SENATE BILL NO. 513

(BY SENATOR MCCABE, ET AL)

PASSED APRIL 16, 2005

IN EFFECT FEB. 19 Passage
ENROLLED

Senate Bill No. 513

(BY SENATORS MCCABE, PLYMALE, JENKINS, FOSTER, SPROUSE, HARRISON, SHARPE, DEMPSEY, BARNES AND UNGER)

[Passed April 16, 2005; in effect from passage.]

AN ACT to amend and reenact §5E-1-8 of the Code of West Virginia, 1931, as amended, relating to the Capital Company Act; eliminating the total tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand five; and modifying the time period in which the authority may allocate 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 qualified company may not exceed two million dollars. 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 one million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand four, 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 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, and for the fiscal year beginning on the first day of July, two thousand five, 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: Provided further, That for the fiscal year beginning on the first day of July, two thousand five, 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: And provided further, That for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, 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 allo-
cated to companies that: (A) Were organized on or after the
first day of January, one thousand nine hundred ninety-
ine; (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 the first day of July, two thousand four, the
authority may allocate the tax credits allowed for eco-

demic 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 develop-
ment 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: And provided further,
That for the fiscal year beginning on the first day of July,
two thousand four, and for the fiscal year beginning on the
first day of July, two thousand five, 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, and for the fiscal year beginning on the
first day of July, two thousand five, 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 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 com-
pany, 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 part-
ners, 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 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 .................. this the .................. Day of .................. 2005.

 Governor