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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 573

(By Senator McCabe, et al)

PASSED April 9, 2005

In Effect July 1, 2005 **Passage**

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Senate Bill No. 513

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

[Passed April 9, 2005; to take effect July 1, 2005.]

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
- 2 single qualified company may not exceed two million
- 3 dollars. The total amount of tax credits authorized for a
- 4 single economic development and technology advancement

5 center may not exceed one million dollars. Capitalization
6 of the company or center may be increased pursuant to
7 rule of the authority.

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

41 (2) Not more than two million dollars of the credits
42 allowed under subdivision (1) of this subsection may be
43 allocated by the authority during each fiscal year to one or
44 more small business investment companies described in
45 this subdivision: *Provided*, That for the fiscal year begin-
46 ning on the first day of July, two thousand four, and for
47 the fiscal year beginning on the first day of July, two
48 thousand five, no credits authorized by this section may be
49 allocated by the authority to one or more small business
50 investment companies. After a portion of the credits are
51 allocated to small business investment companies as
52 provided in this section, not more than one million dollars
53 of the credits allowed under subdivision (1) of this subsec-
54 tion may be allocated by the authority during each fiscal
55 year to one or more economic development and technology
56 advancement centers qualified by the authority under
57 article twelve-a, chapter eighteen-b of this code: *Pro-*
58 *vided, however*, That for the fiscal year beginning on the
59 first day of July, two thousand four, all of the credits
60 allowed under subdivision (1) of this subsection shall be
61 allocated only to one or more qualified economic develop-
62 ment and technology advancement centers: *Provided*
63 *further*, That for the fiscal year beginning on the first day
64 of July, two thousand five, no credits allowed under
65 subdivision (1) of this subsection shall be allocated to any
66 qualified economic development and technology advance-
67 ment center. The remainder of the tax credits allowed
68 during the fiscal year shall be allocated by the authority
69 under the provisions of section four, article two of this
70 chapter: *And provided further*, That for the fiscal year
71 beginning on the first day of July, two thousand four, and
72 for the fiscal year beginning on the first day of July, two
73 thousand five, no credits authorized by this section may be
74 allocated by the authority to a taxpayer pursuant to the
75 provisions of section four, article two of this chapter. The
76 portion of the tax credits allowed for small business
77 investment companies described in this subdivision shall
78 be allowed only if allocated by the authority during the

79 first ninety days of the fiscal year and may only be allo-
80 cated to companies that: (A) Were organized on or after the
81 first day of January, one thousand nine hundred ninety-
82 nine; (B) are licensed by the small business administration
83 as a small business investment company under the small
84 business investment act; and (C) have certified in writing
85 to the authority on the application for credits under this
86 act that the company will diligently seek to obtain and
87 thereafter diligently seek to invest leverage available to
88 the small business investment companies under the small
89 business investment act. These credits shall be allocated
90 by the authority in the order that the companies are
91 qualified. The portion of the tax credits allowed for
92 economic development and technology advancement
93 centers described in article twelve-a, chapter eighteen-b of
94 this code shall be similarly allowed only if allocated by the
95 authority during the first ninety days of the fiscal year:
96 *And provided further*, That solely for the fiscal year
97 beginning on the first day of July, two thousand four, the
98 authority may allocate the tax credits allowed for eco-
99 nomic development and technology advancement centers
100 at any time during the fiscal year. Any credits which have
101 not been allocated to qualified companies meeting the
102 requirements of this subdivision relating to small business
103 investment companies or to qualified economic develop-
104 ment and technology advancement centers during the first
105 ninety days of the fiscal year shall be made available and
106 allocated by the authority under the provisions of section
107 four, article two of this chapter: *And provided further*,
108 That for the fiscal year beginning on the first day of July,
109 two thousand four, and for the fiscal year beginning on the
110 first day of July, two thousand five, no credits authorized
111 by this section may be allocated by the authority to a
112 taxpayer pursuant to the provisions of section four, article
113 two of this chapter.

114 (3) Notwithstanding any provision of this code or
115 legislative rule promulgated thereunder to the contrary,
116 for the fiscal year beginning on the first day of July, two

117 thousand four, and for the fiscal year beginning on the
118 first day of July, two thousand five, the authority has the
119 sole discretion to allocate or refuse to allocate tax credits
120 authorized under this section to any qualified economic
121 development and technology advancement center upon its
122 determination of the extent to which the center will fulfill
123 the purposes of this article. The determination shall be
124 based upon the application of the center, the extent to
125 which the company or center fulfilled those purposes in
126 prior years after receiving tax credits authorized under
127 this section, the extent to which the center is expected to
128 stimulate economic development and high technology
129 research in the chemical industry and such other similarly
130 related criteria as the authority may establish by vote of
131 the majority of authority.

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

152 (d) The tax credit allowed under this section is to be
153 credited against the taxpayer's tax liability for the taxable

154 year in which the investment in a qualified West Virginia
155 capital company or economic development and technology
156 advancement center is made. If the amount of the tax
157 credit exceeds the taxpayer's tax liability for the taxable
158 year, the amount of the credit which exceeds the tax
159 liability for the taxable year may be carried to succeeding
160 taxable years until used in full or until forfeited: *Pro-*
161 *vided*, That: (i) Tax credits may not be carried forward
162 beyond fifteen years; and (ii) tax credits may not be
163 carried back to prior taxable years. Any tax credit
164 remaining after the fifteenth taxable year is forfeited.

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

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

173 (g) Notwithstanding any provision in this code to the
174 contrary, the Tax Commissioner shall publish in the State
175 Register the name and address of every taxpayer and the
176 amount, by category, of any credit asserted under this
177 article. The categories by dollar amount of credit received
178 are as follows:

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

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

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

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

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

184 and

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

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this the *10th*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time

~~4:05~~ 2:35 p