Act 566 of the Regular Session

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

HOUSE BILL 2552

By: Representative D. Johnson

For An Act To Be Entitled

AN ACT TO PROVIDE TAX CREDIT INCENTIVES FOR EQUITY INVESTMENTS IN TARGETED EARLY-STAGE AND START-UP BUSINESSES; TO PROVIDE THAT THE INCENTIVES SHALL BE ADMINISTERED BY THE ARKANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT; TO AMEND CERTAIN PROVISIONS OF ARKANSAS CODE § 15-4-1001 ET SEQ.; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO ESTABLISH AN EQUITY INVESTMENT INCENTIVE PROGRAM ADMINISTERED BY THE ARKANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 15, Chapter 4 is amended to add an additional subchapter to read as follows:

15-4-3301. Title.

This subchapter shall be known and may be cited as the "Equity Investment Incentive Act of 2007".

15-4-3302. Equity investment incentives – Creation – Purpose – Tax credit.

(a) Equity investment incentives in the form of tax credits to persons or companies investing in certain types of eligible businesses are created.

(b) The equity investment incentives shall:

(1) Encourage capital investment in certain types of businesses including:

(A) Early-stage businesses and start-up businesses in this state;

(B) Businesses paying wages in excess of prevailing wages in the state or the county where the company is located; and

(C) Businesses that are invested in by venture capital funds and regional or community-based alliance funds; and

(2) Create new jobs.

(c)(1) An equity investment incentive tax credit is created that shall be equal to thirty-three and one-third percent (33 1/3%) of the approved amount invested by an investor in an eligible business, as identified in § 15-4-3303(a).

(2) The tax credit, if awarded, is available to the investor.

15-4-3303. Eligibility for equity investment incentive.

(a) Eligibility for the equity investment incentive tax credit under this subchapter is limited to investments in:

(1) Targeted businesses as defined in Arkansas Code § 15-4-2703(43); or

(2) Businesses that receive assistance in the form of equity investments from capital investment funds that target early-stage businesses and start-up businesses, if the business:

(A) Pays not less than one hundred fifty percent (150%) of the lesser of the county average wage or the state average wage; and

(B) Meets at least two (2) of the following conditions:

(i) The business is in one (1) of the business sectors set forth in § 15-4-2703(43)(A)(i)-(vi);

(ii) The business is identified in a local or regional economic development plan as the type of business targeted for recruitment or growth within the community or region;

(iii) The business is supported by a resolution of the city council or quorum court in the municipality or county in which the business is located or plans to locate;

(iv) The business is supported by business incubators certified under § 26-51-815(d);

(v) The business is supported by federal small business innovation research grants; or

(vi) The business is supported by technology development or seed capital investments made by instrumentalities of the state.

(b)(1) The award of the equity investment incentive tax credit to a qualified business under subsection (a) of this section shall be at the discretion of the Director of the Department of Economic Development.

(2) Only cash investments shall qualify for the equity investment incentive tax credit under this subchapter.

(3) A business that seeks eligibility for an equity investment incentive tax credit under this subchapter shall sign an equity investment incentive agreement with the department.

15-4-3304. Application for an equity investment incentive tax credit.

(a) A business that seeks eligibility for an equity investment incentive tax credit under this subchapter shall file an application with the Department of Economic Development.

(b) The application shall include:

(1) A business plan describing the proposed business for which an equity investment incentive tax credit is sought;

(2) A projection of the amount of capital being sought for the proposed business; and

(3) Other information requested by the Director of the Department of Economic Development.

(c)(1) The department shall gather information necessary to determine the eligibility of a business that seeks an equity investment incentive tax credit and process the application.

(2)(A) The department shall share the application and all information concerning the business with the Arkansas Development Finance Authority and the Arkansas Science and Technology Authority.

(B) The Arkansas Science and Technology Authority shall decide whether an equity investment incentive shall be offered to the business.

(d)(1) If a business is notified of approval of an application for an equity investment incentive tax credit, the business shall sign an equity investment incentive agreement with the department.

(2) After the equity investment incentive agreement has been signed by the business and the department, the business may solicit investors and offer the equity investment incentive tax credit to the investors.

(e) For the equity investment tax credit to be awarded to an investor, the eligible business shall verify that all conditions to the award of an equity investment incentive tax credit stated in the equity investment incentive agreement have been met within the time set forth in the agreement.

15-4-3305. Award of an equity investment incentive tax credit.

(a) A person who purchases an equity interest in a qualified business under § 15-4-3303(a) in any of the calendar years 2007 - 2019 is entitled to a credit against any state income tax liability that may be imposed on the person for any tax year commencing on or after the date of the purchase.

(b) The credit against state income tax liability shall be determined in the following manner:

(1) The credit shall not exceed thirty-three and one-third percent (331/3%) of the actual purchase price paid for the equity interest to the business, less any fees or commissions to underwriters or sales agents paid by the busines;

(2) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax liability or premium tax liability of the taxpayer after all other credits and reductions in tax have been calculated;

(3)(A) Any credit in excess of the amount allowed by subdivision (b)(2) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax for the next-succeeding tax year and annually thereafter for a total period of nine (9) years next succeeding the year in which the equity interest in a business was purchased, subject to the provisions of subdivision (b)(2) of this section or until the credit is exhausted, whichever occurs first.

(B) In no event may the credit allowed by this section be allowed for any tax year ending after December 31, 2028; and

(4) An original purchaser of equity interests who seeks to qualify for the income tax credit or premium tax credit provided in this

section shall obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the business stating:

(A) The name and address of the original purchaser;

(B) The tax identification number of the person entitled to the credit;

(C) The original date of purchase of the equity interest;

(D) The number and type of equity interests purchased;

(E) The amount paid by the original purchaser for the equity interest;

(F) The amount of the tax credit associated with the purchase of the equity interest; and

(G) The amount of dividends and distributions previously paid by the business to the purchaser.

(c)(1) A transferee from an original purchaser is entitled to the tax credit described in this section only to the extent the credit is still available to and has not previously been used by the transferor.

(2) A transferee of equity interests or tax credits who seeks to qualify for the income tax credit or premium tax credit provided in this section shall obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the business stating:

(A) The name and address of the original purchaser and all transferees;

(B) The tax identification number of all persons entitled to any portion of the original tax credit;

(C) The original date the equity interest was purchased;

(D) The number and type of equity interests purchased;

(E) The amount paid by the original purchaser for the equity interest;

(F) The amount of the tax credit associated with the purchase of the equity interest;

(G) The amount of the tax credit associated with the original purchase used by all previous owners of the equity interest or tax credit and the remaining amount of the tax credit available for use by the transferee; and

(H) The amount of dividends and distributions previously paid by the business to the original purchaser and all transferees.

(d)(1) If the owner of an equity interest in or a tax credit issued by a company is a pass-through entity for tax purposes, such as a limited liability company or a partnership, then the owner of the pass-through entity is entitled to the tax credit described in this section.

(2) If a pass-through entity entitled to a tax credit under subdivision (d)(1) of this section is owned by two (2) or more persons, then the tax credit may be allocated among the pass-through entity owners in the method selected by the owners as described in the governing documents of the pass-through entity or by other written agreement among the owners.

(e)(1) For the purpose of ascertaining the gain or loss from the sale or other disposition of an equity interest in a business, the owner of the equity interest shall reduce his or her basis in the equity interest by the amount of the tax credits previously deducted under this section.

(2) However, sale or other disposition under subdivision (e)(1) of this section does not include a transfer from the holder of an equity interest to the business in liquidation of the equity interest.

(3) This reduced basis shall be used by the original purchaser or transferee when calculating tax due under the Income Tax Act of 1929, § 26-51-101 et seq.

(f) The total cumulative amount of tax credits available to all purchasers of equity interest in qualified businesses under this section and under § 15-4-1026 in any calendar year shall not exceed six million two hundred and fifty thousand dollars ($6,250,000).

15-4-3306. Rules.

The Department of Economic Development shall promulgate guidelines and rules to implement this subchapter.

SECTION 2. Arkansas Code § 15-4-1026(a)(1), concerning tax credits under the Arkansas Capital Development Company Act, is amended to read as follows:

(a)(1) Subject to the limitations contained in this section, ~~A~~ a person who purchases an equity interest in a capital development company in any of the calendar years 2003 - 2015 is entitled to a credit against any state income tax liability or premium tax liability that may be imposed on the purchaser for any tax year commencing on or after the date of the purchase.

SECTION 3. Arkansas Code § 15-4-1026, concerning tax credits under the Arkansas Capital Development Company Act, is amended to add an additional subsection to read as follows:

(h)(1) No capital development company shall enter into an agreement or a commitment for the purchase by any person of equity interests in the capital development company on or after July 1, 2007.

(2) However, all agreements and commitments of the capital development company related to the purchase of equity interests in existence before July 1, 2007, and certified to the Department of Economic Development shall remain valid and enforceable, shall be entitled to the tax credits set forth in this section, and shall be completed in accordance with their respective terms.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state continues to be insufficient to support the growth of businesses that will bring higher-paying jobs to inhabitants of the state; that as a result of the lack of available capital sources the state has suffered economic losses because of the inability to compete with other states in providing capital resources for high-wage businesses; that this legislation will stimulate the flow of private capital vital to the attraction, growth, and modernization of targeted businesses and allow the coordination by state agencies of tax credits with other economic development tools; that unless such a program of tax credits is undertaken, the state will suffer further irreparable loss as a result of the continued inability to attract and support business development and from lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the

<u>bill; or</u>

<u>(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.</u>

APPROVED: 3/28/2007