

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1235

Bill Subtitle: TO AMEND THE EQUITY INVESTMENT INCENTIVE ACT OF 2007.

Basic Change : Sponsor: Representative Sabin

This bill amends the Equity Investment Incentive Act of 2007 which providing income tax credits equal to 33 1/3% of the investment for an equity interest in a qualified business. Eligible businesses must first be reviewed and approved by the Arkansas Economic Development Commission, the Arkansas Development Finance Authority, and the Arkansas Science and Technology Authority. The tax credits granted are based on cash investments only and the tax credits approved are limited to a maximum amount of \$6,250,000 annually for all approved eligible business projects.

The bill provides that the initial principle amount of a qualifying convertible financing structure may also qualify for purposes of the investment tax credit. The convertible financing structure is required to be converted to equity no later than five years from the date of the consummation of the initial agreement. The bill defines a "convertible financing structure" to mean an investment mechanism that converts into equity at a subsequent event, including convertible debt, convertible equity, and a convertible note.

The bill also amends the current law to stipulate that if the \$6,250,000 annual cap is reached, then the Arkansas Economic Development Commission shall first award credits to investors taking an equity interest through an equity purchase before credits may be allocated to investors that use a convertible financing structure. The bill would also extend the ending date for which credits may be allowed from December 31, 2028 to December 31, 2037. December 31, 2037.

Revenue Impact :

No Impact to Current State Revenues

[The proposal offers investors the option to use convertible financing structures but does not increase the existing \$6,250,000 annual cap for credits allowed.]

Taxpayer Impact :

Investors will have the option to use a convertible financing structure to earn the tax credit.

Resources Required :

None.

Time Required :

Adequate time is allowed in the proposal.

Procedural Changes :

Education of staff of the law change.

Other Comments :

The bill should provide additional clarity regarding when the tax credits resulting from a convertible financing structure are available for use by the investor. Are the tax credits available for use upon

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approval of the investment project and creation of the convertible debt or note, or, are the credits available at the time of converting the debt or note principle to equity?

Section 5 of the bill adds subsection §15-4-3305(g) that reads "The original investor earning tax credits under this section may sell its tax credits, in whole or in part, the balance of which shall be used by the original investor within the time frame allowed under this subchapter." This new subsection is somewhat confusing as worded, particularly since existing subsection §15-4-3305(c) already provides for the transfer of the tax credits.

Legal Analysis :

HB1235 amends the Equity Investment Act of 2007, codified at Arkansas Code §§ 15-4-3301 through 3306, to broaden the types of equity investments in Arkansas companies that will qualify for tax credits, extend the time periods for eligible investments and carry forwards, and allow tax credits to be sold. This bill extends the tax credits available for cash equity investments to include the initial principal amount of a "qualifying convertible financing structure."

In Section 1 of the bill, the term "principle" is misused and should be correctly spelled or identified as "principal." The bill also amends the application process for the tax credits set out in § 15-4-3304(b) to add a provision as subdivision (3) that if a convertible financing structure is the basis for the tax credit, a clear statement concerning the timing and conditions under which the convertible financing structure will convert into equity is required.