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SB 3014
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
3RD EXTRAORDINARY SESSION, 2004

ENROLLED

SENATE BILL NO. 3014

(By Senator McCabe)

PASSED NOVEMBER 16, 2004

In Effect From Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
Senate Bill No. 3014

(BY SENATOR MCCABE)

[Passed November 16, 2004; in effect from passage.]

AN ACT to amend and reenact §5E-1-8 of the code of West Virginia, 1931, as amended, relating to modifying the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four; limiting the availability of certain tax credits to qualified economic development and technology advancement centers; and authorizing the economic development authority to establish criteria for the determination of the allocation of certain tax credits by vote of the majority of the authority.

Be it enacted by the Legislature of West Virginia:

That §5E-1-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

- 1 (a) The total amount of tax credits authorized for a
- 2 single qualified company may not exceed two million

3 dollars. The total amount of tax credits authorized for a
4 single economic development and technology advancement
5 center may not exceed one million dollars. Capitalization
6 of the company or center may be increased pursuant to
7 rule of the authority.

8 (b)(1) The total credits authorized by the authority for all
9 companies and centers may not exceed a total of ten
10 million dollars each fiscal year: *Provided*, That for the
11 fiscal year beginning on the first day of July, one thousand
12 nine hundred ninety-nine, the total credits authorized for
13 all companies may not exceed a total of six million dollars:
14 *Provided, however*, That for the fiscal year beginning on
15 the first day of July, two thousand, the total credits
16 authorized for all companies may not exceed a total of
17 four million dollars: *Provided further*, That for the fiscal
18 year beginning on the first day of July, two thousand one,
19 the total credits authorized for all companies may not
20 exceed a total of four million dollars: *And provided*
21 *further*, That for the fiscal year beginning on the first day
22 of July, two thousand two, the total credits authorized for
23 all companies may not exceed a total of three million
24 dollars: *And provided further*, That for the fiscal year
25 beginning on the first day of July, two thousand three, the
26 total credits authorized for all companies may not exceed
27 a total of three million dollars: *And provided further*, That
28 for the fiscal year beginning on the first day of July, two
29 thousand four, the total credits authorized for all compa-
30 nies may not exceed a total of one million dollars: *And*
31 *provided further*, That the capital base of any qualified
32 company other than an economic development and
33 technology advancement center qualified under the
34 provisions of article twelve-a, chapter eighteen-b of this
35 code shall be invested in accordance with the provisions of
36 this article. The authority shall allocate these credits to
37 qualified companies and centers in the order that the
38 companies are qualified.

39 (2) Not more than two million dollars of the credits
40 allowed under subdivision (1) of this subsection may be
41 allocated by the authority during each fiscal year to one or
42 more small business investment companies described in
43 this subdivision: *Provided*, That for the fiscal year begin-
44 ning on the first day of July, two thousand four, no credits
45 authorized by this section may be allocated by the author-
46 ity to one or more small business investment companies.
47 After a portion of the credits are allocated to small
48 business investment companies as provided in this section,
49 not more than one million dollars of the credits allowed
50 under subdivision (1) of this subsection may be allocated
51 by the authority during each fiscal year to one or more
52 economic development and technology advancement
53 centers qualified by the authority under article twelve-a,
54 chapter eighteen-b of this code: *Provided, however*, That
55 for the fiscal year beginning on the first day of July, two
56 thousand four, all of the credits allowed under subdivision
57 (1) of this subsection shall be allocated only to one or more
58 qualified economic development and technology advance-
59 ment centers. The remainder of the tax credits allowed
60 during the fiscal year shall be allocated by the authority
61 under the provisions of section four, article two of this
62 chapter: *Provided further*, That for the fiscal year begin-
63 ning on the first day of July, two thousand four, no credits
64 authorized by this section may be allocated by the author-
65 ity to a taxpayer pursuant to the provisions of section four,
66 article two of this chapter. The portion of the tax credits
67 allowed for small business investment companies de-
68 scribed in this subdivision shall be allowed only if allo-
69 cated by the authority during the first ninety days of the
70 fiscal year and may only be allocated to companies that:
71 (A) Were organized on or after the first day of January, one
72 thousand nine hundred ninety-nine; (B) are licensed by the
73 small business administration as a small business invest-
74 ment company under the small business investment act;
75 and (C) have certified in writing to the authority on the
76 application for credits under this act that the company

77 will diligently seek to obtain and thereafter diligently seek
78 to invest leverage available to the small business invest-
79 ment companies under the small business investment act.
80 These credits shall be allocated by the authority in the
81 order that the companies are qualified. The portion of the
82 tax credits allowed for economic development and tech-
83 nology advancement centers described in article twelve-a,
84 chapter eighteen-b of this code shall be similarly allowed
85 only if allocated by the authority during the first ninety
86 days of the fiscal year. Any credits which have not been
87 allocated to qualified companies meeting the requirements
88 of this subdivision relating to small business investment
89 companies or to qualified economic development and
90 technology advancement centers during the first ninety
91 days of the fiscal year shall be made available and allo-
92 cated by the authority under the provisions of section four,
93 article two of this chapter: *And provided further*, That for
94 the fiscal year beginning on the first day of July, two
95 thousand four, no credits authorized by this section may
96 be allocated by the authority to a taxpayer pursuant to the
97 provisions of section four, article two of this chapter.

98 (3) Notwithstanding any provision of this code or
99 legislative rule promulgated thereunder to the contrary,
100 for the fiscal year beginning on the first day of July, two
101 thousand four, the authority has the sole discretion to
102 allocate or refuse to allocate tax credits authorized under
103 this section to any qualified economic development and
104 technology advancement center upon its determination of
105 the extent to which the center will fulfill the purposes of
106 this article. The determination shall be based upon the
107 application of the center, the extent to which the company
108 or center fulfilled those purposes in prior years after
109 receiving tax credits authorized under this section, the
110 extent to which the center is expected to stimulate eco-
111 nomic development and high technology research in the
112 chemical industry and such other similarly related criteria
113 as the authority may establish by vote of the majority of
114 authority.

115 (c) Any investor, including an individual, partnership,
116 limited liability company, corporation or other entity who
117 makes a capital investment in a qualified West Virginia
118 capital company, is entitled to a tax credit equal to fifty
119 percent of the investment, except as otherwise provided in
120 this section or in this article: *Provided*, That the tax credit
121 available to investors who make a capital investment in an
122 economic development and technology advancement
123 center shall be one hundred percent of the investment. The
124 credit allowed by this article shall be taken after all other
125 credits allowed by chapter eleven of this code. It shall be
126 taken against the same taxes and in the same order as set
127 forth in subsections (c) through (i), inclusive, section five,
128 article thirteen-c, chapter eleven of this code. The credit
129 for investments by a partnership, limited liability com-
130 pany, a corporation electing to be treated as a subchapter
131 S corporation or any other entity which is treated as a pass
132 through entity under federal and state income tax laws
133 may be divided pursuant to election of the entity's part-
134 ners, members, shareholders or owners.

135 (d) The tax credit allowed under this section is to be
136 credited against the taxpayer's tax liability for the taxable
137 year in which the investment in a qualified West Virginia
138 capital company or economic development and technology
139 advancement center is made. If the amount of the tax
140 credit exceeds the taxpayer's tax liability for the taxable
141 year, the amount of the credit which exceeds the tax
142 liability for the taxable year may be carried to succeeding
143 taxable years until used in full or until forfeited: *Pro-*
144 *vided*, That: (i) Tax credits may not be carried forward
145 beyond fifteen years; and (ii) tax credits may not be
146 carried back to prior taxable years. Any tax credit
147 remaining after the fifteenth taxable year is forfeited.

148 (e) The tax credit provided for in this section is available
149 only to those taxpayers whose investment in a qualified
150 West Virginia capital company or economic development

151 and technology advancement center occurs after the first
152 day of July, one thousand nine hundred eighty-six.

153 (f) The tax credit allowed under this section may not be
154 used against any liability the taxpayer may have for
155 interest, penalties or additions to tax.

156 (g) Notwithstanding any provision in this code to the
157 contrary, the tax commissioner shall publish in the state
158 register the name and address of every taxpayer and the
159 amount, by category, of any credit asserted under this
160 article. The categories by dollar amount of credit received
161 are as follows:

162 (1) More than \$1.00, but not more than \$50,000;

163 (2) More than \$50,000, but not more than \$100,000;

164 (3) More than \$100,000, but not more than \$250,000;

165 (4) More than \$250,000, but not more than \$500,000;

166 (5) More than \$500,000, but not more than \$1,000,000;

167 and

168 (6) More than \$1,000,000.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *20th*
Day of *December*, 2004.

[Signature]
.....
Governor

PRESENTED TO
THE GOVERNOR

DATE 11/19/04

TIME 4:20pm