

1 HB40
2 144448-1
3 By Representative Williams (J)
4 RFD: Commerce and Small Business
5 First Read: 05-FEB-13
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8 SYNOPSIS: Under existing law, there is no tax credit
9 to encourage individual investors to invest in an
10 Alabama entrepreneurial business, as that term is
11 defined.

12 This bill would provide a tax credit for
13 investment in an Alabama entrepreneurial business.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To provide an income tax credit for investment by
20 qualified investors in an Alabama entrepreneurial business.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall be known as the Early
23 Stage Investment Act.

24 Section 2. The provisions of this act shall apply to
25 any qualified investment made by any person in any Alabama
26 entrepreneurial business located within the State of Alabama.

1 Section 3. As used in this act, the term "ALABAMA
2 ENTREPRENEURIAL BUSINESS" shall mean a business which meets
3 the following requirements:

4 (1) Is domiciled in, and has its principal place of
5 business in, this state.

6 (2) Employs 20 or fewer full-time employees at the
7 time the investment is made.

8 (3) Has gross annual revenues of less than five
9 hundred thousand dollars (\$500,000) in the fiscal year prior
10 to the investment.

11 (4) Has not raised more than one million dollars
12 (\$1,000,000) in funding, excluding commercial loans from
13 banking or loan institutions.

14 (5) Is not in an excluded industry. An excluded
15 industry means that a business must not be principally engaged
16 in professional accounting, medical, or legal services;
17 banking or lending; real estate development; construction;
18 insurance; oil and gas exploration; or direct gambling
19 services.

20 (6) Has been in business less than three years.

21 (7) The principal business operations of the
22 business shall be located in Alabama.

23 (8) The business must demonstrate that it will be,
24 or is, an early stage, innovative, wealth creating business
25 for Alabama.

26 Section 4. Qualifying individuals or entities that
27 invest in an Alabama entrepreneurial business as defined in

1 Section 3 may apply for a refundable tax credit on any income
2 or corporation franchise tax liability of the taxpayer,
3 subject to the terms of this act regarding qualification and
4 allocation of credits. The credits shall be earned and granted
5 for a period of five tax years as provided in this act. The
6 administration of applications for these credits and the
7 provision of these credits shall be called the Early Stage
8 Investment Credit Program.

9 Section 5. The Early Stage Investment Credit Program
10 shall be implemented and administered by the Alabama
11 Department of Commerce. In compliance with the Administrative
12 Procedure Act and this act, the department shall adopt and
13 promulgate such rules as are necessary for the efficient and
14 effective administration of this program. Such rules shall
15 include, at a minimum, provisions for:

16 (1) Certification by the Alabama Department of
17 Commerce of the eligibility of any taxpayer applicant pursuant
18 to subdivision (2) of Section 6 for receipt of the tax credit
19 provided for in this act and the qualification of any taxpayer
20 claimant to claim the credit against state tax liability.

21 (2) Adoption of forms and procedures for the
22 presentation of a taxpayer's eligibility certification and any
23 other documentation required to be applied for to earn or
24 claim a credit.

25 (3) Submission of annual reports by the Alabama
26 entrepreneurial business regarding the use of the proceeds on
27 the investment, number of employees, amount of payroll, annual

1 revenue, jobs created, number of investors, average wages of
2 employees, and any other information requested by the Alabama
3 Department of Commerce.

4 Section 6. To qualify for a tax credit under this
5 act, the taxpayer must meet the following requirements:

6 (1) The investment in the Alabama entrepreneurial
7 business must be an investment that is at risk and is not
8 secured or guaranteed. "At risk" means that the repayment of
9 the investment is entirely dependent on the success of the
10 Alabama entrepreneurial business.

11 (2) The funds invested by the applicant cannot have
12 been raised as a result of other Alabama tax incentive
13 programs or funds pooled or organized through capital
14 placement agreements for the purpose of equity and venture
15 capital investing, unless approved by the Alabama Department
16 of Commerce.

17 (3) The investor or investors cannot be the
18 principal owner or owners of the Alabama entrepreneurial
19 business who are involved in the operation of the business as
20 a full-time professional activity. For purposes of this
21 section, any interest owned by persons included as "family
22 members" under Section 267(c) (4) of the Internal Revenue Code
23 shall be included in determining whether an investor is a
24 "principal owner" of the business. A principal owner means one
25 or more persons who own an aggregate of 50 percent or more of
26 the Alabama entrepreneurial business.

1 (4) The use of proceeds from the investment must be
2 used for capital improvements, plant equipment, research and
3 development, working capital for the business, or other
4 business activity as may be approved by the Alabama Department
5 of Commerce. The proceeds cannot be used to pay dividends,
6 repay shareholders' loans, redeem shares, or repay debt unless
7 approved by the Alabama Department of Commerce.

8 Section 7. (a) Except as provided in subsection (b),
9 the taxpayer may earn and apply for and, if qualified, be
10 granted a tax credit on any income or corporation franchise
11 tax liability owed to the state by the taxpayer seeking to
12 claim the credit, in the amount approved by the Secretary of
13 the Alabama Department of Commerce for the amount of money
14 invested by the taxpayer in the Alabama entrepreneurial
15 business, which shall not exceed one hundred thousand dollars
16 (\$100,000) per year per business. Except as otherwise provided
17 in this subsection, the tax credit shall be allowed against
18 the income tax for the taxable period in which the credit is
19 earned and the franchise tax for the taxable period following
20 the period in which the credit is earned.

21 (b) (1) The credits approved by the Alabama
22 Department of Commerce shall be granted at the rate of 50
23 percent of the amount of money invested by the taxpayer in the
24 Alabama entrepreneurial business, with the credit divided
25 equally over five taxable years, subject to the limitations
26 provided for in subsection (a).

1 (2) The total aggregate tax credits granted by the
2 Alabama Department of Commerce in any calendar year to all
3 taxpayers shall not exceed ten million dollars (\$10,000,000).

4 (3) After certifying the eligibility of the Alabama
5 entrepreneurial business and the amount of the investment, the
6 Alabama Department of Commerce shall issue a tax credit
7 voucher, a copy of which is to be attached to the return of
8 the early stage investor. The tax credit voucher shall contain
9 the taxpayer's name, address, tax identification number, the
10 amount of credit, the name of the qualifying business, and
11 other information required by the Department of Revenue. The
12 tax credit voucher, unless rescinded by the Alabama Department
13 of Commerce, shall be accepted by the Department of Revenue as
14 conclusory proof of the credit.

15 (4) The Alabama Department of Commerce shall
16 maintain a list of the tax credit vouchers issued.

17 (c)(1) All entities taxed as corporations for
18 Alabama income or corporation franchise tax purposes shall
19 claim any credit allowed under this section on their
20 corporation income and corporation franchise tax return.

21 (2) Individuals shall claim any credit allowed under
22 this section on their individual income tax return.

23 (3) Estates or trusts shall claim any credit allowed
24 under this section on their fiduciary income tax returns.

25 (4) Entities not taxed as corporations shall claim
26 any credit allowed under this section on the returns of the
27 partners or members as follows:

1 a. Corporate partners or members shall claim their
2 share of the credit on their corporation income or corporation
3 franchise tax returns.

4 b. Individual partners or members shall claim their
5 share of the credit on their individual income tax returns.

6 c. Partners or members that are estates or trusts
7 shall claim their share of the credit on their fiduciary
8 income tax returns.

9 (5) A tax credit granted pursuant to the Early Stage
10 Investor Tax Credit Program may be carried forward for 10
11 years from the date of issuance to the taxpayer.

12 (6) A tax credit granted pursuant to the Early Stage
13 Investor Tax Credit Program shall be freely transferable and
14 assignable.

15 Section 8. The provisions of this act are severable.
16 If any part of this act is declared invalid or
17 unconstitutional, that declaration shall not affect the part
18 which remains.

19 Section 9. This act shall become effective for the
20 taxable year beginning January 1, 2014, and continuing
21 thereafter, following its passage and approval by the
22 Governor, or its otherwise becoming law.