**A** **BILL**

TO AMEND SECTION 11‑44‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS REGARDING THE HIGH GROWTH SMALL BUSINESS JOB CREATION ACT, SO AS TO ALLOW INDIVIDUALS NOT SUBJECT TO THE SOUTH CAROLINA INCOME TAX TO CLAIM THE CREDIT, TO SPECIFY SERVICES FOR WHICH CONTRIBUTIONS ARE NOT ELIGIBLE FOR THE CREDIT, AND TO SUBSTITUTE ‘CONVERTIBLE’ FOR ‘SUBORDINATED’ IN THE DEFINITION OF QUALIFIED INVESTMENT; TO AMEND SECTIONS 11‑44‑40 AND 11‑44‑50, BOTH RELATING TO THE CREDIT, SO AS TO INCREASE THE ANNUAL AGGREGATE CREDIT FROM FIVE MILLION DOLLARS TO TEN MILLION DOLLARS, AND TO MAKE A CONFORMING CHANGE; TO AMEND SECTION 11‑44‑60, RELATING TO THE REGISTRATION OF A QUALIFIED BUSINESS, SO AS TO ELIMINATE THE REQUIREMENT THAT CERTAIN INFORMATION BE CONTAINED IN A REPORT TO THE GENERAL ASSEMBLY AND GOVERNOR; TO REPEAL SECTION 11‑44‑65 RELATING TO THE TAX TREATMENT OF CERTAIN CAPITAL GAINS OR LOSSES; AND TO AMEND ACT 80 OF 2013, RELATING TO THE HIGH GROWTH SMALL BUSINESS JOB CREATION ACT, SO AS TO REAUTHORIZE THE ACT FOR SIX MORE YEARS.

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

SECTION 1.A. Section 11‑44‑30(1)(a) of the 1976 Code, as added by Act 80 of 2013, is amended to read:

“(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~~ makes a qualifying investment in a qualified business; or”

B. Section 11‑44‑30(5), (6), and (7) of the 1976 Code is amended to read:

(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, debt offerings, investment activities, or insurance;

(vii) entertainment, amusement, recreation, or athletic or fitness activity for which an admission or fee is charged~~.~~; and

(g) a business is substantially engaged in one of the activities defined in subitem (f) if:

(i) its gross revenue from an activity exceeds twenty‑five percent of its gross revenues in a fiscal year;

(ii) more than ten percent of the total value of its assets consists of debt offered to other entities or real property which is not used in the active conduct of a qualified trade or business. However, the ownership of, purchasing title to, dealing in, or renting of real property must not be treated as the active conduct of a qualified trade or business; or

(iii) 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~~ convertible debt in a qualified business. Investment of common or preferred stock or an equity interest or purchase of ~~subordinated~~ convertible 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~~.”

SECTION 2. Section 11‑44‑40(C) of the 1976 Code, as added by Act 80 of 2013, is amended to read:

“(C) For any pass‑through entity making a qualified investment directly in a qualified business, each individual ~~who~~ or pass‑through entity that 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 3. Section 11‑44‑50(1) of the 1976 Code, as added by Act 80 of 2013, is amended to read:

“(1) the total amount of credits allowed pursuant to this chapter may not exceed in the aggregate ~~five~~ ten million dollars for all taxpayers for any one calendar year;”

SECTION 4. Section 11‑44‑60(D) of the 1976 Code, as added by Act 80 of 2013, is amended to read:

“(D) By January thirty‑first each year, the Secretary shall report to the House Ways and Means Committee, the Senate Finance Committee, and the Governor, a list of the businesses that have registered with the Secretary as a qualified business. The report must include, by county, 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 including the amount of qualified investment as defined by this chapter, the number of full‑time, part‑time, and temporary jobs created by the business during the period covered by the report, and the average wages paid by these jobs~~. An aggregated statewide report containing the number of businesses, the amount of capital raised by the businesses including the amount of qualified investment as defined by this chapter, the number of full‑time, part‑time and temporary jobs created by the businesses, and the average wages paid by these jobs also must be made available in a conspicuous place on the Secretary’s website. The report must be updated annually.”

SECTION 5. Section 11‑44‑65 of the 1976 Code is repealed.

SECTION 6. SECTION 1.B. of Act 80 of 2013 is amended to read:

“B. The provisions of Chapter 44, Title 11, contained in this act are repealed on December 31, ~~2019~~ 2025. Any carry forward credits shall continue to be allowed until the ten year time period in Section 11‑44‑40(B) is completed.”

SECTION 7. This act takes effect upon approval by the Governor and first applies to tax years beginning after 2016.

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