WEST VIRGINIA CODE CHAPTER 5E

WV Legislature

§5E-1-1. Short title.

The article may be cited as the "West Virginia Capital Company Act."

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§5E-1-2. Declaration of policy.

(a) The Legislature finds and declares that the West Virginia economy can be strengthened by promoting private investment in West Virginia businesses.

(b) The Legislature further finds that:

(1) Investment of capital in the West Virginia economy can be promoted by making tax credits available to taxpayers investing in West Virginia capital companies;

(2) Economic development in the West Virginia economy can be stimulated and higher education can be promoted by making tax credits available to taxpayers investing in economic development and technology advancement centers organized to partner with institutions of higher education and qualified pursuant to the provisions of article twelve-a, chapter eighteen-b of this code.

(3) Demands on state revenues restrict the financial ability of this state to make unlimited tax credits available for investment purposes and require that this state place reasonable limits on the total amount of tax credits to be made available for investment incentives;

(4) Establishment of a tax credit program, which gives priority to investments in capital companies in the order in which they are qualified as such, will encourage investment in West Virginia businesses; and

(5) The promotion of private investment in West Virginia businesses will tend to reduce unemployment by creating new or maintaining existing employment opportunities for the citizens of this state.

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§5E-1-3. Purposes.

(a) The purpose of this article is to promote the development of the human resources and the diversification of the economy of West Virginia. The investment capital generated by this article must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new business and industry in West Virginia, rehabilitating existing business and industry, and stimulating and assisting in the expansion of business activities that promote and maintain the economic stability of this state by providing maximum opportunities for employment of West Virginians and improving the standard of living of the people of this state.

(b) This article is aimed at:

(1) Increasing the availability of development capital in order to encourage and assist in the creation, development and expansion of businesses based in West Virginia;

(2) Developing, preserving, diversifying, expanding and strengthening the agricultural, industrial and business base of West Virginia's economy, particularly for those businesses utilizing this state's technical, managerial and research resources in domestic and international markets; and

(3) Providing the residents of West Virginia with greater opportunities to invest and participate in the economic development and potential of this state.

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§5E-1-4. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:

(a) "Authority" means the West Virginia economic development authority, provided for in article fifteen, chapter thirty-one of this code.

(b) "Capital base" means equity capital or net worth.

(c) "Certified West Virginia capital company" means:

(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one of this code; or

(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments that has been certified by the authority.

(d) "Qualified investment" means a debt or equity financing of a West Virginia business, but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; service industry; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; computer software development companies engaged in the creation of computer software; and wholesale or retail distribution activities within the state. The investment by a West Virginia capital company in purchases of property to be leased by it, as lessor, through a capital lease to a West Virginia business lessee engaged in one of the above enumerated activities is a qualified investment.

(e) "Qualified West Virginia capital company" means a West Virginia capital company that has been designated by the authority as a qualified capital company under the provisions of section six of this article.

(f) "Small business investment company" means a small business investment company licensed by the United States small business investment administration under the federal small business investment act of 1958, 15 U.S.C. §661, et seq., as amended.

(g) "State" means the State of West Virginia.

(h) "Capital lease" means a lease meeting one or more of the following criteria:

(1) The lease transfers ownership of the property to the lessee at the end of the lease term by the lessee's exercise of a purchase option which is de minimis in amount; or

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(2) The lease term is equal to seventy-five percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used; or

(3) Under generally accepted accounting principles, the lessee cannot treat payments to the capital company as payments under an operating lease; or

(4) For federal income tax purposes, the parties are required to treat payments as amortization of principal and interest.

(i) "Economic development and technology advancement center" or "center" means an economic development and technology advancement center organized and operating under the laws of this state which has been designated by the authority as a qualified economic development and technology advancement center under the provisions of article twelve-a, chapter eighteen-b of this code.

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§5E-1-5. Rules.

The authority shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to efficiently provide for the general administration of this article. The authority may promulgate additional rules in accordance with article three, chapter twenty-nine-a of this code that it considers necessary to provide for the efficient administration of the credits allowed for investments in economic development and technology advancement centers.

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§5E-1-6. Qualification of West Virginia capital companies.

(a) The authority shall qualify West Virginia capital companies commencing after the effective date of this article. A company seeking to be qualified as a West Virginia capital company shall make written application to the authority on forms provided by the authority. The application shall contain the information required by section ten of this article. Further, the application shall specify the level of capitalization of the company.

(b) The application shall set forth the applicant's purpose.

(c) The authority may certify West Virginia capital companies in existence after July 1, 1986.

(d) An applicant which is not a small business investment company shall establish an escrow account located in West Virginia, into which funds invested in the applicant shall be deposited and held for the period of time between their receipt by the applicant and the designation of the applicant as a qualified company. Small business investment company applicants shall submit small business administration capital certificates totaling the funds to be invested. The funds shall not be invested by the applicant until it is designated by the authority as a qualified company. In the case of companies which are not small business investment companies, where the authority does not designate the applicant a qualified company, the funds shall be returned to the investors, if requested by the investors.

(e) A West Virginia capital company may not qualify or be issued a certification under this article unless the company holds a valid business registration certificate issued pursuant to article twelve, chapter eleven of this code. A company exempt from registration under article twelve may qualify and be certified under this article upon proof of its exemption.

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§5E-1-7. Minimum standards of qualified West Virginia capital companies.

The following requirements apply to all qualified companies:

(a) A qualified company shall be a certified West Virginia capital company.

(b) A qualified company shall have a reasonably accessible business office located within the State of West Virginia, which office has a listed telephone number and is open to the public during normal business hours.

(c) A qualified company which is not a small business investment company shall maintain all of its capital base, except that which has been invested to meet the purposes of this article, in bank accounts and financial institutions which are located in the State of West Virginia or in any other interest bearing instruments with a maturity of less than one year which are obtained from and managed by a West Virginia corporation.

(d) A qualified company shall have a capital base of at least $1 million, but not greater than $4 million, which must be raised after July 1, 1986. If the amount of the investment in a qualified company in any fiscal year exceeds $4 million, the amount in excess of $4 million is not eligible for tax credits under this article.

(e) No more than twenty-five percent of each separate capital base of a qualified company which is not a small business investment company shall be in the form of full recourse, interest bearing demand notes, backed by an irrevocable letter of credit or bond from a reputable source, as determined by the authority.

(f) A qualified company's stated purpose shall be to encourage and assist in the creation, development or expansion of West Virginia businesses.

(g) A qualified company which is not a small business investment company, seeking to establish a separate capital base or increase its capital base, shall establish an escrow account located in West Virginia, into which funds invested in the qualified company shall be deposited and held for the period of time between their receipt by the qualified company and the designation as qualified of a separate capital base or an increase to capital base. A small business investment company qualified company, seeking to establish a separate capital base or increase its capital base, shall submit small business administration capital certificates totaling the amount of the separate capital base or increased capital base. The funds may not be invested by the qualified company until the designation by the authority. In the case of companies which are not small business investment companies, where the authority does not designate as qualified a separate capital base or an increase to capital base, the funds shall be returned to the investors, if requested by the investors.

(h) A qualified company, when soliciting funds for its capital base, shall disclose that no tax credit for the investor's investment will be available until the authority designates as qualified a capital base or an increase to capital base and issues to the qualified company

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notice of such qualification and a certificate of tax credit.

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§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 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 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:

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

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

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(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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§5E-1-9. Recaptures; unqualified investments.

A taxpayer receiving a credit hereunder is not subject to a recapture provision for any credit claimed by the taxpayer but the company is subject to the civil penalty provided for in subsection (e), section twelve of this article.

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§5E-1-10. Application requirements.

(a) Each company shall make application to the authority on forms provided by the authority, which shall set forth:

(1) The capitalization level of capital company;

(2) The purpose of the company;

(3) The names of investors;

(4) A process for disclosing to investors the tax credit available pursuant to this article. The disclosure shall clearly set forth that no tax credit will be available until the qualification of the company is granted by the authority and the disclosure of immunity of the state for damages is provided to the investors;

(5) The location of the escrow account, if applicable, which has been established for investors for the period of time between the investment and the qualification of the capital company by the authority;

(6) If applicable, evidence that the company is licensed as a small business investment company; and

(7) That the capital company will diligently seek to obtain and thereafter diligently seek to invest leverage available to the small business investment companies.

(b) An applicant submitting an application pursuant to this section shall continually supplement the application if any material fact contained in the application changes. The authority shall determine if the change constitutes an amendment requiring the consent of the authority pursuant to subdivision (c) of this section.

(c) An applicant may not amend an application submitted pursuant to this section without the written consent of the authority for good cause shown.

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§5E-1-11. Disclaimer of liability of the state.

The state of West Virginia shall not be liable to any investor or qualified capital company as a result of this article or any of the activities authorized herein by any court of law.

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§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

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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.

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§5E-1-13. Restrictions on investment.

(a) No more than thirty percent of the equity raised by a West Virginia capital company under this article may be invested in any one West Virginia business.

(b) No portion of the capital base of a West Virginia capital company may be invested in a business that is the "alter ego" of that West Virginia capital company. Furthermore, after the effective date of this article no investments shall be made by a West Virginia capital company to a business that is an "alter ego" of the West Virginia capital company: Provided, That this restriction on investments shall not effect any contracts entered into prior to the effective date of this article. For purposes of this subsection, a business is an "alter ego" of the West Virginia capital company if any one or more of the following criteria are satisfied:

(1) The ownership of the business is substantially related to the ownership of the capital company; or

(2) The board of directors of the business is controlled by the capital company: Provided, That a capital company may control the board of directors of a business if control consists of no more than a simple majority of the board.

(c) No owner, director, officer or employee of a West Virginia capital company may occupy any management position in any business in which that capital company has invested, unless that person is filling that management position in an effort to remedy problems arising from a lack of profitability of the business or from dishonesty of the persons otherwise managing the business.

(d) West Virginia capital companies that are small business investment companies are not governed by the restrictions described in subsections (b) and (c) of this section but shall conform the rules and regulations promulgated by the small business administration.

(e) Each qualified West Virginia capital company may not invest any of its capital base in any of the following businesses:

(1) Banks;

(2) Savings and loan associations;

(3) Credit companies;

(4) Financial or investment advisors;

(5) Brokerage or financial firms;

(6) Other capital companies;

(7) Charitable and religious institutions;

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(8) Conventional oil and gas exploration;

(9) Insurance companies;

(10) Residential housing or development; or

(11) Any other business which the authority determines to be against the public interest, the purposes of this article or in violation of any law.

The authority, by the promulgation of rules in accordance with section five of this article, may designate, in addition to those listed in this subsection, other businesses in which capital companies may not invest any of their capital base.

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§5E-1-14. Conflict of interest.

No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any capital company.

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§5E-1-15. Investment reporting and record keeping.

(a) Each qualified West Virginia capital company shall report, at a minimum, to the Tax Commissioner and the authority on a semiannual basis:

(1) The name of each investor in the qualified West Virginia capital company who is entitled to a tax credit;

(2) The amount of each investor's investment in the capital company;

(3) The amount of the tax credit allowed to the investor and the date on which the qualified investment that generated the tax credit was made;

(4) All qualified investments the company has made;

(5) An affidavit for each business invested in, prepared by any officer or partner of each such respective business which sets forth (A) that it is a business located in or principally based in West Virginia; (B) that more than fifty percent of its assets, operations and employees are located in West Virginia; and (C) a brief description of the activities the business is engaged in; and

(6) An affidavit pertaining to each business invested in, prepared by an officer, partner or trustee of the qualified West Virginia capital company which demonstrates with respect to such business (A) that the business invested in is not a business engaged in an activity prohibited by subsection (d), section thirteen of this article; (B) that more than fifty percent of the assets, operations and employees of the business invested in are located in West Virginia; and (C) that, if a qualified investment, the business invested in is engaged in activities that meet the requirements of a qualified investment as listed in subdivision (d), section four of this article.

(b) The authority, by the promulgation of rules, in accordance with section five of this article, may require that each qualified West Virginia capital company, in its semiannual report to the Tax Commissioner and the authority, disclose information in addition to the disclosures required by subsection (a) of this section.

(c) The company shall provide each investor in a qualified West Virginia capital company with a certificate authorizing the tax credits, and a true copy of the certificate shall be submitted with each taxpayer's tax return claiming a credit under section eight of this article.

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§5E-1-16. Examination.

(a) Annually each qualified capital company and center shall cause its books and records to be audited by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. In addition to the performance of a financial audit, the audit shall address the methods of operation and conduct of the business of the West Virginia capital company or center to determine compliance with this article and that the funds received by the company have been invested within the time limits required by this article. Upon completion, a copy of the audit report shall be certified and sent to the authority.

(b) The authority may examine, under oath, any of the officers, directors, agents, employees or investors of a West Virginia capital company or center regarding the affairs and business of the company or center. The authority may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may at once be reported to the circuit court of the county in which the company or center is located or the persons subpoenaed reside and the circuit court shall enforce obedience to the subpoena or subpoena duces tecum in the manner provided by law for compliance with a subpoena or subpoena duces tecum issued by a circuit court of this state.

(c) In addition to the audits herein required, the authority and the Tax Commissioner may jointly audit any capital company or number of capital companies or centers in any year on a random basis, or for cause, or for any other basis the authority or the Tax Commissioner may select. The Tax Commissioner may also audit any company or business in which a capital company has made an investment, or which a capital company proposes to invest, on a random audit selection basis, or for cause, or on any other basis the Tax Commissioner may select. Nothing herein shall be construed to prohibit the Tax Commissioner from conducting any audit relating to the administration or enforcement of the tax laws of this state which the Tax Commissioner may, in his or her discretion, determine to be appropriate.

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§5E-1-17. Failure to comply.

(a) If the examination conducted pursuant to section sixteen of this article discloses that a West Virginia capital company or center is not in compliance with the provisions of this article, the authority may exercise any of the powers necessary and appropriate to protect the authority's interest.

(b) The authority shall give a West Virginia capital company or center written notice of any inadequacies in its compliance with the provisions of this article, and specify a period of time the company has to redress such inadequacies. Failure within said time period to make corrections will result in further action by the authority pursuant to this section.

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§5E-1-18. Ruling procedure.

(a) The authority may issue an informal ruling as to its position on the application of this article and the rules promulgated thereunder to a stated transaction or event.

(b) Such rulings will only be issued after receipt of a written request and payment of a nonrefundable filing fee.

(c) Such rulings shall not constitute binding precedent, and are issued solely for the guidance of those persons requesting the ruling. Such rulings may be modified prospectively at any time with notice to the recipient of the ruling at said recipient's last address known to the authority and may be published or released by the authority with facts or characteristics identifying the person or persons requesting the ruling omitted or modified.

(d) Notwithstanding any provision of this section, rulings relating to issues of taxation may be issued only by the State Tax Commissioner and may not be issued by the authority.

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§5E-1-19. Effective date; transition rules.

(a) The provisions of subsection (d), section eight of this article relating to credit carryback that were in effect on January 1, 1990, apply to any credit earned prior to the effective date of the amendments to that subsection, notwithstanding the fact that the taxpayer's taxable year does not end until a date on or after the effective date of the amendments to that subsection. The provisions of subsections (d) and (f), section eight of this article, as amended, prohibiting credit carryback and application of credit against interest, penalties and additions to tax apply to any credit earned on or after the effective date of the amendments to that subsection.

(b) The provisions of section twelve of this article relating to minimum investment time limitations that were in effect on January 1, 1990, apply to any capital base qualified prior to the effective date of the amendments to that subsection. The provisions of subsection (a), subsection (b), subsection (c), section twelve of this article, as amended, apply to any capital base qualified on a date on or after the effective date of the amendments to that section.

(c) The provisions of section twenty of this article relating to financial institutions are applicable to investments by financial institutions made on a date on or after the effective date of that section. Investments made on a date prior to the effective date of that section remain unaffected by the provisions of that section.

(d) The provisions of subsections (b) through (d), section thirteen of this article relating to investment restrictions are applicable to investments made on a date on or after the effective date of those subsections. Investments made on dates prior to the effective date of those subsections remain unaffected by the provisions of those subsections.

(e) As used in this section "amendments" means changes made in this article during the 1991 regular session of the Legislature.

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§5E-1-20. Limitation on financial institutions.

Not more than forty-nine percent of the total capital base of any capital company which is not a small business investment company may be owned by banks, savings and loan associations, savings banks or other financial institutions, or any affiliate thereof, as investors. No officer, employee or director of any such financial institution may vote as a member of the board of any capital company formed under the provisions of this article if the matter being voted upon affects the financial institution for which the board member serves as an officer, employee or director.

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§5E-1-21. Confidentiality.

(a) The authority shall, by the promulgation of rules, determine which records, reports, or information obtained from any person or entity under this article are to be treated by the agency as confidential and not subject to disclosure, except as hereinafter provided in subsection (c) of this section: Provided, That notwithstanding any other provision of law to the contrary, the authority shall make available to the public the name of any business or company receiving a qualified investment from a capital company and the name of the capital company so investing.

(b) Any other records, reports, or information obtained from any person or entity under this article shall be made available to the public, except that upon a showing at the time of submission, satisfactory to the authority, by any person or entity, that records, reports or information, or a particular part thereof, to which the authority or any officer, employee or representative thereof has or will have access under this section, if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code as said section reads on December 20, 1990, such information or particular portion thereof is confidential in accordance with the purposes of this section. In submitting data under this article, a person required to provide such data may designate the data which he or she believes is entitled to protection under this subsection and submit such designated data separately from other data submitted under this article. A designation under this subsection shall be made in writing and in such manner as the authority may prescribe.

(c) Notwithstanding the foregoing provisions of this section, any record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of this state charged with administering the provisions of this article and may be disclosed pursuant to proceeding under subsection (b), section sixteen of this article. Notwithstanding the previous sentence, and notwithstanding any provision of this article, the provisions of this code regarding confidentiality and the disclosure of tax returns and tax information, including specifically section five-d, article ten, chapter eleven of this code, apply to the authority, its agents and employees and to information submitted to the authority under this article.

WV Legislature

§5E-1-22. Decertification of qualified capital companies other than small business investment companies.

Notwithstanding any provision in this article to the contrary, the authority may not hereafter allocate credit to any applicant other than a small business investment company. Every qualified capital company that is not a small business investment company may no longer be considered a qualified capital company and shall, without any further action, be decertified. Each company that has been decertified in accordance with the provisions of this section is no longer subject to the provisions of this article. Nothing herein may be construed to limit an investor in a qualified capital company from applying credits previously allocated by the authority including unused credits carried forward pursuant to section eight of this article.

WV Legislature

§5E-1-23. Elimination of credit; effective date.

Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article shall result from, and no tax credit shall be available to, any taxpayer for any investment in a West Virginia capital company made after December 31, 2006: Provided, That the provisions of this article shall continue to apply to the investments for which tax credits were authorized and allocated pursuant to the provisions of this article in effect prior to January 1, 2007.

WV Legislature

§5E-2-1. Short title.

The article may be cited as the "West Virginia Venture Capital Act."

WV Legislature

§5E-2-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:

(a) "Authority" means the West Virginia economic development authority, provided for in article fifteen, chapter thirty-one of this code.

(b) "State" means the State of West Virginia.

WV Legislature

§5E-2-3. Rules.

The authority shall propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to efficiently provide for the general administration of this article.

WV Legislature

§5E-2-4. Tax credits.

(a) The total amount of tax credits which may be allocated by the authority pursuant to this article during any fiscal year is equal to the tax credits authorized by section eight, article one of this chapter but unallocated by the authority to qualified West Virginia capital companies during the first thirty days of the fiscal year.

(b) Any investor, including an individual, partnership, limited liability company, corporation or other entity, who makes an investment in a fund authorized by the authority for the investment of capital in the West Virginia economy, which is independently operated by qualified managers and is not directly or indirectly operated or managed by the investors, is entitled to a tax credit equal to no more than fifty percent of the investment in the fund. The percentage and other terms and conditions of the credit shall be established by the authority pursuant to rules promulgated in accordance with section three of this article.

(c) The tax credits allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. They 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, a 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 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 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 for in this section is available only to those taxpayers whose investment occurs after July 1, 2001.

(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:

(1) More than $1.00, but no more than $50,000;

(2) More than $50,000, but no more than $100,000;

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(3) More than $100,000, but no more than $250,000;

(4) More than $250,000, but no more than $500,000;

(5) More than $500,000, but no more than $1,000,000; and

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

WV Legislature

§5E-2-5. Elimination of credit; effective date.

Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article shall result from, and no tax credit shall be available to, any taxpayer for any venture capital investment made after December 31, 2006: Provided, That the provisions of this article shall continue to apply to the investments for which tax credits were authorized and allocated pursuant to the provisions of this article in effect prior to January 1, 2007.

WV Legislature