

WEST VIRGINIA CODE: §5E-1-12

§5E-1-12. Qualified investments; liquidation or dissolution.

(a) A qualified West Virginia capital company shall use its capital base to make qualified investments according to the following schedule:

(1) At least thirty-five percent of its capital base within the first year of the date on which the capital company which is not a small business investment company was designated as qualified by the authority;

(2) At least fifty-five percent of its capital base within two years of the date on which the capital company which is not a small business investment company was designated as qualified by the authority; and

(3) At least seventy-five percent of its capital base within three years of the date on which the capital company which is not a small business investment company was designated as qualified by the authority.

(b) A qualified West Virginia capital company which is not a small business investment company shall maintain its qualified investments for a period of at least five years, except that a qualified West Virginia capital company receiving repayment or return of a qualified investment (exclusive of interest, dividends or other earnings on the investment) shall reinvest the company's repaid or returned cost basis in the investment in a qualified investment which remains outstanding for a period of time at least equal to the remainder of the initial five-year term, the reinvestment to be made within twenty-four months from the date of repayment or return, unless a waiver is obtained from the authority prior to the end of the twenty-four month period: Provided, That the returned amounts may be accumulated for six months before the twenty-four month period commences.

(c) A qualified West Virginia capital company which is not a small business investment company may be dissolved or liquidated only after notice and approval of the dissolution or liquidation by the authority. The authority shall provide by rule a procedure for application for approval to dissolve or liquidate a capital company and the approval shall not be unreasonably withheld, the intention of this subsection being to ensure compliance with subsection (b) of this section. Unless waived by the authority, no dissolution or liquidation of any qualified West Virginia capital company may be made if the dissolution or liquidation would cause the provisions of subsection (b) of this section to be violated.

(d) The authority shall annually audit the certified audit of each qualified company, as required by section sixteen of this article, and the results of the audit shall be used to notify the Tax Commissioner of any companies that are not in compliance with this section.

(e) A qualified West Virginia capital company that fails to make or maintain qualified

investments pursuant to this section shall pay to the Tax Commissioner a penalty equal to all of the tax credits allowed to the taxpayers investing in the company with interest at the rate of one and one-half percent per month, compounded monthly, from the date the tax credits were certified as allocated to the qualified West Virginia capital company. The Tax Commissioner shall give notice to the company of any penalties under this section. The Tax Commissioner may abate the penalty upon written request if the capital company establishes reasonable cause for the failure to make qualified investments. The Tax Commissioner shall deposit any amounts received under this subsection in the state General Revenue Fund.