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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 3189**

(By Delegates Doyle, Leach, Hall, Proudfoot,  
Boggs and Ashley)



Passed March 13, 2004

In Effect July 1, 2004

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

## H. B. 3189

(BY DELEGATES DOYLE, LEACH, HALL, PROUDFOOT,  
BOGGS AND ASHLEY)

[Passed March 13, 2004; in effect July 1, 2004.]

AN ACT to amend and reenact §5E-1-8 of the code of West Virginia, 1931, as amended, relating to reducing the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four.

*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
- 2 qualified company may not exceed two million dollars. The

3 total amount of tax credits authorized for a single economic  
4 development and technology advancement center may not  
5 exceed one million dollars. Capitalization of the company or  
6 center may be increased pursuant to rule of the authority.

7 (b) (1) The total credits authorized by the authority for all  
8 companies and centers may not exceed a total of ten million  
9 dollars each fiscal year: *Provided*, That for the fiscal year  
10 beginning on the first day of July, one thousand nine hundred  
11 ninety-nine, the total credits authorized for all companies may  
12 not exceed a total of six million dollars: *Provided, however*,  
13 That for the fiscal year beginning on the first day of July, two  
14 thousand, the total credits authorized for all companies may not  
15 exceed a total of four million dollars: *Provided further*, That for  
16 the fiscal year beginning on the first day of July, two thousand  
17 one, the total credits authorized for all companies may not  
18 exceed a total of four million dollars: *And provided further*,  
19 That for the fiscal year beginning on the first day of July, two  
20 thousand two, the total credits authorized for all companies may  
21 not exceed a total of three million dollars: *And provided further*,  
22 That for the fiscal year beginning on the first day of July, two  
23 thousand three, the total credits authorized for all companies  
24 may not exceed a total of three million dollars: *And provided*  
25 *further*, That for the fiscal year beginning on the first day of  
26 July, two thousand four, no credits are authorized: *And provided*  
27 *further*, That the capital base of any qualified company other  
28 than an economic development and technology advancement  
29 center qualified under the provisions of article twelve-a, chapter  
30 eighteen-b of this code shall be invested in accordance with the  
31 provisions of this article. The authority shall allocate these  
32 credits to qualified companies and centers in the order that the  
33 companies are qualified.

34 (2) Not more than two million dollars of the credits allowed  
35 under subdivision (1) of this subsection may be allocated by the  
36 authority during each fiscal year to one or more small business

37 investment companies described in this subdivision. After a  
38 portion of the credits are allocated to small business investment  
39 companies as provided in this section, not more than one  
40 million dollars of the credits allowed under subdivision (1) of  
41 this subsection may be allocated by the authority during each  
42 fiscal year to one or more economic development and technol-  
43 ogy advancement centers qualified by the authority under  
44 article twelve-a, chapter eighteen-b of this code. The remainder  
45 of the tax credits allowed during the fiscal year shall be  
46 allocated by the authority under the provisions of section four,  
47 article two of this chapter. The portion of the tax credits  
48 allowed for small business investment companies described in  
49 this subdivision shall be allowed only if allocated by the  
50 authority during the first ninety days of the fiscal year and may  
51 only be allocated to companies that: (A) Were organized on or  
52 after the first day of January, one thousand nine hundred ninety-  
53 nine; (B) are licensed by the small business administration as a  
54 small business investment company under the small business  
55 investment act; and (C) have certified in writing to the authority  
56 on the application for credits under this act that the company  
57 will diligently seek to obtain and thereafter diligently seek to  
58 invest leverage available to the small business investment  
59 companies under the small business investment act. These  
60 credits shall be allocated by the authority in the order that the  
61 companies are qualified. The portion of the tax credits allowed  
62 for economic development and technology advancement centers  
63 described in article twelve-a, chapter eighteen-b of the code  
64 shall be similarly allowed only if allocated by the authority  
65 during the first ninety days of the fiscal year. Any credits which  
66 have not been allocated to qualified companies meeting the  
67 requirements of this subdivision relating to small business  
68 investment companies or to qualified economic development  
69 and technology advancement centers during the first ninety  
70 days of the fiscal year shall be made available and allocated by

71 the authority under the provisions of section four, article two of  
72 this chapter.

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

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

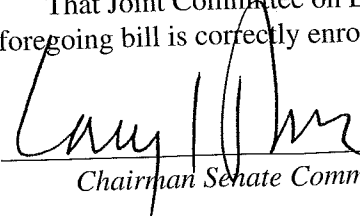
104 (e) The tax credit provided for in this section is available  
105 only to those taxpayers whose investment in a qualified West  
106 Virginia capital company or economic development and  
107 technology advancement center occurs after the first day of  
108 July, one thousand nine hundred eighty-six.

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

112 (g) Notwithstanding any provision in this code to the  
113 contrary, the tax commissioner shall publish in the state register  
114 the name and address of every taxpayer and the amount, by  
115 category, of any credit asserted under this article. The catego-  
116 ries by dollar amount of credit received are as follows:

- 117 (1) More than \$1.00, but not more than \$50,000;
- 118 (2) More than \$50,000, but not more than \$100,000;
- 119 (3) More than \$100,000, but not more than \$250,000;
- 120 (4) More than \$250,000, but not more than \$500,000;
- 121 (5) More than \$500,000, but not more than \$1,000,000; and
- 122 (6) More than \$1,000,000.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

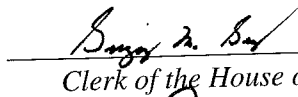
  
Chairman Senate Committee

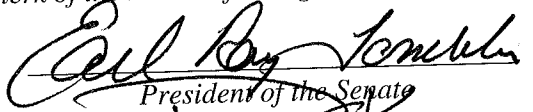
  
Chairman House Committee

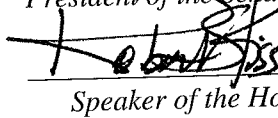
Originating in the House.

In effect July 1, 2004.

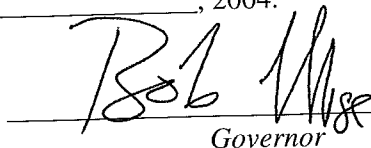
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 4th  
day of April, 2004.

  
Governor

FILED  
GOVERNOR

Date 3/26/04

Time 3:42