COMMITTEE REPORT

May 21, 2015

**H. 3088**

Introduced by Reps. Loftis, Burns, Henderson, G.R. Smith and Whipper

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Read the first time January 13, 2015.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3088) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 1 in its entirety.

Amend further, page 5, beginning on line 7, by striking Section 35‑1‑205(E), as contained in SECTION 3, and inserting:

/ (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.

W. BRIAN WHITE for Committee.

**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

Section 12‑6‑1510. This article may be cited as the ‘South Carolina Small Business Tax Incentives Act’ and applies for transactions for investments and reinvestments made in qualified securities of an incentive‑eligible qualified company by a qualified resident investor.

Section 12‑6‑1520. As used in this article:

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

(i) advanced materials and nanotechnology;

(ii) biomedical;

(iii) information sciences;

(iv) pharmaceuticals;

(v) nuclear engineering and manufacturing;

(vi) agribusiness food processing.

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

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

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

(2) ‘Qualified company’ is as defined in Section 35‑1‑205(C)(2).

(3) ‘Qualified resident investor’ is as defined in Section 35‑1‑205(C)(3).

(4) ‘Qualified security’ has the meaning provided in Section 35‑1‑205(C)(1).

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

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

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

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

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

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

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

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

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

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

(C) As used in this section:

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

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

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

(4) ‘Disclosure brochure’ means a brochure produced and updated by the securities commissioner for distribution to qualified investors, qualified companies, and professional business intermediaries engaged in a South Carolina private intrastate securities offering.

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

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

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

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

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

(1) the issuer;

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

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

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

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

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

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

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

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

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

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

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

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