COMMITTEE AMENDMENT ADOPTED

February 15, 2013

**S. 262**

Introduced by Senators Leatherman, Setzler and Ford

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Read the first time January 17, 2013.

**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 JOB CREATION 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, AND TO MAKE THE CREDIT TRANSFERABLE.

Amend Title To Conform

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

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 substantially 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 substantially 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 individuals’ 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 12‑44‑40(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.

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