

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H2/6/15
A Bill

HOUSE BILL 1235

5 By: Representative Sabin
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7 **For An Act To Be Entitled**

8 AN ACT TO AMEND THE EQUITY INVESTMENT INCENTIVE ACT
9 OF 2007; TO SPECIFY THAT CONVERTIBLE FINANCING
10 STRUCTURES MAY BE USED FOR CERTAIN COMPANIES UNDER
11 THE EQUITY INVESTMENT INCENTIVE ACT OF 2007; TO
12 CLARIFY THE SALE OF TAX CREDITS UNDER THE EQUITY
13 INVESTMENT INCENTIVE ACT OF 2007; TO GIVE PRIORITY TO
14 CASH INVESTMENTS UNDER THE EQUITY INVESTMENT
15 INCENTIVE ACT OF 2007; AND FOR OTHER PURPOSES.
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18 **Subtitle**

19 TO AMEND THE EQUITY INVESTMENT INCENTIVE
20 ACT OF 2007.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code § 15-4-3303(b)(2), concerning eligibility for
26 an equity investment incentive under the Equity Investment Incentive Act of
27 2007, is amended to read as follows:

28 (2) Only cash investments shall qualify for the equity
29 investment incentive tax credit under this subchapter, including without
30 limitation the initial principle amount of a qualifying convertible financing
31 structure if the convertible financing structure is required to be converted
32 to equity by the business receiving the investment no later than five (5)
33 years from the date the convertible financing structure was consummated.
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35 SECTION 2. Arkansas Code § 15-4-3304(b), concerning applications for
36 an equity investment incentive tax credit, is amended to read as follows:



1 (b) The application shall include:

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

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

6 (3) If the application proposes to use a convertible financing
7 structure, a clear statement concerning the timing and conditions under which
8 the convertible financing structure converts into equity; and

9 ~~(3)~~ (4) Other information requested jointly by the Director of
10 the Arkansas Economic Development Commission, the President of the Arkansas
11 Development Finance Authority, and the President of the Arkansas Science and
12 Technology Authority.

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14 SECTION 3. Arkansas Code § 15-4-3305(a) and (b), concerning the award
15 of an equity investment incentive tax credit, are amended to read as follows:

16 (a) A person or company that purchases an equity interest in a
17 qualified business under § 15-4-3303(a) in any of the calendar years 2007 –
18 ~~2019~~ 2028 is entitled to a credit against any state income tax liability that
19 may be imposed on the person or company for any tax year, beginning in the
20 tax year in which the equity interest was purchased and for a period not to
21 exceed nine (9) years beyond the tax year in which the equity interest was
22 purchased.

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

25 (1) The credit shall not exceed thirty-three and one-third
26 percent (33 1/3%) of the actual purchase price paid for the equity interest
27 to the business, less any fees or commissions to underwriters or sales agents
28 paid by the business;

29 (2) In any one (1) tax year, the credit allowed by this section
30 shall not exceed fifty percent (50%) of the net Arkansas state income tax
31 liability or premium tax liability of the taxpayer ~~after~~;

32 (A) After all other credits and reductions in tax have
33 been calculated; and

34 (B) Before the credit allowed by this section is applied;

35 (3)(A) Any credit in excess of the amount allowed by subdivision
36 (b)(2) of this section for any one (1) tax year may be carried forward and

1 applied against Arkansas state income tax for the next-succeeding tax year
2 and annually thereafter for a total period of nine (9) years next succeeding
3 the year in which the equity interest in a business was purchased, subject to
4 the provisions of subdivision (b)(2) of this section or until the credit is
5 exhausted, whichever occurs first.

6 (B) ~~In no event may the~~ The credit allowed by this section
7 shall not be allowed for ~~any~~ a tax year ending after December 31, ~~2028~~ 2037;
8 ~~and~~

9 (4) If the total amount of credits applied for under this
10 subchapter for the year exceed the cap stated in subsection (f) of this
11 section, the Arkansas Economic Development Commission, when allocating
12 credits under this subchapter for the particular applications that would
13 exceed that cap and in order to not exceed the cap, shall first award credits
14 to investors taking an equity interest through an equity purchase before
15 credits may be allocated to investors that use a convertible financing
16 structure for the investment; and

17 ~~(4)~~ (5) An original purchaser of equity interests who seeks to
18 qualify for the income tax credit or premium tax credit provided in this
19 section shall obtain and attach to the income tax return or premium tax
20 return for the years the credit is claimed a certified statement from the
21 business stating:

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

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

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

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

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

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

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

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34 SECTION 4. Arkansas Code § 15-4-3305(e)(1), concerning the award of an
35 equity investment incentive tax credit, is amended to read as follows:

36 (e)(1) For the purpose of ascertaining the gain or loss from the sale

1 or other disposition of an equity interest in a business, the owner of the
2 equity interest shall reduce the owner's basis in the equity interest by the
3 amount of cash received from selling the tax credits and the tax credits
4 previously deducted under this section.

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6 SECTION 5. Arkansas Code § 15-4-3305, concerning the award of an
7 equity investment incentive tax credit, is amended to add an additional
8 subsection to read as follows:

9 (g) The original investor earning tax credits under this section may
10 sell its tax credits only one (1) time, in whole or in part, the balance of
11 which shall be used by the original investor within the time frame allowed
12 under this subchapter.

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14 SECTION 6. Arkansas Code Title 15, Chapter 4, Subchapter 33, is
15 amended to add an additional section to read as follows:

16 15-4-3307. Definition.

17 As used in this subchapter, "convertible financing structure" means an
18 investment mechanism that converts into equity at a subsequent event,
19 including without limitation convertible debt, convertible equity, and a
20 convertible note.

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