

REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

(Allison, Simrill, G.M. Smith, Hosey & Stavrinakis - Staff Contact: Katie Owen)

HOUSE BILL 3505

H. 3505 -- Reps. Loftis, Bannister, Harrell, J.R. Smith, Brannon, Huggins, Kennedy, Ballentine, Cole, Hixon, McCoy and G.R. Smith: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 44 TO TITLE 11 SO AS TO ENACT THE "HIGH GROWTH SMALL BUSINESS ACCESS TO CAPITAL ACT OF 2013" BY PROVIDING FOR STATE NONREFUNDABLE INCOME TAX CREDITS FOR QUALIFIED INVESTMENTS IN BUSINESSES MEETING CERTAIN CRITERIA AND PRIMARILY ENGAGED IN MANUFACTURING, PROCESSING, WAREHOUSING, WHOLESALING, SOFTWARE DEVELOPMENT, INFORMATION TECHNOLOGY SERVICES, RESEARCH AND DEVELOPMENT OR OTHER NONPROHIBITED SERVICES, TO ESTABLISH THE CRITERIA AND PROCEDURES FOR THE CREDIT, TO MAKE THE CREDIT TRANSFERABLE, AND TO PROVIDE FOR CERTAIN ADJUSTED NET CAPITAL GAIN AND LOSS COMPUTATIONS FOR INVESTOR TAXPAYERS WHO RECOGNIZE SUCH A GAIN OR LOSS ON THE SALE OF CREDIT ASSETS AS DEFINED IN THIS CHAPTER.

Summary of Bill:

This bill enacts the "High Growth Small Business Job Creation Act of 2013." The bill provides a non-refundable income tax credit for "angel investors" who provide investments for small businesses that are involved with manufacturing, processing, warehousing, wholesaling, software development, information technology services and research and development. The bill provides for the amount and transferring of the credit.

Introduced: 02/06/2013

Received by Ways and Means: 02/06/2013

Estimated Fiscal Impact:

This bill is expected to reduce General Fund individual income tax revenue by an estimated \$6,000,000 in FY 13-14, and reduce General Fund individual income tax revenue by an estimated \$8,000,000 each fiscal year thereafter for ten years after the repeal date of this legislation on July 1, 2019.

The bill as amended has an estimated fiscal impact of \$5M in FY 13-14 and each fiscal year thereafter until FY19-20.

Subcommittee Recommendation:

Favorable with amendment

Full Committee Recommendation:

Pending

Other Notes/Comments:

THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

GOOD/LEE
APRIL 10, 2013

CLERK OF THE HOUSE

THE SALES AND INCOME TAX SUBCOMMITTEE PROPOSES THE
FOLLOWING AMENDMENT NO. TO H. 3505
(COUNCIL\NL\3505C001.NL.DG13):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING ALL AFTER THE ENACTING WORDS AND
INSERTING:**

**/ SECTION 1. A. TITLE 11 OF THE 1976
CODE IS AMENDED BY ADDING:**

“CHAPTER 44

**HIGH GROWTH SMALL BUSINESS JOB
CREATION ACT**

SECTION 11-44-10. THIS CHAPTER MAY BE CITED AS THE ‘HIGH GROWTH SMALL BUSINESS JOB CREATION ACT OF 2013’.

SECTION 11-44-20. THE GENERAL ASSEMBLY DESIRES TO SUPPORT THE ECONOMIC DEVELOPMENT GOALS OF THIS STATE BY IMPROVING THE AVAILABILITY OF EARLY STAGE CAPITAL FOR EMERGING HIGH-GROWTH ENTERPRISES IN SOUTH CAROLINA. TO FURTHER THESE GOALS, THIS CHAPTER IS INTENDED TO:

(1)ENCOURAGE INDIVIDUAL ANGEL INVESTORS TO INVEST IN EARLY STAGE, HIGH-GROWTH, JOB-CREATING BUSINESSES;

(2)ENLARGE THE NUMBER OF HIGH QUALITY, HIGH PAYING JOBS WITHIN THE STATE;

(3)EXPAND THE ECONOMY OF THIS STATE BY ENLARGING ITS BASE OF WEALTH-CREATING BUSINESSES; AND

(4)SUPPORT BUSINESSES SEEKING TO COMMERCIALIZE TECHNOLOGY INVENTED IN

THIS STATE'S INSTITUTIONS OF HIGHER EDUCATION.

SECTION 11-44-30. FOR PURPOSES OF THIS CHAPTER:

(1) 'ANGEL INVESTOR' MEANS AN ACCREDITED INVESTOR AS DEFINED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, WHO IS:

(A) AN INDIVIDUAL PERSON WHO IS A RESIDENT OF THIS STATE OR A NONRESIDENT WHO IS SUBJECT TO TAXES IMPOSED BY CHAPTER 6, TITLE 12; OR

(B) A PASS-THROUGH ENTITY WHICH IS FORMED FOR INVESTMENT PURPOSES, HAS NO BUSINESS OPERATIONS, DOES NOT HAVE COMMITTED CAPITAL UNDER MANAGEMENT EXCEEDING FIVE MILLION DOLLARS, AND IS NOT CAPITALIZED WITH FUNDS RAISED OR POOLED THROUGH PRIVATE PLACEMENT MEMORANDA DIRECTED TO INSTITUTIONAL INVESTORS. A VENTURE CAPITAL FUND OR COMMODITY FUND

WITH INSTITUTIONAL INVESTORS OR A HEDGE FUND DOES NOT QUALIFY AS AN ANGEL INVESTOR.

(2) 'HEADQUARTERS' MEANS THE FACILITY OR PORTION OF A FACILITY WHERE CORPORATE STAFF EMPLOYEES ARE PHYSICALLY EMPLOYED, AND WHERE THE MAJORITY OF THE COMPANY'S OR COMPANY BUSINESS UNIT'S FINANCIAL, PERSONNEL, LEGAL, PLANNING, INFORMATION TECHNOLOGY, OR OTHER HEADQUARTERS-RELATED FUNCTIONS ARE HANDLED.

(3) 'NET INCOME TAX LIABILITY' MEANS SOUTH CAROLINA STATE INCOME TAX LIABILITY REDUCED BY ALL OTHER CREDITS ALLOWED UNDER TITLES 11, 12, AND 48.

(4) 'PASS-THROUGH ENTITY' MEANS A PARTNERSHIP, AN S-CORPORATION, OR A LIMITED LIABILITY COMPANY TAXED AS A PARTNERSHIP.

(5) 'QUALIFIED BUSINESS' MEANS A REGISTERED BUSINESS THAT:

(A) IS EITHER A CORPORATION, LIMITED LIABILITY COMPANY, OR A GENERAL OR LIMITED PARTNERSHIP LOCATED IN THIS STATE AND HAS ITS HEADQUARTERS LOCATED IN THIS STATE AT THE TIME THE INVESTMENT WAS MADE AND HAS MAINTAINED THESE HEADQUARTERS FOR THE ENTIRE TIME THE QUALIFIED BUSINESS BENEFITTED FROM THE TAX CREDIT PROVIDED FOR PURSUANT TO THIS SECTION;

(B) WAS ORGANIZED NO MORE THAN FIVE YEARS BEFORE THE QUALIFIED INVESTMENT WAS MADE;

(C) EMPLOYS TWENTY-FIVE OR FEWER PEOPLE IN THIS STATE AT THE TIME IT IS REGISTERED AS A QUALIFIED BUSINESS;

(D) HAS HAD IN ANY COMPLETE FISCAL YEAR BEFORE REGISTRATION GROSS INCOME AS DETERMINED IN ACCORDANCE WITH THE INTERNAL REVENUE CODE OF TWO MILLION DOLLARS OR LESS ON A CONSOLIDATED BASIS;

(E) IS PRIMARILY ENGAGED IN MANUFACTURING, PROCESSING, WAREHOUSING, WHOLESALING, SOFTWARE DEVELOPMENT, INFORMATION TECHNOLOGY SERVICES, RESEARCH AND DEVELOPMENT, OR A BUSINESS PROVIDING SERVICES SET FORTH IN SECTION 12-6-3360(M)(13), OTHER THAN THOSE DESCRIBED IN SUBITEM (F); AND

(F) DOES NOT ENGAGE SUBSTANTIALY IN:

- (I) RETAIL SALES;**
- (II) REAL ESTATE OR CONSTRUCTION;**
- (III) PROFESSIONAL SERVICES;**
- (IV) GAMBLING;**
- (V) NATURAL RESOURCE EXTRACTION;**
- (VI) FINANCIAL BROKERAGE, INVESTMENT ACTIVITIES, OR INSURANCE;**
- (VII) ENTERTAINMENT, AMUSEMENT, RECREATION, OR ATHLETIC OR FITNESS ACTIVITY FOR WHICH AN ADMISSION OR FEE IS CHARGED.**

A BUSINESS IS SUBSTANTIALY ENGAGED IN ONE OF THE ACTIVITIES DEFINED IN SUBITEM (F) IF ITS GROSS REVENUE FROM AN ACTIVITY EXCEEDS TWENTY-FIVE PERCENT OF ITS GROSS REVENUES IN A FISCAL YEAR OR IT IS ESTABLISHED PURSUANT TO ITS ARTICLES OF INCORPORATION, ARTICLES OF ORGANIZATION, OPERATING AGREEMENT, OR SIMILAR ORGANIZATIONAL DOCUMENTS TO ENGAGE AS ONE OF ITS PRIMARY PURPOSES SUCH ACTIVITY.

(6) ‘QUALIFIED INVESTMENT’ MEANS AN INVESTMENT BY AN ANGEL INVESTOR OF CASH IN A QUALIFIED BUSINESS FOR COMMON OR PREFERRED STOCK OR AN EQUITY INTEREST OR A PURCHASE FOR CASH OF SUBORDINATED DEBT IN A QUALIFIED BUSINESS. INVESTMENT OF COMMON OR PREFERRED STOCK OR AN EQUITY INTEREST OR PURCHASE OF SUBORDINATED DEBT DOES NOT QUALIFY AS A QUALIFIED INVESTMENT IF A BROKER FEE OR COMMISSION OR A SIMILAR REMUNERATION IS PAID OR GIVEN DIRECTLY OR INDIRECTLY FOR SOLICITING AN INVESTMENT OR A PURCHASE.

(7) 'REGISTERED' OR 'REGISTRATION' MEANS THAT A BUSINESS HAS BEEN CERTIFIED BY THE SECRETARY AS A QUALIFIED BUSINESS AT THE TIME OF APPLICATION TO THE SECRETARY.

(8) 'SECRETARY' MEANS THE SECRETARY OF STATE.

SECTION 11-44-40. (A) AN ANGEL INVESTOR IS ENTITLED TO A NONREFUNDABLE INCOME TAX CREDIT OF THIRTY-FIVE PERCENT OF ITS QUALIFIED INVESTMENT MADE PURSUANT TO THIS CHAPTER.

(B) FIFTY PERCENT OF THE ALLOWED CREDIT MAY BE APPLIED TO THE ANGEL INVESTOR'S NET INCOME TAX LIABILITY IN THE TAX YEAR DURING WHICH THE QUALIFIED INVESTMENT IS MADE, AND FIFTY PERCENT OF THE ALLOWED CREDIT MAY BE APPLIED TO THE ANGEL INVESTOR'S NET INCOME TAX LIABILITY IN THE TAX YEARS AFTER THE QUALIFIED INVESTMENT IS MADE AND MAY BE CARRIED FORWARD FOR A PERIOD NOT TO EXCEED TEN YEARS FOR THESE PURPOSES AS PROVIDED IN SECTION 11-44-50.

(C) FOR ANY PASS-THROUGH ENTITY MAKING A QUALIFIED INVESTMENT DIRECTLY IN A QUALIFIED BUSINESS, EACH INDIVIDUAL WHO IS A SHAREHOLDER, PARTNER, OR MEMBER OF THE ENTITY MUST BE ALLOCATED THE CREDIT ALLOWED THE PASS-THROUGH ENTITY IN AN AMOUNT DETERMINED IN THE SAME MANNER AS THE PROPORTIONATE SHARES OF INCOME OR LOSS OF SUCH PASS-THROUGH ENTITY WOULD BE DETERMINED. THE PASS-THROUGH ENTITY MUST MAKE AN IRREVOCABLE ELECTION WITH THE DEPARTMENT OF REVENUE AS TO THE MANNER IN WHICH THE CREDIT IS ALLOCATED. IF AN INDIVIDUAL'S SHARE OF THE PASS-THROUGH ENTITY'S CREDIT IS LIMITED DUE TO THE MAXIMUM ALLOWABLE CREDIT UNDER THIS CHAPTER FOR A TAXABLE YEAR, THE PASS-THROUGH ENTITY AND ITS OWNERS MAY NOT REALLOCATE THE UNUSED CREDIT AMONG THE OTHER OWNERS.

SECTION 11-44-50. TAX CREDITS CLAIMED PURSUANT TO THIS CHAPTER ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

(1) THE TOTAL AMOUNT OF CREDITS ALLOWED PURSUANT TO THIS CHAPTER MAY NOT EXCEED IN THE AGGREGATE FIVE MILLION DOLLARS FOR ALL TAXPAYERS FOR ANY ONE CALENDAR YEAR;

(2) THE AGGREGATE AMOUNT OF CREDIT ALLOWED AN INDIVIDUAL FOR ONE OR MORE QUALIFIED INVESTMENTS IN A SINGLE TAXABLE YEAR UNDER THIS CHAPTER, WHETHER MADE DIRECTLY OR BY A PASS-THROUGH ENTITY AND ALLOCATED TO AN INDIVIDUAL, SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS EACH YEAR, NOT INCLUDING ANY CARRY FORWARD CREDITS;

(3) THE AMOUNT OF THE TAX CREDIT ALLOWED AN INDIVIDUAL UNDER THIS CHAPTER FOR A TAXABLE YEAR SHALL NOT EXCEED AN INDIVIDUAL'S NET INCOME TAX LIABILITY. AN UNUSED CREDIT AMOUNT IS ALLOWED TO BE CARRIED FORWARD FOR TEN YEARS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE QUALIFIED INVESTMENT WAS MADE. CREDIT IS NOT ALLOWED AGAINST PRIOR YEARS' TAX LIABILITY;

(4) THE CREDIT IS TRANSFERRABLE BY THE ANGEL INVESTOR TO HIS HEIRS AND LEGATEES UPON HIS OR HER DEATH AND TO HIS OR HER SPOUSE OR INCIDENT TO DIVORCE;

(5) THE CREDIT MAY BE SOLD, EXCHANGED, OR OTHERWISE TRANSFERRED, AND MAY BE CARRIED FORWARD FOR A PERIOD OF TEN TAXABLE YEARS FOLLOWING THE TAXABLE YEAR IN WHICH THE CREDIT ORIGINATED UNTIL FULLY EXPENDED. A TAX CREDIT OR INCREMENT OF A TAX CREDIT MAY BE TRANSFERRED ONLY ONCE. THE CREDIT MAY BE TRANSFERRED TO ANY TAXPAYER. A TAXPAYER TO WHOM A CREDIT HAS BEEN TRANSFERRED MAY USE THE CREDIT FOR THE TAXABLE YEAR IN WHICH THE TRANSFER OCCURRED AND UNUSED AMOUNTS MAY BE CARRIED FORWARD TO SUCCEEDING TAXABLE

YEARS, BUT THE TRANSFERRED CREDIT MAY NOT BE USED MORE THAN TEN YEARS AFTER IT WAS ORIGINALLY ISSUED; AND

(6) THE DEPARTMENT OF REVENUE MAY DEVELOP PROCEDURES FOR THE TRANSFER OF THE CREDITS.

SECTION 11-44-60. (A) A QUALIFIED BUSINESS SHALL REGISTER WITH THE SECRETARY FOR PURPOSES OF THIS CHAPTER. APPROVAL OF THIS REGISTRATION CONSTITUTES CERTIFICATION BY THE SECRETARY FOR TWELVE MONTHS AFTER BEING ISSUED. A BUSINESS IS PERMITTED TO RENEW ITS REGISTRATION WITH THE SECRETARY SO LONG AS, AT THE TIME OF RENEWAL, THE BUSINESS REMAINS A QUALIFIED BUSINESS.

(B) IF THE SECRETARY FINDS THAT ANY INFORMATION CONTAINED IN AN APPLICATION OF A BUSINESS FOR REGISTRATION UNDER THIS CHAPTER IS FALSE, THE SECRETARY SHALL REVOKE THE REGISTRATION OF THE BUSINESS. THE SECRETARY SHALL NOT REVOKE THE REGISTRATION OF A BUSINESS ONLY BECAUSE IT CEASES BUSINESS OPERATIONS FOR AN INDEFINITE PERIOD OF TIME, AS LONG AS THE BUSINESS RENEWS ITS REGISTRATION.

(C) A REGISTRATION AS A QUALIFIED BUSINESS MAY NOT BE SOLD OR OTHERWISE TRANSFERRED, EXCEPT THAT, IF A QUALIFIED BUSINESS ENTERS INTO A MERGER, CONVERSION, CONSOLIDATION, OR OTHER SIMILAR TRANSACTION WITH ANOTHER BUSINESS AND THE SURVIVING COMPANY WOULD OTHERWISE MEET THE CRITERIA FOR BEING A QUALIFIED BUSINESS, THE SURVIVING COMPANY RETAINS THE REGISTRATION FOR THE TWELVE-MONTH REGISTRATION PERIOD WITHOUT FURTHER APPLICATION TO THE SECRETARY. IN THIS CASE, THE QUALIFIED BUSINESS SHALL PROVIDE THE SECRETARY WITH WRITTEN NOTICE OF THE MERGER, CONVERSION, CONSOLIDATION, OR SIMILAR TRANSACTION AND OTHER INFORMATION AS REQUIRED BY THE SECRETARY.

(D) THE SECRETARY SHALL REPORT TO THE HOUSE WAYS AND MEANS COMMITTEE AND THE SENATE FINANCE COMMITTEE EACH

YEAR ALL OF THE BUSINESSES THAT HAVE REGISTERED WITH THE SECRETARY AS A QUALIFIED BUSINESS. THE REPORT MUST INCLUDE THE NAME AND ADDRESS OF EACH BUSINESS, THE LOCATION OF ITS HEADQUARTERS, A DESCRIPTION OF THE TYPE OF BUSINESS IN WHICH IT ENGAGES, THE AMOUNT OF CAPITAL IT HAS RAISED, THE NUMBER OF JOBS CREATED BY THE BUSINESS DURING THE PERIOD COVERED BY THE REPORT, AND THE AVERAGE WAGES PAID BY THESE JOBS.

SECTION 11-44-65. (A) FOR PURPOSES OF THIS SECTION:

(1) 'ANGEL INVESTOR TAXPAYER' MEANS A TAXPAYER WHO INVESTED IN A CAPITAL ASSET AND AS A RESULT OF THAT INVESTMENT WAS ELIGIBLE TO CLAIM THE TAX CREDIT ALLOWED PURSUANT TO THIS CHAPTER.

(2) 'CREDIT ASSET' MEANS A CAPITAL ASSET ACQUIRED BY AN ANGEL INVESTOR TAXPAYER WHO WAS ELIGIBLE TO CLAIM THE TAX CREDIT ALLOWED PURSUANT TO THIS CHAPTER WITH RESPECT TO THE ACQUISITION.

(3) 'NET CAPITAL GAIN' IS AS DEFINED IN INTERNAL REVENUE CODE SECTION 1222 AND RELATED SECTIONS.

(4) 'NET CAPITAL LOSS' IS AS DEFINED IN INTERNAL REVENUE CODE SECTION 1211(B), NOT INCLUDING THE LIMITATION IMPOSED PURSUANT TO SECTION 1211(B)(1).

(B)(1) IF AN ANGEL INVESTOR TAXPAYER RECOGNIZED NET CAPITAL GAIN ON THE SALE OR EXCHANGE OF CREDIT ASSETS IN A TAXABLE YEAR, THEN THE AMOUNT OF NET CAPITAL GAIN OF THAT TAXPAYER ELIGIBLE FOR THE DEDUCTION OTHERWISE ALLOWED PURSUANT TO SECTION 12-6-1150 MUST BE REDUCED BY THE NET CAPITAL GAIN ON THE SALE OR EXCHANGE OF CREDIT ASSETS BY THE ANGEL INVESTOR TAXPAYER.

(2) IN A SEPARATE COMPUTATION IN EACH TAXABLE YEAR THE ANGEL INVESTOR TAXPAYER SHALL ATTRIBUTE THE NET CAPITAL GAIN ON CREDIT ASSETS TO EACH CREDIT ASSET IN THE RATIO THAT THE

LONG TERM CAPITAL GAIN ON EACH SEPARATE CREDIT ASSET AS A PROPORTION OF ALL SUCH LONG TERM GAIN BEARS TO THE NET CAPITAL GAIN REDUCTION REQUIRED PURSUANT TO ITEM (1). IF CUMULATIVE NET CAPITAL GAIN ON A CREDIT ASSET MULTIPLIED BY SEVEN PERCENT EQUALS THE TOTAL CREDIT CLAIMED ON THE CREDIT ASSET, THE EXCESS OF THE NET CAPITAL GAIN ATTRIBUTABLE TO THIS CREDIT ASSET OVER THAT NECESSARY TO PRODUCE THE TOTAL CREDIT AMOUNT IN THE COMPUTATION IS DEDUCTED FROM THE REDUCTION OTHERWISE REQUIRED PURSUANT TO ITEM (1).

(C)(1) IF AN ANGEL INVESTOR TAXPAYER RECOGNIZED NET CAPITAL LOSS ON THE SALE OR EXCHANGE OF CREDIT ASSETS IN A TAXABLE YEAR IN AN AMOUNT EQUAL TO OR LESS THAN THE TOTAL OF TAX CREDITS CLAIMED ON THOSE CREDIT ASSETS, THEN THERE IS ADDED TO THE ANGEL INVESTOR TAXPAYER'S SOUTH CAROLINA TAXABLE INCOME FOR THAT TAXABLE YEAR THE AMOUNT OF THE NET CAPITAL LOSS ON THOSE CREDIT ASSETS NOT TO EXCEED THE TAX CREDITS CLAIMED ON THOSE CREDIT ASSETS.

(2) IF AN ANGEL INVESTOR TAXPAYER RECOGNIZED NET CAPITAL LOSS ON THE SALE OR EXCHANGE OF CREDIT ASSETS IN A TAXABLE YEAR IN AN AMOUNT GREATER THAN THE AMOUNT OF THE TAX CREDITS CLAIMED ON THOSE CREDIT ASSETS, THEN THERE IS ADDED TO THE ANGEL INVESTOR TAXPAYER'S SOUTH CAROLINA TAXABLE INCOME FOR THAT TAXABLE YEAR THE AMOUNT OF THE TAX CREDIT CLAIMED ON THOSE CREDIT ASSETS.

SECTION 11-44-70. (A) AN ANGEL INVESTOR SEEKING TO CLAIM A TAX CREDIT PROVIDED FOR UNDER THIS CHAPTER SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT OF REVENUE FOR TENTATIVE APPROVAL FOR THE TAX CREDIT IN THE YEAR FOR WHICH THE TAX CREDIT IS CLAIMED OR ALLOWED. THE DEPARTMENT OF REVENUE SHALL PROVIDE FOR THE MANNER IN WHICH THE APPLICATION IS TO BE SUBMITTED. THE DEPARTMENT OF REVENUE SHALL REVIEW THE

APPLICATION AND TENTATIVELY SHALL APPROVE THE APPLICATION UPON DETERMINING THAT IT MEETS THE REQUIREMENTS OF THIS CHAPTER.

(B) THE DEPARTMENT OF REVENUE SHALL PROVIDE TENTATIVE APPROVAL OF THE APPLICATIONS BY THE DATE PROVIDED IN SUBSECTION (C).

(C) THE DEPARTMENT OF REVENUE SHALL NOTIFY EACH QUALIFIED INVESTOR OF THE TAX CREDITS TENTATIVELY APPROVED AND ALLOCATED TO THE QUALIFIED INVESTOR BY JANUARY THIRTY-FIRST OF THE YEAR AFTER THE APPLICATION WAS SUBMITTED. IF THE CREDIT AMOUNTS ON THE TAX CREDIT APPLICATIONS FILED WITH THE DEPARTMENT OF REVENUE EXCEED THE MAXIMUM AGGREGATE LIMIT OF TAX CREDITS, THEN THE TAX CREDIT MUST BE ALLOCATED AMONG THE ANGEL INVESTORS WHO FILED A TIMELY APPLICATION ON A PRO RATA BASIS BASED UPON THE AMOUNTS OTHERWISE ALLOWED BY THIS CHAPTER. ONCE THE TAX CREDIT APPLICATION HAS BEEN APPROVED AND THE AMOUNT HAS BEEN COMMUNICATED TO THE APPLICANT, THE ANGEL INVESTOR THEN MAY APPLY THE AMOUNT OF THE APPROVED TAX CREDIT TO ITS TAX LIABILITY FOR THE TAX YEAR OF WHICH THE APPROVED APPLICATION APPLIES.

SECTION 11-44-80. TAX CREDITS GENERATED AS A RESULT OF THESE INVESTMENTS ARE NOT CONSIDERED SECURITIES UNDER THE LAWS OF THIS STATE.”

B. THE PROVISIONS OF CHAPTER 44, TITLE 11 CONTAINED IN THIS ACT ARE REPEALED ON DECEMBER 31, 2019. ANY CARRY FORWARD CREDITS SHALL CONTINUE TO BE ALLOWED UNTIL THE TEN YEAR TIME PERIOD IN SECTION 11-44-40(B) IS COMPLETED.

SECTION 2. SECTION 12-54-240(B) OF THE 1976 CODE, AS LAST AMENDED BY ACT 116 OF 2007, IS FURTHER AMENDED BY ADDING AN APPROPRIATELY NUMBERED ITEM AT THE END TO READ:

“() EXCHANGE BETWEEN THE DEPARTMENT OF REVENUE AND THE SECRETARY OF STATE OF ANY INFORMATION THAT ASSISTS THE DEPARTMENT OF REVENUE OR THE SECRETARY OF STATE IN DETERMINING OR VERIFYING INFORMATION CONCERNING WHETHER A BUSINESS IS A QUALIFIED BUSINESS PURSUANT TO SECTION 11-44-60.”

SECTION 3. THIS ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR, AND THE TAX CREDITS PERMITTED BY THIS CHAPTER ARE FIRST AVAILABLE FOR INVESTMENTS MADE AFTER DECEMBER 31, 2012.

/

RENUMBER SECTIONS TO CONFORM.

AMEND TITLE TO CONFORM.

Statement of Estimated State Revenue Impact

Date: April 15, 2013 (As amended April 10, 2013 by the Sales & Income Tax Subcommittee)

Bill Number: H.B. 3505

Authors: Loftis, Bannister, Harrell, J.R. Smith, Brannon, *et. al.*

Committee Requesting Impact: House Ways & Means Committee

Bill Summary

A bill to amend the Code of Laws of South Carolina, 1976, by adding Chapter 44 to Title 11 so as to enact the "High Growth Small Business Access to Capital Act of 2013" by providing for state nonrefundable income tax credits for qualified investments in businesses meeting certain criteria and primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development or other nonprohibited services, to establish the criteria and procedures for the credit, to make the credit transferable, and to provide for certain adjusted net capital gain and loss computations for investor taxpayers who recognize such a gain or loss on the sale of credit assets as defined in this chapter.

REVENUE IMPACT ^{1/}

This bill, as amended, is expected to reduce General Fund individual income tax revenue by an estimated \$5,000,000 in FY2013-14, and each fiscal year thereafter.

Explanation of Amendment (April 10, 2013) – House Sales & Income Tax Subcommittee

This amendment would strike all after the enacting words and insert the following changes to the bill as originally filed:

- The amendment lowers the total amount of tax credits claimed for all taxpayers from \$8,000,000 to \$5,000,000 in any one taxable year. Total tax credits may not exceed \$100,000 for an individual taxpayer in a single taxable year.
- The amendment removes language that would allow an angel investor to claim a nonrefundable state income tax credit of fifty percent of its qualified investment in a business start-up company if a qualified investment is made in a South Carolina Launch portfolio business. SC Launch is a private, not-for-profit South Carolina Research Authority (SCRA) affiliate, and is collaboration among SCRA and South Carolina's university research foundations – Clemson University, the Medical University of South Carolina and the University of South Carolina.
- The amendment removes the repeal date of July 1, 2019 from the legislation.

This amended bill, therefore, is expected to reduce General Fund individual income tax revenue by an estimated \$5,000,000 in FY2013-14, and each fiscal year thereafter.

Explanation of Bill filed February 6, 2013

This bill would add Chapter 44 to Title 11 to create the "High Growth Small Business Access to Capital Act of 2013". Similar tax credit incentive programs have been implemented in 25 states, including North Carolina and Georgia. This bill would allow an angel investor to claim a nonrefundable state income tax credit of thirty-five percent of its qualified investment in a business

Statement of Estimated State Revenue Impact

start-up company. If a qualified investment is made in a South Carolina Launch portfolio business, the nonrefundable tax credit is increased to fifty percent. SC Launch is a private, not-for-profit South Carolina Research Authority (SCRA) affiliate. It is collaboration among SCRA and South Carolina's university research foundations – Clemson University, the Medical University of South Carolina and the University of South Carolina. It supports the creation of early-stage, knowledge-based companies in obtaining funding to commercialize their products and create high wage jobs. Total tax credits may not exceed \$8,000,000 for all taxpayers in any one taxable year, and total tax credits may not exceed \$100,000 for an individual taxpayer in a single taxable year. A taxpayer may apply fifty percent of the allowed tax credit to the investor net tax liability during the tax year the qualified investment is made, and the remaining fifty percent of the tax credit may be applied to any net taxable liability in future tax years. Any unused tax credits may be carried forward for ten years and tax credits may not be used against prior years' tax liability. Tax credits are transferrable by the heirs and legatees of the qualified investor upon death and/or to his spouse. The tax credit may be transferred only once to any taxpayer, but may be carried forward for ten years from the original date of issue.

An angel investor is an accredited investor who is a resident of this state or a nonresident who is obligated to pay taxes in this state, or is a pass-through entity which is formed for investment purposes, has no business operations, and does not have committed capital exceeding \$10,000,000. A pass-through entity means a partnership, an S-corporation, or a limited liability company taxed as a partnership. The individual investor or the pass-through business may invest in a qualified business that meets the following criteria – is either a corporation, limited liability company, or a general or limited partnership located in this state; was organized no more than five years before the qualified investment was made; is headquartered in this state; employs 25 or fewer people; has had gross annual revenue of \$3,000,000 or less in any complete fiscal year before registration with the Secretary of State; and is primarily engaged in specific types of businesses such as manufacturing, processing, warehousing, wholesaling, software development, information technology services, and research and development.

Angel investors are different from venture capitalists. Angel investors generally invest their own money in business start-ups and very early stage companies, while venture capitalists mostly provide capital they have raised from others to later-stage businesses for growth. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as a "qualified investor". An angel investor is an individual who invests directly into promising entrepreneurial businesses in return for stock in the companies or a share of the profits. To be an accredited investor pursuant to the Securities Act of 1933 requires a net worth of \$1,000,000 or an annual income over \$200,000. Under the Securities Act of 1933, a company that offers or sells its securities must register the securities with the Securities and Exchange Commission or find an exemption from the registration requirements. The most widely used exemptions are rules 505 and 506 of Regulation D which allows a company to sell its securities to "accredited investors". An angel group is individual angel investors that join together with other angel investors to evaluate and invest in entrepreneurial ventures. They pool their capital to make larger investments. According to the Angel Capital Association, there are 300 member angel investor groups in the United States. There are two angel investor groups in South Carolina. They are the Charleston Angel Partners (CHAP) and the Upstate Carolina Angel Network (UCAN) in Greenville.

A qualified angel investor seeking to claim a tax credit must submit an application to the Department of Revenue to seek tentative approval of the tax credit. The Department would notify each qualified

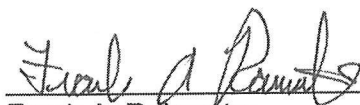
Statement of Estimated State Revenue Impact

angel investor of the tax credits that are approved and allocated to the investor by January 31st for the year after the application was submitted. If the total amount of tax credits applied for exceeds the maximum amount of tax credits allowed, the tax credits must be allocated among the qualified investors on a pro rata basis.

According to the Angel Capital Association, a professional alliance of angel groups in North America, there were 8,000 accredited angel investors that financed business start-ups investing an average of nearly \$307,500 per project in 2011. After adjusting these figures to comparable state figures, we estimate that 120 investors in South Carolina would qualify as angel investors. Multiplying 120 accredited angel investors by an annual tax credit limitation of \$100,000 per individual investor for all projects yields an estimated \$12,000,000 that may be applied for by investors with the Department of Revenue in a tax year. Because fifty percent of the allowed tax credit may be used in the tax year the qualified investment is first made, an estimated total of \$6,000,000 of tax credits could be claimed in the first tax year of the program. We expect that the maximum limitation of \$8,000,000 set aside for accredited angel investors would be met in future tax years. This bill is expected to reduce General Fund individual income tax revenue by an estimated \$6,000,000 in FY2013-14, and reduce General Fund individual income tax revenue by an estimated \$8,000,000 each fiscal year thereafter.

This bill would also add Section 11-44-65 to allow the qualified taxpayer to apply the tax credit against any net capital gain realized from the sale of credit assets by the taxpayer. A "credit asset" is a capital asset acquired by the taxpayer who is eligible to claim the income tax credit. This section would tax any realized net capital gain income by the taxpayer/investor by treating the net capital gain as ordinary income up to an amount of tax equal to the amount of the state credit. This income would be taxed at the rate of seven percent instead of at the tax rate of 3.92 percent for capital gain income. This would mitigate the risk to the state by recouping some of the loss of subsidizing the investment in high-risk, high growth start-up companies. All of the capital gain realized in excess of the credit amount would then be taxed at the preferential capital gains tax rate of 3.92 percent. Conversely, if an angel investment results in a failed outcome, the investor would only be able to deduct the portion of loss over and above the credit limitation of 35 percent on their state income tax return. As a result, the net capital loss may be fully deductible on an angel investor's federal income tax return, but the net capital loss would not be fully deductible on the angel investor's state income tax return. This would prevent the occurrence of "double dipping" – the ability to fully apply a tax provision at the federal level as well as at the state level.

Lastly, each year, the Secretary of State would report to the House Ways & Means Committee and Senate Finance Committee all of the businesses that have registered with the Secretary of State as qualified businesses. This act takes effect upon approval by the Governor, and the tax credits are first available for tax years after December 31, 2012. The provisions contained in this act are repealed on July 1, 2019.



Frank A. Rainwater
Chief Economist

Analyst: Martin

¹¹ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact of Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

South Carolina General Assembly
120th Session, 2013-2014

H. 3505

STATUS INFORMATION

General Bill

Sponsors: Reps. Loftis, Bannister, Harrell, J.R. Smith, Brannon, Huggins, Kennedy, Ballentine, Cole, Hixon, McCoy, G.R. Smith, Hamilton, Tallon, Henderson and Forrester

Document Path: I:\council\bill\dk\3014sd13.docx

Introduced in the House on February 6, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: High Growth Small Business Access to Capital Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/6/2013	House	Introduced and read first time (House Journal-page 7)
2/6/2013	House	Referred to Committee on Ways and Means (House Journal-page 7)
2/7/2013	House	Member(s) request name added as sponsor: Hamilton, Tallon, Henderson, Forrester

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VERSIONS OF THIS BILL

2/6/2013

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 44 TO TITLE 11 SO AS TO ENACT THE “HIGH GROWTH SMALL BUSINESS ACCESS TO CAPITAL ACT OF 2013” BY PROVIDING FOR STATE NONREFUNDABLE INCOME TAX CREDITS FOR QUALIFIED INVESTMENTS IN BUSINESSES MEETING CERTAIN CRITERIA AND PRIMARILY ENGAGED IN MANUFACTURING, PROCESSING, WAREHOUSING, WHOLESALING, SOFTWARE DEVELOPMENT, INFORMATION TECHNOLOGY SERVICES, RESEARCH AND DEVELOPMENT OR OTHER NONPROHIBITED SERVICES, TO ESTABLISH THE CRITERIA AND PROCEDURES FOR THE CREDIT, TO MAKE THE CREDIT TRANSFERABLE, AND TO PROVIDE FOR CERTAIN ADJUSTED NET CAPITAL GAIN AND LOSS COMPUTATIONS FOR INVESTOR TAXPAYERS WHO RECOGNIZE SUCH A GAIN OR LOSS ON THE SALE OF CREDIT ASSETS AS DEFINED IN THIS CHAPTER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 11 of the 1976 Code is amended by adding:

“CHAPTER 44

High Growth Small Business Access to Capital Act

Section 11-44-10. This chapter may be cited as the ‘High Growth Small Business Access to Capital Act of 2013’.

1 Section 11-44-20. The General Assembly desires to support the
2 economic development goals of this State by improving the
3 availability of early stage capital for emerging high-growth
4 enterprises in South Carolina. To further these goals, this chapter
5 is intended to:

6 (1) encourage individual angel investors to invest in early
7 stage, high-growth, job-creating businesses;

8 (2) enlarge the number of high quality, high paying jobs within
9 the State;

10 (3) expand the economy of this State by enlarging its base of
11 wealth-creating businesses; and

12 (4) support businesses seeking to commercialize technology
13 invented in this State's institutions of higher education.
14

15 Section 11-44-30. For purposes of this chapter:

16 (1) 'Angel investor' means an accredited investor as defined by
17 the United States Securities and Exchange Commission, who is:

18 (a) an individual person who is a resident of this State or a
19 nonresident who makes a qualified angel investment allowed
20 pursuant to this chapter; or

21 (b) a pass-through entity which is formed for investment
22 purposes, has no business operations, does not have committed
23 capital under management exceeding ten million dollars, and is not
24 capitalized with funds raised or pooled through private placement
25 memoranda directed to institutional investors. A venture capital
26 fund or commodity fund with institutional investors or a hedge
27 fund does not qualify as an angel investor.

28 (2) 'Headquarters' means the principal central administrative
29 office of a business located in this State which conducts significant
30 operations of a business.

31 (3) 'Net income tax liability' means South Carolina state
32 income tax liability reduced by all other credits allowed under
33 Chapter 6, Title 12.

34 (4) 'Pass-through entity' means a partnership, an
35 S-corporation, or a limited liability company taxed as a
36 partnership.

37 (5) 'Qualified business' means a registered business that:

38 (a) is either a corporation, limited liability company, or a
39 general or limited partnership located in this State;

40 (b) was organized no more than five years before the
41 qualified investment was made;

42 (c) has its headquarters located in this State at the time the
43 investment was made and has maintained these headquarters for

1 the entire time the qualified business benefitted from the tax credit
2 provided for pursuant to this section;

3 (d) employs twenty-five or fewer people in this State at the
4 time it is registered as a qualified business;

5 (e) has had in any complete fiscal year before registration
6 gross income as determined in accordance with the Internal
7 Revenue Code of three million dollars or less on a consolidated
8 basis;

9 (f) is primarily engaged in manufacturing, processing,
10 warehousing, wholesaling, software development, information
11 technology services, research and development, or a business
12 providing services other than those described in subitem (g); and

13 (g) does not engage substantially in:

14 (i) retail sales;

15 (ii) real estate or construction;

16 (iii) professional services, other than for services provided
17 by firms primarily engaged in computer, information technology,
18 scientific, or technical services;

19 (iv) gambling;

20 (v) natural resource extraction;

21 (vi) financial brokerage, investment activities, or
22 insurance;

23 (vii) entertainment, amusement, recreation, or athletic or
24 fitness activity for which an admission or fee is charged.

25 A business is substantially engaged in one of the activities
26 defined in subitem (f) if its gross revenue from an activity exceeds
27 twenty-five percent of its gross revenues in a fiscal year or it is
28 established pursuant to its articles of incorporation, articles of
29 organization, operating agreement, or similar organizational
30 documents to engage as one of its primary purposes such activity.

31 (6) 'Qualified investment' means an investment by an angel
32 investor of cash in a qualified business for common or preferred
33 stock or an equity interest or a purchase for cash of convertible,
34 secured or unsecured debt in a qualified business. Investment of
35 common or preferred stock or an equity interest or purchase of
36 subordinated debt does not qualify as a qualified investment if a
37 broker fee or commission or a similar remuneration is paid or
38 given directly or indirectly for soliciting an investment or a
39 purchase.

40 (7) 'Registered' or 'registration' means that a business has
41 been certified by the Secretary as a qualified business at the time
42 of application to the Secretary.

43 (8) 'Secretary' means the Secretary of State.

1 (9) 'SC Launch portfolio company' means a South
2 Carolina-based company that has received equity or debt financing
3 through the SC Launch program within the South Carolina
4 Research Authority.

5
6 Section 11-44-40. (A) An angel investor is entitled to a
7 nonrefundable state income tax credit of thirty-five percent of its
8 qualified investment made pursuant to this chapter. For qualified
9 investments in South Carolina Launch portfolio businesses, the tax
10 credit shall be increased to fifty percent.

11 (B) Fifty percent of the allowed credit may be applied to the
12 angel investor's net income tax liability in the tax year during
13 which the qualified investment is made, and fifty percent of the
14 allowed credit may be applied to the angel investor's net income
15 tax liability in the tax years after the qualified investment is made
16 and may be carried forward for a period not to exceed ten years for
17 these purposes as provided in Section 11-44-50.

18 (C) For any pass-through entity making a qualified investment
19 directly in a qualified business, each individual who is a
20 shareholder, partner, or member of the entity must be allocated the
21 credit allowed the pass-through entity in an amount determined in
22 the same manner as the proportionate shares of income or loss of
23 such pass-through entity would be determined. If an individuals'
24 share of the pass-through entity's credit is limited due to the
25 maximum allowable credit under this chapter for a taxable year,
26 the pass-through entity and its owners may not reallocate the
27 unused credit among the other owners.

28
29 Section 11-44-50. Tax credits claimed pursuant to this chapter
30 are subject to the following conditions and limitations:

31 (1) the total amount of credits allowed pursuant to this chapter
32 may not exceed in the aggregate eight million dollars for all
33 taxpayers for any one taxable year;

34 (2) the aggregate amount of credit allowed an individual for
35 one or more qualified investments in a single taxable year under
36 this chapter, whether made directly or by a pass-through entity and
37 allocated to an individual, shall not exceed one hundred thousand
38 dollars;

39 (3) the amount of the tax credit allowed an individual under
40 this chapter for a taxable year shall not exceed an individual's net
41 income tax liability. An unused credit amount is allowed to be
42 carried forward for ten years from the close of the taxable year in

1 which the qualified investment was made. Credit is not allowed
2 against prior years' tax liability;

3 (4) the credit is transferrable by the angel investor to his heirs
4 and legatees upon his or her death and to his or her spouse or
5 incident to divorce;

6 (5) the credit may be sold, exchanged, or otherwise transferred,
7 and may be carried forward for a period of ten taxable years
8 following the taxable year in which the credit originated until fully
9 expended. A tax credit or increment of a tax credit may be
10 transferred only once. The credit may be transferred to any
11 taxpayer. A taxpayer to whom a credit has been transferred may
12 use the credit for the taxable year in which the transfer occurred
13 and unused amounts may be carried forward to succeeding taxable
14 years, but the transferred credit may not be used more than ten
15 years after it was originally issued; and

16 (6) the Department of Revenue may develop procedures for the
17 transfer of the credits.

18

19 Section 11-44-60. (A) A qualified business shall register with
20 the Secretary for purposes of this chapter. Approval of this
21 registration constitutes certification by the Secretary for twelve
22 months after being issued. A business is permitted to renew its
23 registration with the Secretary so long as, at the time of renewal,
24 the business remains a qualified business.

25 (B) If the Secretary finds that any information contained in an
26 application of a business for registration under this chapter is false,
27 the Secretary shall revoke the registration of the business. The
28 Secretary shall not revoke the registration of a business only
29 because it ceases business operations for an indefinite period of
30 time, as long as the business renews its registration.

31 (C) A registration as a qualified business may not be sold or
32 otherwise transferred, except that, if a qualified business enters
33 into a merger, conversion, consolidation, or other similar
34 transaction with another business and the surviving company
35 would otherwise meet the criteria for being a qualified business,
36 the surviving company retains the registration for the
37 twelve-month registration period without further application to the
38 Secretary. In this case, the qualified business shall provide the
39 Secretary with written notice of the merger, conversion,
40 consolidation, or similar transaction and other information as
41 required by the Secretary.

42 (D) The Secretary shall report to the House Ways and Means
43 Committee and the Senate Finance Committee each year all of the

1 businesses that have registered with the Secretary as a qualified
2 business. The report must include the name and address of each
3 business, the location of its headquarters, a description of the type
4 of business in which it engages, the amount of capital it has raised,
5 the number of jobs created by the business during the period
6 covered by the report, and the average wages paid by these jobs.

7
8 Section 11-44-65. (A) For purposes of this section:

9 (1) 'Angel investor taxpayer' means a taxpayer who invested
10 in a capital asset and as a result of that investment was eligible to
11 claim the income tax credit allowed pursuant to this chapter.

12 (2) 'Credit asset' means a capital asset acquired by an angel
13 investor taxpayer who was eligible to claim the income tax credit
14 allowed pursuant to this chapter with respect to the acquisition.

15 (3) 'Net capital gain' is as defined in Internal Revenue Code
16 Section 1222 and related sections.

17 (4) 'Net capital loss' is as defined in Internal Revenue Code
18 Section 1211(b), not including the limitation imposed pursuant to
19 Section 1211(b)(1).

20 (B)(1) If an angel investor taxpayer recognized net capital gain
21 on the sale or exchange of credit assets in a taxable year, then the
22 amount of net capital gain of that taxpayer eligible for the
23 deduction otherwise allowed pursuant to Section 12-6-1150 must
24 be reduced by the net capital gain on the sale or exchange of credit
25 assets by the angel investor taxpayer.

26 (2) In a separate computation in each taxable year, the angel
27 investor taxpayer shall attribute the net capital gain on credit assets
28 to each credit asset in the ratio that the long term capital gain on
29 each separate credit asset as a proportion of all such long term gain
30 bears to the net capital gain reduction required pursuant to item
31 (1). If cumulative net capital gain on a credit asset multiplied by
32 seven percent equals the total credit claimed on the credit asset, the
33 excess of the net capital gain attributable to this credit asset over
34 that necessary to produce the total credit amount in the
35 computation is deducted from the reduction otherwise required
36 pursuant to item (1).

37 (C)(1) If an angel investor taxpayer recognized net capital loss
38 on the sale or exchange of credit assets in a taxable year in an
39 amount equal to or less than the total of tax credits claimed on
40 those credit assets, then there is added to the angel investor
41 taxpayer's South Carolina taxable income for that taxable year the
42 amount of the net capital loss on those credit assets not to exceed
43 the tax credits claimed on those credit assets.

1 (2) If an angel investor taxpayer recognized net capital loss
2 on the sale or exchange of credit assets in a taxable year in an
3 amount greater than the amount of the tax credits claimed on those
4 credit assets, then there is added to the angel investor taxpayer's
5 South Carolina taxable income for that taxable year the amount of
6 the tax credit claimed on those credit assets.

7

8 Section 11-44-70. (A) An angel investor seeking to claim a tax
9 credit provided pursuant to this chapter shall submit an application
10 to the Department of Revenue for tentative approval for the tax
11 credit in the year for which the tax credit is claimed or allowed.
12 The Department of Revenue, by regulation, shall provide for the
13 manner in which the application is to be submitted. The
14 Department of Revenue shall review the application and
15 tentatively shall approve the application upon determining that it
16 meets the requirements of this chapter.

17 (B) The Department of Revenue shall provide tentative
18 approval of the applications by the date provided in subsection (C).

19 (C) The Department of Revenue shall notify each qualified
20 investor of the tax credits tentatively approved and allocated to the
21 qualified investor by January thirty-first of the year after the
22 application was submitted. If the credit amounts on the tax credit
23 applications filed with the Department of Revenue exceed the
24 maximum aggregate limit of tax credits, then the tax credit must be
25 allocated among the angel investors who filed a timely application
26 on a pro rata basis based upon the amounts otherwise allowed by
27 this chapter. Once the tax credit application has been approved
28 and the amount has been communicated to the applicant the angel
29 investor then may apply the amount of the approved tax credit to
30 its tax liability for the tax year of which the approved application
31 applies. The Department of Revenue shall publish on its website
32 by the fifth day of each month the total amount of tax credit
33 applications received during the calendar year to date.

34

35 Section 11-44-80. Tax credits generated as a result of these
36 investments are not considered securities under the laws of this
37 State."

38

39 SECTION 2. Chapter 44, Title 11 of the 1976 Code contained in
40 this act is repealed on July 1, 2019.

41

1 SECTION 3. This act takes effect upon approval by the Governor,
2 and the tax credits permitted by this chapter are first available for
3 tax years beginning after December 31, 2012.
4 ----XX----
5