth investor or its allocatee shall not exceed the amount of such entity's state tax liability for the tax year for which the credit is claimed. No credit may be claimed under this article against a growth investor’s state tax liability for any investor’s tax year that begins prior to calendar year 2029. Any amount of credit that a growth investor or its allocatee is prohibited from claiming in a tax year as a result of this section may be carried forward for use in any of the five subsequent tax years, but shall not be carried back to prior tax years. It is the intent of this article that a growth investor claiming a credit under this article is not required to pay any additional tax that may arise as a result of claiming such credit.

(b) No credit claimed under this section shall be refundable or saleable on the open market. Credits earned by or allocated to a partnership, limited liability company, or S corporation may be allocated to the partners, members, or shareholders of such entity for their use in accordance with the provisions of any agreement among such partners, members, or shareholders, and any such entity shall notify the department of the names of the entities that are eligible to utilize such credit. Such allocation shall not be considered a sale for the purpose of state law. An insurer allocated a credit in accordance with this section may transfer a credit under this section to an affiliate of the insurer that is subject to state tax liability if the insurer notifies the department of the transfer and includes with that notification a copy of the transfer documents.

(c) The department may recapture credits from a taxpayer that claimed a credit authorized under this section if:

(1) The growth fund does not invest 100 percent of its capital investment authority in qualified investments in this state within three years of the initial credit allowance date;

(2) The growth fund fails to maintain qualified investments equal to 100 percent of its capital investment authority from the third anniversary until the sixth anniversary of the credit allowance date. For the purposes of this subsection, a qualified investment is considered maintained even if the qualified investment was sold or repaid so long as the growth fund reinvests an amount equal to the capital returned or recovered or repaid by the growth fund from the original investment, exclusive of any profits realized, in other qualified investments in this state within 12 months of receipt of such capital. Amounts received periodically by a growth fund shall be treated as maintained in qualified investments if the amounts are reinvested in one or more qualified investments by the end of the following calendar year. A

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growth fund shall not be required to reinvest capital returned from qualified investments after the fifth anniversary of the credit allowance date, and such qualified investments shall be considered maintained by the growth fund through the sixth anniversary of the credit allowance date;

(3) Prior to the earlier of exiting the program in accordance with this article or 30 days after the sixth anniversary of the credit allowance date, the growth fund makes a distribution or payment that results in the growth fund having less than 100 percent of its capital investment authority invested in qualified investments in the state or held in cash or other marketable securities; or

(4) The growth fund violates the provisions of §5B-12-6 of this code, in which case the department may recapture an amount equal to the amount of the growth fund's capital investment authority found to be in violation of such provisions.

(d) Recaptured credits and related capital investment authority shall revert to the department and shall be reissued pro rata to growth fund applicants whose capital investment allocations were reduced in accordance with the application process provided under §5B-12-3(e) of this code.

(e) No recapture shall occur until the growth fund has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

(f) A growth fund, before making a qualified investment, may request from the department a written opinion as to whether the business in which it proposes to invest is an eligible business. The department, no later than 15 business days after the date of receipt of such request, shall notify the growth fund of its determination. If the department fails to notify the growth fund of its determination by the 20th business day, the business in which the growth fund proposes to invest shall be deemed an eligible business.

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