

2015 -- H 5858

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO TAXATION

Introduced By: Representatives Ucci, Winfield, Blazejewski, Kazarian, and Newberry

Date Introduced: March 12, 2015

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 70

4 VENTURE CAPITAL INVESTMENT TAX CREDIT

5 **44-70-1. Definitions. --** As used in this chapter: (1) "Pass through entity" means:

6 (i) A corporation that is exempt from income tax under title 44;

7 (ii) A partnership;

8 (iii) A limited liability company; or

9 (iv) A limited liability partnership.

10 (2) "Qualified Rhode Island business" means an independently owned and operated
11 business that is certified as a qualified Rhode Island business by the Rhode Island commerce
12 corporation.

13 (3) "Qualified investment capital" means debt or equity capital that is provided to a
14 qualified Rhode Island business after December 31, 2015. However, the term does not include
15 debt that:

16 (i) Is provided by a financial institution, as defined in chapter 1 of title 19, after May 15,
17 2017; and

18 (ii) Is secured by a valid mortgage, security agreement, or other agreement or document
19 that establishes a collateral or security position for the financial institution that is senior to all

1 collateral or security interests of other taxpayers that provide debt or equity capital to the
2 qualified Rhode Island business.

3 (4) "State tax liability" means a taxpayer's total tax liability that is incurred under
4 chapters 11, 14, 17 and 30 of this title, as computed after the application of the credits that under
5 title 44 are to be applied before the credit provided by this chapter.

6 (5) "Taxpayer" means an individual or entity, including a pass through entity, that has
7 any state tax liability.

8 **44-70-2. Credit -- Eligibility. -- A taxpayer that:**

9 (1) Provides qualified investment capital to a qualified Rhode Island business; and

10 (2) Fulfills the requirements of the Rhode Island commerce corporation, is entitled to a
11 credit against the person's state tax liability in a taxable year equal to the amount specified in §
12 44-70-10.

13 **44-70-3. Certification of qualified Rhode Island business -- Forms -- Fee. -- (a) The**

14 Rhode Island commerce corporation shall certify that a business is a qualified Rhode Island
15 business if the corporation determines that the business:

16 (1) Has its headquarters in Rhode Island;

17 (2) Is primarily focused on the commercialization of research and development,
18 technology transfers, or the application of new technology, or is determined by the Rhode Island
19 commerce corporation to have significant potential to:

20 (i) Bring substantial capital into Rhode Island;

21 (ii) Create jobs;

22 (iii) Diversify the business base of Rhode Island; or

23 (iv) Significantly promote the purposes of this chapter in any other way.

24 (3) Has had average annual revenues of less than ten million dollars (\$10,000,000) in the
25 two (2) years preceding the year in which the business received qualified investment capital from
26 a taxpayer claiming a credit under this chapter;

27 (4) Has:

28 (i) At least fifty percent (50%) of its employees residing in Rhode Island; or

29 (ii) At least seventy-five percent (75%) of its assets are located in Rhode Island; and

30 (5) Is not engaged in a business involving:

31 (i) Real estate;

32 (ii) Real estate development;

33 (iii) Insurance;

34 (iv) Professional services provided by an accountant, a lawyer, or a physician;

1 (v) Retail sales, except when the primary purpose of the business is the development or
2 support of electronic commerce using the Internet; or

3 (vi) Oil and gas exploration.

4 (b) A business shall apply to be certified as a qualified Rhode Island business on a form
5 prescribed by the Rhode Island commerce corporation.

6 (c) If a business is certified as a qualified Rhode Island business under this section, the
7 Rhode Island commerce corporation shall provide a copy of the certification to the investors in
8 the qualified Rhode Island business for inclusion in tax filings.

9 (d) The Rhode Island commerce corporation may impose an application fee of not more
10 than two hundred dollars (\$200).

11 **44-70-4. Maximum allowable credit notice to investors. --** (a) A certification provided
12 under § 44-70-3 must include notice to the investors of the maximum amount of tax credits
13 available under this chapter for the provision of qualified investment capital to the qualified
14 Rhode Island business.

15 (b) The maximum amount of tax credits available under this chapter for the provision of
16 qualified investment capital to a particular qualified Rhode Island business shall equal the lesser
17 of:

18 (1) The total amount of qualified investment capital provided to the qualified Rhode
19 Island business in the calendar year, multiplied by twenty percent (20%); or

20 (2) Five hundred thousand dollars (\$500,000).

21 **44-70-5. Maximum annual statewide allowance for credits -- Treatment of credit**
22 **carryovers -- Program expiration. --** (a) The total amount of tax credits that may be allowed
23 under this chapter in a particular calendar year for qualified investment capital provided during
24 that calendar year may not exceed twelve million five hundred thousand dollars (\$12,500,000).
25 The Rhode Island commerce corporation may not certify a proposed investment plan under § 44-
26 70-9 if the proposed investment would result in the total amount of the tax credits certified for the
27 calendar year exceeding twelve million five hundred thousand dollars (\$12,500,000). The amount
28 of an unused credit carried over by a taxpayer from a previous calendar year may not be
29 considered in determining the amount of proposed investments that the Rhode Island commerce
30 corporation may certify under this chapter.

31 (b) Notwithstanding any provisions of this chapter to the contrary, a taxpayer is not
32 entitled to a credit for providing qualified investment capital to a qualified Rhode Island business
33 after December 31, 2015. However, this subsection may not be construed to prevent a taxpayer
34 from carrying over to a taxable year beginning after December 31, 2015, an unused tax credit

1 attributable to an investment occurring before January 1, 2016.

2 **44-70-6. Credit -- Calculation.** -- Subject to §§ 44-70-4 and 44-70-10, the amount of the
3 credit to which a taxpayer is entitled under § 44-70-2, shall equal the product of:

4 (1) Twenty percent (20%); multiplied by

5 (2) The amount of the qualified investment capital provided to a qualified Rhode Island
6 business by the taxpayer in the taxable year.

7 **44-70-7. Pass through entity -- Eligibility of owners, shareholders, or members for**
8 **credit.** -- If a pass through entity is entitled to a credit under § 44-70-2 but does not have state tax
9 liability against which the tax credit may be applied, a shareholder, partner, or member of the
10 pass through entity is entitled to a tax credit equal to:

11 (1) The tax credit determined for the pass through entity for the taxable year; multiplied
12 by;

13 (2) The percentage of the pass through entity's distributive income to which the
14 shareholder, partner, or member is entitled.

15 **44-70-8. Carryover -- Unused tax credit.** -- If the amount of the credit determined
16 under § 44-70-6 for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that
17 taxable year, the taxpayer may carry the excess credit over for a period not to exceed the
18 taxpayer's following five (5) taxable years. The amount of the credit carryover from a taxable
19 year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit
20 under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback or a
21 refund of any unused credit amount.

22 **44-70-9. Certification of investment plan -- Application -- Proof of investment within**
23 **two (2) years.** -- (a) A taxpayer wishing to obtain a credit under this chapter must apply to the
24 Rhode Island commerce corporation for a certification that the taxpayer's proposed investment
25 plan would qualify for a credit under this chapter.

26 (b) The application required under subsection (a) of this section must include:

27 (1) The name and address of the taxpayer;

28 (2) The name and address of each proposed recipient of the taxpayer's proposed
29 investment;

30 (3) The amount of the proposed investment;

31 (4) A copy of the certification issued under § 44-70-3 that the proposed recipient is a
32 qualified Rhode Island business; and

33 (5) Any other information required by the Rhode Island commerce corporation.

34 (c) If the Rhode Island commerce corporation shall certify the taxpayer's proposed

1 investment plan if the corporation determines that:

2 (1) The proposed investment would qualify the taxpayer for a credit under this chapter;
3 and

4 (2) The amount of the proposed investment would not result in the total amount of tax
5 credits certified for the calendar year exceeding twelve million five hundred thousand dollars
6 (\$12,500,000).

7 (d) To receive a credit under this chapter, the taxpayer must provide qualified investment
8 capital to a qualified Rhode Island business according to the taxpayer's certified investment plan
9 within two (2) years after the date on which the Rhode Island commerce corporation certifies the
10 investment plan.

11 (e) Upon making the investment required under subsection (d) of this section, the
12 taxpayer shall provide proof of the investment to the Rhode Island commerce corporation.

13 (f) Upon receiving proof of a taxpayer's investment under subsection (e) of this section,
14 the Rhode Island commerce corporation shall issue the taxpayer a certificate indicating that the
15 taxpayer has fulfilled the requirements of the corporation and that the taxpayer is entitled to a
16 credit under this chapter.

17 (g) A taxpayer forfeits the right to a tax credit attributable to an investment certified
18 under subsection (c) of this section if the taxpayer fails to make the proposed investment within
19 the period required under subsection (d) of this section.

20 **44-70-10. Returns -- Submission of certificates from Rhode Island commerce**
21 **corporation. -- To receive the credit provided by this chapter, a taxpayer must claim the credit on**
22 **the taxpayer's state tax return or returns in the manner prescribed by the department of revenue.**
23 **The taxpayer shall submit to the department of revenue, along with the taxpayer's state tax return**
24 **or returns, a copy of the certificate issued by the Rhode Island commerce corporation to the**
25 **taxpayer under § 44-70-9 and all information that the department of revenue determines is**
26 **necessary for the calculation of the credit provided by this chapter.**

27 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION

1 This act would establish a venture capital investment tax credit to qualified Rhode Island
2 businesses and the credit would be available to businesses certified by the Rhode Island
3 commerce corporation as meeting certain set requirements.

4 This act would take effect upon passage.

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