WEST VIRGINIA CODE: §5E-1-8

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed $2 million. The total amount of tax credits authorized for a single economic development and technology advancement center may not exceed $1 million. Capitalization of the company or center may be increased pursuant to rule of the authority.

(b) (1) The total credits authorized by the authority for all companies and centers may not exceed a total of $10 million each fiscal year: Provided, That for the fiscal year beginning on July 1, 1999, the total credits authorized for all companies may not exceed a total of $6 million: Provided, however, That for the fiscal year beginning on July 1, 2000, the total credits authorized for all companies may not exceed a total of $4 million: Provided further, That for the fiscal year beginning on July 1, 2001, the total credits authorized for all companies may not exceed a total of $4 million: And provided further, That for the fiscal year beginning on July 1, 2002, the total credits authorized for all companies may not exceed a total of $3 million: And provided further, That for the fiscal year beginning on July 1, 2003, the total credits authorized for all companies may not exceed a total of $3 million: And provided further, That for the fiscal year beginning on July 1, 2004, the total credits authorized for all companies may not exceed a total of $1 million: And provided further, That for the fiscal year beginning on July 1, 2005, there shall be no credits authorized: And provided further, That for the fiscal year beginning on July 1, 2006, the total credits authorized for all companies may not exceed a total of $1 million: And provided further, That for the fiscal years beginning on July 1, 2007, and 2008, there shall be no credits authorized: And provided further, That the capital base of any qualified company other than an economic development and technology advancement center qualified under the provisions of article twelve-a, chapter eighteen-b of this code shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies and centers in the order that the companies are qualified.

(2) Not more than $2 million of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision: Provided, That for the fiscal year beginning on July 1, 2004, and for the fiscal year beginning on July 1, 2005, no credits authorized by this section may be allocated by the authority to one or more small business investment companies: Provided, however, That for the fiscal year beginning on July 1, 2006, all of the credits allowed under subdivision (1) of this subsection shall be allocated only to one or more small business investment companies described in this subdivision: Provided further, That for the fiscal years beginning on July 1, 2007 and 2008, no credits authorized by this section may be allocated by the authority to one or more small business investment companies. After a portion of the credits are allocated to small business investment companies as provided in this section, not more than $1 million of the credits allowed under

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subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more economic development and technology advancement centers qualified by the authority under article twelve-a, chapter eighteen-b of this code: Provided, however, That for the fiscal year beginning on July 1, 2004, all of the credits allowed under subdivision (1) of this subsection shall be allocated only to one or more qualified economic development and technology advancement centers: Provided further, That for the fiscal year beginning on July 1, 2005, no credits allowed under subdivision (1) of this subsection shall be allocated to any qualified economic development and technology advancement center: And provided further, That for the fiscal years beginning on July 1, 2006, 2007 and 2008, no credits allowed under subdivision (1) of this subsection shall be allocated to any qualified economic development and technology advancement center. The remainder of the tax credits allowed during the fiscal year shall be allocated by the authority under the provisions of section four, article two of this chapter: Provided, That for the fiscal year beginning on July 1, 2004, and for the fiscal year beginning on July 1, 2005, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter: Provided, however, That for the fiscal year beginning on July 1, 2006, 2007 and 2008, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year and may only be allocated to companies that: (A) Were organized on or after January 1, 1999; (B) are licensed by the small business administration as a small business investment company under the small business investment act; and (C) have certified in writing to the authority on the application for credits under this act that the company will diligently seek to obtain and thereafter diligently seek to invest leverage available to the small business investment companies under the small business investment act. These credits shall be allocated by the authority in the order that the companies are qualified. The portion of the tax credits allowed for economic development and technology advancement centers described in article twelve-a, chapter eighteen-b of this code shall be similarly allowed only if allocated by the authority during the first ninety days of the fiscal year: And provided further, That solely for the fiscal year beginning on July 1, 2004, the authority may allocate the tax credits allowed for economic development and technology advancement centers at any time during the fiscal year. Any credits which have not been allocated to qualified companies meeting the requirements of this subdivision relating to small business investment companies or to qualified economic development and technology advancement centers during the first ninety days of the fiscal year shall be made available and allocated by the authority under the provisions of section four, article two of this chapter: Provided, That for the fiscal year beginning on July 1, 2004, and for the fiscal year beginning on July 1, 2005, and for the fiscal years beginning on July 1, 2006, 2007 and 2008, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter.

(3) Notwithstanding any provision of this code or legislative rule promulgated thereunder to the contrary, for the fiscal year beginning on July 1, 2004, and for the fiscal year beginning

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on July 1, 2005, the authority has the sole discretion to allocate or refuse to allocate tax credits authorized under this section to any qualified economic development and technology advancement center upon its determination of the extent to which the center will fulfill the purposes of this article. The determination shall be based upon the application of the center, the extent to which the company or center fulfilled those purposes in prior years after receiving tax credits authorized under this section, the extent to which the center is expected to stimulate economic development and high technology research in the chemical industry and such other similarly related criteria as the authority may establish by vote of the majority of authority.

(c) Any investor, including an individual, partnership, limited liability company, corporation or other entity who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article: Provided, That the tax credit available to investors who make a capital investment in an economic development and technology advancement center shall be one hundred percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership, limited liability company, a corporation electing to be treated as a subchapter S corporation or any other entity which is treated as a pass through entity under federal and state income tax laws may be divided pursuant to election of the entity's partners, members, shareholders or owners.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company or economic development and technology advancement center is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full or until forfeited: Provided, That: (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company or economic development and technology advancement center occurs after July 1, 1986.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the state register the name and address of every taxpayer and the amount, by category, of any credit asserted under this article. The categories by dollar amount of credit received are as follows:

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(1) More than $1.00, but not more than $50,000;

(2) More than $50,000, but not more than $100,000;

(3) More than $100,000, but not more than $250,000;

(4) More than $250,000, but not more than $500,000;

(5) More than $500,000, but not more than $1,000,000; and

(6) More than $1,000,000.

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