WEST VIRGINIA LEGISLATURE
3RD EXTRAORDINARY SESSION 2006

ENROLLED

SENATE BILL NO. 3014

(By Senator McCabe)

PASSED November 16, 2006

In Effect From Passage
AN ACT to amend and reenact §5E-1-8 of the code of West Virginia, 1931, as amended, relating to modifying the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four; limiting the availability of certain tax credits to qualified economic development and technology advancement centers; and authorizing the economic development authority to establish criteria for the determination of the allocation of certain tax credits by vote of the majority of the authority.

Be it enacted by the Legislature of West Virginia:

That §5E-1-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single qualified company may not exceed two million
dolars. The total amount of tax credits authorized for a single economic development and technology advancement center may not exceed one million dollars. 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 ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: Provided, however, That for the fiscal year beginning on the first day of July, two thousand, the total credits authorized for all companies may not exceed a total of four million dollars: Provided further, That for the fiscal year beginning on the first day of July, two thousand one, the total credits authorized for all companies may not exceed a total of four million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand two, the total credits authorized for all companies may not exceed a total of three million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand three, the total credits authorized for all companies may not exceed a total of three million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand four, the total credits authorized for all companies may not exceed a total of one million dollars: 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 two million dollars 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 the first day of July, two thousand four, 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 one million dollars 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 the first day of July, two thousand four, 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. 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 further, That for the fiscal year beginning on the first day of July, two thousand four, 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 the first day of January, one thousand nine hundred ninety-nine; (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 invest-
ment 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 tech-
nology 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. 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 allo-
cated by the authority under the provisions of section four,
article two of this chapter: And provided further, That for
the fiscal year beginning on the first day of July, two
thousand four, 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 the first day of July, two
thousand four, 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 eco-

nomic 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 for 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 the first
day of July, one thousand nine hundred eighty-six.

(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;
(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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd Day of December, 2004.

Governor
PRESENTED TO
THE GOVERNOR
DATE 11/19/04
TIME 4:20 PM