

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 419**

4 (By Senators Browning, Plymale and Kirkendoll)

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6 [Originating in the Committee on Economic Development;
7 reported February 1, 2012.]

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10 A BILL to amend and reenact §11-13U-2, §11-13U-3, §11-13U-4, §11-
11 13U-5, §11-13U-8, §11-13U-9 and §11-13U-10 of the Code of West
12 Virginia, 1931, as amended, all relating to revising the high-
13 growth business investment tax credit; permitting eligible
14 start-up, early-stage or growth-oriented taxpayers to take the
15 credit; lowering certain gross receipt and payroll
16 requirements; increasing the amount of credit available;
17 requiring the Economic Development Authority to assist in
18 preparing legislative reports; requiring new rules to be
19 promulgated; redefining terms; and changing effective dates.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §11-13U-2, §11-13U-3, §11-13U-4, §11-13U-5, §11-13U-8,
22 §11-13U-9 and §11-13U-10 of the Code of West Virginia, 1931, as
23 amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 13U. HIGH-GROWTH BUSINESS INVESTMENT TAX CREDIT.**

25 **§11-13U-2. Legislative finding and purpose.**

1 The Legislature finds the encouragement of investment in
2 potentially high-growth ~~research and development~~ businesses in this
3 state is in the public interest and promotes economic growth and
4 development for the people of this state. In order to encourage
5 investment in start-up, early stage growth-oriented, research and
6 development businesses in this state and thereby increase
7 employment and economic development, there is hereby provided a
8 high-growth business investment tax credit.

9 **§11-13U-3. Definitions.**

10 As used in this article, the following terms have the meanings
11 ascribed to them in this section, unless the context in which the
12 term is used clearly requires another meaning or a specific
13 different definition is provided:

14 (1) "Alter ego" means a qualified start-up, early stage,
15 growth oriented or research and development company where one or
16 more of the following criteria are satisfied in relation to the
17 eligible taxpayer:

18 (A) The ownership of the business is "substantially related"
19 to the ownership of the eligible taxpayer. "Substantially related"
20 means a five percent or more common ownership interest; or

21 (B) The board of directors of the qualified research and
22 development company is controlled by the eligible taxpayer:
23 *Provided*, That an eligible taxpayer is deemed to have control of
24 the board of directors of a qualified research and development
25 company if it controls a simple majority of the board of directors.

26 (2) "Corporate headquarters" means the place at which the

1 corporation has its commercial domicile and from which the business
2 of the corporation is primarily conducted.

3 (3) "Eligible taxpayer" means a person that has received
4 certification from the economic development authority that a
5 portion of the annual available high growth business investment
6 credit has been allocated to it, that is subject to the tax imposed
7 by either article twenty-three, article twenty-four or article
8 twenty-one of this chapter, and that has made a qualified
9 investment in a qualified start-up, early stage, growth oriented or
10 research and development credit company.

11 (4) "Person" includes any natural person, corporation, limited
12 liability company, or partnership.

13 (5) "Qualified investment" means an equity financing of a West
14 Virginia qualified ~~strategic~~ start-up, early stage, growth oriented
15 or research and development company. The investment must be in
16 cash or cash equivalents and may not be an exchange of in-kind
17 property.

18 (6) "Qualified start-up, early stage, growth oriented or
19 research and development company" for purposes of the high growth
20 business investment tax credit means an entity that has been
21 certified by the ~~State Tax Commissioner~~ economic development
22 authority as eligible for the ~~West Virginia research and~~
23 ~~development tax credit set forth in article thirteen r, chapter~~
24 ~~eleven of this code~~ tax credit authorized in this article, that has
25 annual gross receipts of less than ~~twenty million dollars~~ \$5
26 million and has annual payroll of less ~~then two million five~~

1 ~~hundred thousand dollars~~ than \$1.5 million.

2 (7) "Tax credit" means the high-growth business development
3 tax credit authorized by this article.

4 (8) "Taxable year" means the tax year of the eligible
5 taxpayer.

6 **§11-13U-4. High-growth business investment tax credit.**

7 (a) *Credit allowed.* -- There shall be allowed to each eligible
8 taxpayer in a qualified start-up, early stage, growth oriented or
9 research and development company that maintains its corporate
10 headquarters or other significant operations in West Virginia a tax
11 credit for the taxable year in which the investment was made. The
12 total tax credit that may be used by an eligible taxpayer shall be
13 equal to fifty percent of the total value of the qualified
14 investment in the taxable year the qualified investment was
15 actually made.

16 (b) No more than ~~one million dollars~~ \$3 million of the tax
17 credits allowed under subsection (a) of this section shall be
18 allocated by the Economic Development Authority during any fiscal
19 year. The Economic Development Authority shall allocate the tax
20 credits in the order the applications therefor are received.

21 (c) *Business franchise tax.* -- The tax credit is first applied
22 to reduce the taxes imposed upon the eligible taxpayer by article
23 twenty-three of this chapter for the taxable year (determined after
24 application of the credits against tax provided in section
25 seventeen of said article, but before application of any other
26 allowable credits against tax).

1 (d) *Corporation net income taxes.* -- After application of
2 subsection (c) of this section, any unused tax credit is next
3 applied to reduce the taxes imposed upon the eligible taxpayer by
4 article twenty-four of this chapter for the taxable year
5 (determined before application of allowable credits against tax).

6 (e) If the eligible taxpayer is a limited liability company,
7 an electing small business corporation (as defined in Section 1361
8 of the United States Internal Revenue Code of 1986, as amended), or
9 a partnership, any unused tax credit remaining after application of
10 subsections (c) and (d) of this section is allowed as a tax credit
11 against the taxes imposed by article twenty-four of this chapter on
12 owners of the eligible taxpayer.

13 (1) Electing small business corporations (as defined above in
14 subsection (e)), limited liability companies, and partnerships
15 shall allocate the tax credit allowed by this article among their
16 members in the same manner as profits and losses are allocated for
17 the taxable year.

18 (2) No tax credit is allowed under this article against any
19 withholding tax imposed by, or payable under, article twenty-one of
20 this chapter.

21 (f) *Personal income tax taxes.* -- After application of
22 subsections (c), (d) and (e) of this section, any unused tax credit
23 is next applied to reduce the taxes imposed by article twenty-one
24 of this chapter for the taxable year (determined before application
25 of allowable credits against tax) of the eligible taxpayer.

26 (g) If the eligible taxpayer is a limited liability company,

1 an electing small business corporation (as defined in subsection
2 (e) of this section) or a partnership, any unused tax credit
3 remaining after application of subsections (c), (d), (e) and (f) of
4 this section is allowed as a tax credit against the taxes imposed
5 by article twenty-one of this chapter on owners of the eligible
6 taxpayer.

7 (1) Electing small business corporations (as defined in
8 subsection (e) of this section), limited liability companies, and
9 partnerships shall allocate the tax credit allowed by this article
10 among their members in the same manner as profits and losses are
11 allocated for the taxable year.

12 (2) No tax credit is allowed under this article against any
13 withholding tax imposed by, or payable under, article twenty-one of
14 this chapter.

15 (h) The total amount of tax credit that may be used in any
16 taxable year by any eligible taxpayer in combination with the
17 owners of the eligible taxpayer under subsections (e) and (g) of
18 this section may not exceed \$50,000. The total amount of qualified
19 investment that a qualified start-up, early stage, growth oriented
20 or research and development company may accept from all eligible
21 taxpayers in any taxable year is \$1 million.

22 (I) *Unused credit carry forward.* -- If the tax credit allowed
23 under this article in any taxable year exceeds the sum of the taxes
24 enumerated in subsections (c), (d), (e), (f) and (g) of this
25 section for that taxable year, the eligible taxpayer and owners of
26 eligible taxpayers described in subsections (e) and (g) of this

1 section may apply the excess as a tax credit against those taxes,
2 in the order and manner stated in this section, for succeeding
3 taxable years until the earlier of the following:

4 (1) The full amount of the excess tax credit is used; or

5 (2) The expiration of the ~~fourth~~ fifth taxable year after the
6 taxable year in which the investment was made. The tax credit
7 remaining thereafter is forfeited.

8 (j) No tax credit is allowed or may be applied under this
9 article until the taxpayer seeking to claim the tax credit has:

10 (1) Filed with the Economic Development Authority a written
11 application for the tax credit and any other information required
12 by the Economic Development Authority to determine the eligibility
13 of the applicant for the tax credit;

14 ~~(2) Filed with the economic development authority the research~~
15 ~~and development program or project certification issued pursuant to~~
16 ~~section six, article thirteen-r of this chapter for the qualified~~
17 ~~research and development company that will benefit from the~~
18 ~~investment;~~

19 ~~(3)~~ (2) Filed with the Economic Development Authority the
20 certificate of incorporation for the qualified start-up, early
21 stage, growth oriented or research and development company that
22 will benefit from the investment; and

23 ~~(4)~~ (3) Received from the economic development authority
24 certification of the amount of tax credit to be allocated to the
25 eligible taxpayer.

26 **§11-13U-5. Restrictions on investment.**

1 (a) No qualified investment may be made in a qualified start-
2 up, early stage, growth oriented or research and development
3 company that is the alter ego of the eligible taxpayer.

4 (b) The eligible taxpayer shall maintain its qualified
5 investment for a minimum period of five years or until the company
6 is sold: *Provided,* That an eligible taxpayer receiving repayment
7 or return of a qualified investment (exclusive of interest,
8 dividends or other earnings on the investment) shall within three
9 calendar months from the date of repayment or return reinvest the
10 repaid or returned amount of the initial investment in another
11 qualified start-up, early stage, growth oriented or research and
12 development company for a period of time at least equal to the
13 remainder of the initial five-year term.

14 **§11-13U-8. Tax credit review and accountability.**

15 (a) Beginning on February 1, ~~2006~~ 2013, and on February 1
16 every third year thereafter, the Tax Commissioner in conjunction
17 with the Economic Development Authority shall submit to the
18 Governor, the President of the Senate and the Speaker of the House
19 of Delegates a tax credit review and accountability report
20 evaluating the cost effectiveness of the tax credit allowed under
21 this article during the most recent three-year period for which
22 information is available: *Provided,* That the requirement to file
23 the credit review and accountability report terminates June 30,
24 2011, unless the termination of entitlement to the tax credit as
25 stated in section ten of this article terminates. The criteria to
26 be evaluated includes, but is not limited to, for each year of the

1 three-year period:

2 (1) The numbers of eligible taxpayers claiming the tax credit;

3 (2) The net number, type, and duration of new jobs created by
4 all qualified research and development companies in which taxpayers
5 claiming the credit made investment in and the wages and benefits
6 paid by such companies;

7 (3) The cost of the tax credit;

8 (4) The cost of the tax credit per new job created; and

9 (5) Comparison of employment trends for the industry and for
10 taxpayers within the industry that claim the tax credit.

11 (b) Eligible taxpayers claiming the tax credit shall provide
12 any information required by the Tax Commissioner or Economic
13 Development Authority for the purpose of preparing the report:
14 *Provided*, That such information shall be subject to the
15 confidentiality and disclosure provisions of sections five-d and
16 five-s, article ten of this chapter.

17 **§11-13U-9. Rules.**

18 The State Tax Department and the Economic Development
19 Authority ~~may~~ shall promulgate new legislative rules in accordance
20 with article three, chapter twenty-nine-a of this code to carry out
21 the policy and purposes of this article, to determine the
22 eligibility requirements for qualifying for a tax credit under this
23 article to provide any necessary clarification of the provisions of
24 this article and to efficiently provide for the general
25 administration of this article.

26 **§11-13U-10. Effective date; expiration of credit.**

1 The provisions of this article become effective on July 1,
2 ~~2005~~ 2012, and apply only to qualified investment made on or after
3 that date: *Provided*, That no entitlement to the tax credit shall
4 result from any qualified investment made after June 30, ~~2008~~ 2017:
5 *Provided, however*, That unless sooner terminated by law, the high
6 growth business investment tax credit act will terminate on July 1,
7 ~~2008~~ 2017 unless reauthorized by the Legislature prior to the
8 termination date. Taxpayers who have gained entitlement to the tax
9 credit pursuant to qualified investment prior to the earlier of
10 July 1, ~~2008~~ 2017, or termination of the tax credit prior to that
11 date shall retain that entitlement and apply the credit in due
12 course pursuant to the requirements and limitations of this
13 article.

NOTE: The purpose of this bill is to revise the high-growth business investment tax credit. The bill permits eligible start up, early stage or growth oriented taxpayers to take the credit. The bill lowers certain gross receipt and payroll requirements. The bill also increases the amount of credit available. Further, the bill requires the economic development authority to assist in preparing legislative reports. The bill requiring new rules to be promulgated. Additionally, the bill redefines terms and changes effective dates.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.