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# REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

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

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## HOUSE BILL 3088

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H. 3088 -- Reps. Loftis, Burns and Henderson: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 6, TITLE 12 SO AS TO ENACT THE "SOUTH CAROLINA SMALL BUSINESS TAX INCENTIVES ACT", ALLOWING VARIOUS INCOME TAX DEDUCTIONS AND CREDITS FOR RESIDENT TAXPAYERS FOR INVESTMENT IN QUALIFIED BUSINESSES IN THIS STATE AND TO ALLOW A JOBS TAX CREDIT AND AN ADDITIONAL TAX CREDIT FOR QUALIFIED RESEARCH EXPENSES FOR SUCH BUSINESSES; TO AMEND SECTION 35-1-202, RELATING TO TRANSACTIONS WHICH ARE EXEMPT FROM THE REQUIREMENTS OF SPECIFIC PROVISIONS OF SECURITIES LAW INCLUDING REGISTRATION REQUIREMENTS, SO AS TO EXEMPT ANY OFFER OR SALE OF A SECURITY BY AN ISSUER IF THE OFFER OR SALE IS CONDUCTED IN ACCORDANCE WITH SECTION 35-1-205; AND BY ADDING SECTION 35-1-205 SO AS TO AUTHORIZE CERTAIN QUALIFIED COMPANIES IN THIS STATE TO SOLICIT INVESTMENTS FROM QUALIFIED RESIDENT INVESTORS IN THIS STATE IN ORDER TO ENABLE THEM TO RAISE MONEY ON AN INTRASTATE BASIS.

***Summary of Bill:***

This bill provides income tax deductions and credits for qualified investments into small businesses within this state. The business must be engaged in at least one of the following for the credit/deduction to be allowed: A) advanced materials and nontechnology; B) biomedical; C) information sciences; D) pharmaceuticals; E) nuclear engineering and manufacturing; F) agribusiness food processing.

***Estimated Revenue Impact:***

Pending

***Subcommittee Recommendation:***

Favorable with Amendment

***Full Committee Recommendation:***

Pending

***Notes:***

The bill was amended in subcommittee to conform to recent changes in rules from the Securities and Exchange Commission which will apply the same rules at the state level as they are at the federal level.

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

ALLEN/PAIR  
APRIL 15, 2015

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CLERK OF THE HOUSE

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THE SALES AND INCOME TAX SUBCOMMITTEE PROPOSES THE FOLLOWING AMENDMENT No. TO H. 3088 (H-WM\STAFF\KATIE\LEGISLATION\FY 15 - 16\H. 3088 - SC SMALL BUSINESS TAX INCENTIVES ACT\H. 3088 AMENDMENT FOR SUB):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY SECTION 12-6-1520, SECTION 1, PAGE 2, AFTER LINE 39, BY ADDING A NEW ITEM TO READ:**

**/ (4) QUALIFIED PURCHASER IS A PURCHASER WITH SPECIALIZED SKILL, EXPERIENCE, OR KNOWLEDGE, AS DESCRIBED IN SECTION 18(B)(4)(D)(II) OF THE SECURITIES ACT OF 1933, 15 U.S.C., SECTION 77R, WHICH INCLUDES ANY**

**PERSON TO WHOM SECURITIES ARE OFFERED OR SOLD IN A TIER 2 OFFERING OR ANY PERSON OR ENTITY THAT QUALIFIES AS AN ACCREDITED INVESTOR UNDER REGULATION D RULE 501. AN ISSUER MAY RELY ON AN INVESTOR'S REPRESENTATION THAT THE INVESTMENT REPRESENTS NO MORE THAN TEN PERCENT OF THE GREATER OF THE INVESTOR'S NET WORTH OR ANNUAL INCOME, UNLESS THE ISSUER HAS KNOWLEDGE THAT SUCH REPRESENTATION IS UNTRUE. /**

**AMEND FURTHER, SECTION 35-1-205, SECTION 3, PAGE 5, AFTER LINE 6, BY ADDING A NEW LETTERED SUBSECTION TO READ:**

**/ (E) A QUALIFIED INVESTOR, WHO IS NOT AN ACCREDITED INVESTOR AS DEFINED IN RULE 501(A) OF REGULATION D, MAY NOT PURCHASE MORE THAN A TOTAL ANNUAL INVESTMENT IN QUALIFIED COMPANIES OF:**

**(1) TEN PERCENT OF THE GREATER OF ANNUAL INCOME OR NET WORTH FOR NATURAL PERSONS; OR**

**(2) TEN PERCENT OF THE GREATER OF ANNUAL REVENUE OR NET ASSETS AT THE END OF THE FISCAL YEAR FOR NONNATURAL PERSONS. /**

**RENUMBER ITEMS AND RELETTER SUBSECTIONS TO CONFORM.**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**

**South Carolina General Assembly**  
121st Session, 2015-2016

**H. 3088**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Loftis, Burns, Henderson, G.R. Smith and Whipper

Document Path: l:\council\bills\bbm\9104htc15.docx

Introduced in the House on January 13, 2015

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

Summary: S.C. Small Business Tax Incentives Act

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/11/2014	House	Prefiled
12/11/2014	House	Referred to Committee on <b>Ways and Means</b>
1/13/2015	House	Introduced and read first time ( <a href="#">House Journal-page 91</a> )
1/13/2015	House	Referred to Committee on <b>Ways and Means</b> ( <a href="#">House Journal-page 91</a> )
2/5/2015	House	Member(s) request name added as sponsor: Whipper

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**VERSIONS OF THIS BILL**

[12/11/2014](#)

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**A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 6, TITLE 12 SO AS TO ENACT THE “SOUTH CAROLINA SMALL BUSINESS TAX INCENTIVES ACT”, ALLOWING VARIOUS INCOME TAX DEDUCTIONS AND CREDITS FOR RESIDENT TAXPAYERS FOR INVESTMENT IN QUALIFIED BUSINESSES IN THIS STATE AND TO ALLOW A JOBS TAX CREDIT AND AN ADDITIONAL TAX CREDIT FOR QUALIFIED RESEARCH EXPENSES FOR SUCH BUSINESSES; TO AMEND SECTION 35-1-202, RELATING TO TRANSACTIONS WHICH ARE EXEMPT FROM THE REQUIREMENTS OF SPECIFIC PROVISIONS OF SECURITIES LAW INCLUDING REGISTRATION REQUIREMENTS, SO AS TO EXEMPT ANY OFFER OR SALE OF A SECURITY BY AN ISSUER IF THE OFFER OR SALE IS CONDUCTED IN ACCORDANCE WITH SECTION 35-1-205; AND BY ADDING SECTION 35-1-205 SO AS TO AUTHORIZE CERTAIN QUALIFIED COMPANIES IN THIS STATE TO SOLICIT INVESTMENTS FROM QUALIFIED RESIDENT INVESTORS IN THIS STATE IN ORDER TO ENABLE THEM TO RAISE MONEY ON AN INTRASTATE BASIS.

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

SECTION 1. Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Article 10

South Carolina Small Business Tax Incentives

1 Section 12-6-1510. This article may be cited as the 'South  
2 Carolina Small Business Tax Incentives Act' and applies for  
3 transactions for investments and reinvestments made in qualified  
4 securities of an incentive-eligible qualified company by a qualified  
5 resident investor.

6  
7 Section 12-6-1520. As used in this article:

8 (1)(a) 'Incentive eligible' means a qualified company engaged  
9 in a business in this State described within at least one of the  
10 following industrial sectors:

- 11 (i) advanced materials and nanotechnology;
- 12 (ii) biomedical;
- 13 (iii) information sciences;
- 14 (iv) pharmaceuticals;
- 15 (v) nuclear engineering and manufacturing;
- 16 (vi) agribusiness food processing.

17 (b) An incentive-eligible qualified company also includes a  
18 qualified company that engages solely in activities in this State that  
19 service and support the industrial sectors described in subitem (a).

20 (c)(i) To become incentive eligible, a qualified company shall  
21 apply in writing to the South Carolina Department of Commerce on  
22 forms developed by the Department of Commerce in consultation  
23 with the South Carolina Department of Revenue. If the Department  
24 of Commerce determines that the applicant is both a qualified  
25 company and incentive eligible, it shall certify to the qualified  
26 company and the South Carolina Department of Revenue that for  
27 purposes of this article the company is incentive eligible. The  
28 company remains incentive eligible only so long as it remains a  
29 qualified company engaged in the industrial sector described in  
30 subitem (a) or a qualified company primarily serving and supporting  
31 those sectors.

32 (ii) The South Carolina Department of Commerce  
33 periodically shall review the industrial sectors included in subitem  
34 (a) and make recommendations to the General Assembly of  
35 appropriate revisions to those categories.

36 (2) 'Qualified company' is as defined in Section  
37 35-1-205(C)(2).

38 (3) 'Qualified resident investor' is as defined in Section  
39 35-1-205(C)(3).

40 (4) 'Qualified security' has the meaning provided in Section  
41 35-1-205(C)(1).

42

1 Section 12-6-1530. (A) There is allowed as a deduction from the  
2 South Carolina taxable income of a qualified resident investor  
3 amounts invested in securities issued by an incentive-eligible  
4 qualified company. This deduction may not exceed a total of thirty  
5 thousand dollars in a taxable year, or sixty thousand dollars in the  
6 case of married individuals filing a joint income tax return.

7 (B) There is allowed as a deduction from South Carolina taxable  
8 income of a resident corporation or resident pass-through entity  
9 equal to thirty-five percent of amounts invested by that resident  
10 corporation or pass-through entity in a qualified security issued by  
11 an incentive-eligible qualified company. This deduction may not  
12 exceed a total of two hundred fifty thousand dollars in a taxable year  
13 for a corporation or pass-through entity. The annual limit imposed  
14 on qualified resident investors pursuant to subsection (A) is  
15 cumulative to deductions passed through to a qualified investor  
16 pursuant to this subsection.

17 (C) There is allowed as a credit against the South Carolina  
18 income tax liability of a qualified resident investor attributable to  
19 net capital gain in a taxable year equal to the gain realized by the  
20 qualified resident investor on the sale or exchange of a qualified  
21 security on which the qualified resident investor claimed the  
22 deductions allowed pursuant to subsections (A) and (B) for that  
23 portion of the gain which was reinvested in a similarly qualifying  
24 security within twelve months of realizing the gain. The credit is  
25 limited to thirty thousand dollars in a taxable year. Unused credit  
26 may be carried forward for five succeeding taxable years. The credit  
27 allowed by this subsection applies for tax liability attributable to net  
28 capital gain before the application of the credit allowed pursuant to  
29 Section 12-6-1150.

30

31 Section 12-6-1540. An otherwise eligible incentive-eligible  
32 qualified company is allowed the jobs tax credit provided pursuant  
33 to Section 12-6-3360 and the applicable credit amount that applies  
34 for such firms is the Tier IV amount. The provisions of Section  
35 12-6-3360 apply, mutatis mutandis, for credits allowed and claimed  
36 pursuant to this section. The credit allowed pursuant to this section  
37 continues only so long as the claimant remains an incentive-eligible  
38 qualified company.

39

40 Section 12-6-1550. In the case of an incentive-eligible qualified  
41 company, the state tax credit allowed for qualified research  
42 expenses pursuant to Section 12-6-3415(A) is thirty-five percent  
43 rather than five percent.”



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2 SECTION 2. Section 35-1-202 of the 1976 Code, as added by Act  
3 110 of 2005, is amended by adding a new item appropriately  
4 numbered to read:

5

6 “( ) any offer or sale of a security by an issuer if the offer or sale  
7 is conducted in accordance with Section 35-1-205.”

8

9 SECTION 3. Article 2, Chapter 1, Title 35 of the 1976 Code is  
10 amended by adding:

11

12 “Section 35-1-205. (A) Except as otherwise provided in this  
13 chapter, an offer or sale of a security by an issuer is exempt from the  
14 provisions of Sections 35-1-301 through 35-1-306, and Section  
15 35-1-504 if the offer or sale is conducted pursuant to this section.

16 (B) The securities commissioner, consistent with the provisions  
17 of this section, Section 3(a)(11) of the Securities Act of 1933, 15  
18 U.S.C. Section 77c(a)(11), and SEC Rule 147, 17 C.F.R. Section  
19 230.147, shall exempt a security, transaction, or offer of securities  
20 from registration requirements otherwise required. The exemption  
21 applies in this State beginning on the effective date of the  
22 implementing rule, order, or regulation of the securities  
23 commissioner.

24 (C) As used in this section:

25 (1) ‘Qualified security’ means any note, stock, treasury stock  
26 bond, debenture, evidence of indebtedness, certificate of interest or  
27 participation in any profit-sharing agreement, reorganization  
28 certificate or subscription, transferable share, investment contract,  
29 certificate of deposit for a security, certificate of interest or  
30 participation in a patent or application therefore or in royalty or  
31 other payments under such a patent or application, or, in general,  
32 any interest or instrument commonly known as a security or any  
33 certificate for, receipt for, guarantee of, or option, warrant, or right  
34 to subscribe to or purchase any of the foregoing of a qualified  
35 company.

36 (2) ‘Qualified company’ means a for profit, private company  
37 registered and domiciled in this State.

38 (3) ‘Qualified resident investor’ means an individual who  
39 resides in and is domiciled in this State and files South Carolina  
40 individual income tax returns.

41 (4) ‘Disclosure brochure’ means a brochure produced and  
42 updated by the securities commissioner for distribution to qualified  
43 investors, qualified companies, and professional business

1 intermediaries engaged in a South Carolina private intrastate  
2 securities offering.

3 (D) A qualified company may raise an unlimited amount of  
4 capital from qualified resident investors, and a qualified resident  
5 investor who is an accredited investor as defined pursuant to this  
6 chapter may invest an unlimited amount in qualified companies.

7 (E) A qualified investor who is not an accredited investor as  
8 defined pursuant to this chapter may make a total annual investment  
9 in qualified companies of no more than fifteen thousand dollars in a  
10 calendar year, and no more than five thousand dollars in a single  
11 qualified company in a calendar year.

12 (F) A commission, fee, or other remuneration, may not be paid  
13 or given, directly or indirectly, for any person's participation in the  
14 offer or sale of qualified intrastate securities for the issuer unless the  
15 person is registered either as a broker-dealer, an investment advisor,  
16 or private placement agent pursuant to this section.

17 (G) All investment funds and capital received from qualified  
18 investors by a qualified company must be deposited into a bank or  
19 depository institution authorized to do business in this State, and all  
20 funds must be used in accordance with representations made to  
21 investors.

22 (H) Fifteen days before the issue of any public general  
23 solicitation or advertising, the issuer shall provide the Form D notice  
24 to the securities commissioner in writing or in electronic form. The  
25 notice must specify that the issuer is conducting an offering in  
26 reliance upon this exemption allowed by this section and must  
27 contain the names and addresses of the following persons and  
28 information related to the offering:

29 (1) the issuer;

30 (2) all persons involved in the offer or sale of securities on  
31 behalf of the issuer;

32 (3) the bank or other depository institution in which investor  
33 funds are deposited; and

34 (4) the term sheet provided to investors regarding the terms  
35 and conditions of the offering.

36 (I) The issuer may not be, either before or as a result of the  
37 offering, an SEC registered investment company as defined in  
38 Section 3 of the Investment Company Act of 1940, 15 U.S.C.  
39 Section 80a-3, or a company subject to the reporting requirements  
40 of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15  
41 U.S.C. Sections 78m and 78o(d), as adopted by reference in this  
42 chapter.

1 (J) The issuer shall inform all purchasers that the securities have  
2 not been registered and, as a result, may not be resold, within twelve  
3 months of purchase, unless the securities are registered or qualify  
4 for an exemption from registration pursuant to this chapter. In  
5 addition, the issuer shall provide each investor a copy of the  
6 investment disclosure brochure, and obtain a signed copy of that  
7 brochure from the investor, before providing the investor a copy of  
8 the term sheet, related to the offering.

9 (K) Before accepting or depositing investor funds or capital, the  
10 issuer shall provide each investor a copy of the term sheet, and the  
11 private placement memo related to the terms and conditions of the  
12 offering.

13 (L) The securities commissioner may adopt rules, issue orders,  
14 or promulgate regulations as applicable, pursuant to this chapter to  
15 register and regulate intrastate private investment companies,  
16 pursuant to rules contained in Title II of the JOBS Act of 2012, and  
17 Regulation D Rule 506(c). Private equity fund companies are  
18 state-chartered economic, business, and industrial development  
19 companies that provide financial or managerial assistance to  
20 qualified business enterprises engaged in the activities described in  
21 Section 12-6-1520(1). Securities of the private equity fund  
22 companies only may be sold to accredited qualified resident  
23 investors or to resident or nonresident qualified institutional buyers  
24 (QIBs) defined pursuant to Rule 144A of the Securities Act of 1933.

25 Any such private equity fund company must engage in the  
26 transaction of business pursuant to the exemption from registration  
27 pursuant to the Investment Company Act of 1940 afforded to  
28 economic, business, and industrial development companies as  
29 provided for by Section 6(a)(5) of the Investment Company Act of  
30 1940, as amended pursuant to 15 U.S.C. Sec. 80a-6(a).

31 Federal or state registered investment advisors who provide  
32 advice and fund management for private investment companies  
33 must be licensed in this State and shall file Form ADV Part I and  
34 Part II with the securities commissioner. Advisors to private equity  
35 funds are not subject to statutory disqualifications contained  
36 pursuant to the JOBS Act of 2012. Investment advisers to private  
37 equity funds are subject to the general antifraud requirements of  
38 Rule 206(4)-8 pursuant to the Investment Advisers Act of 1940,  
39 Advisers Act, and to the antifraud provisions of this chapter.

40 (M) The provisions of Article 5 of this chapter apply to securities  
41 issued pursuant to this section, mutatis mutandis.”

42

1 SECTION 4. This act takes effect upon approval by the Governor.

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