

2014 -- S 2795

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO TAXATION -- TAX INCENTIVES FOR CAPITAL INVESTMENT IN
SMALL BUSINESSES

Introduced By: Senator Ryan W. Pearson

Date Introduced: March 25, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-43-1, 44-43-2, 44-43-3 and 44-43-5 of the General Laws in
2 Chapter 44-43 entitled "Tax Incentives for Capital Investment in Small Businesses" are hereby
3 amended to read as follows:

4 **44-43-1. Definitions.** -- For the purpose of this chapter: (1) "Average annual gross
5 revenue" means the average of the amounts received or accrued by a qualifying business entity
6 determined on an annualized basis from the sale of goods or services prior to diminution by the
7 cost of those sales or services. The determination is limited to amounts, if any, received or
8 accrued during the four (4) taxable years of the business entity, or a lesser period as may be
9 applicable, immediately preceding the taxable year during which the entity applied to the
10 department for certification as a qualifying business entity.

11 (2) "Certified venture capital partnership" means any:

12 [\(a\) "Venture capital fund" as defined by the United States Securities and Exchange](#)
13 [Commission; or](#)

14 [\(b\) ~~partnership~~ Partnership](#) formed under the laws of Rhode Island that:

15 (i) Has at least three (3) partners each of whom has contributed at least five thousand
16 dollars (\$5,000) and who have contributed in the aggregate at least two hundred fifty thousand
17 dollars (\$250,000) to the partnership;

18 (ii) Employs a professional manager who is an individual with prior experience managing

1 venture capital funds;

2 (iii) Is organized and operated to invest at least ninety percent (90%) of the amounts
3 contributed to its capital in qualifying activities and is registered or exempt from registration
4 under the securities laws of Rhode Island;

5 ~~(iv) Has bonding of its employees to fully cover all funds received from partners;~~

6 ~~(iv)~~(iv) Has filed with the department information as may be requested describing its
7 organization, operation, and programs and has received certification and annual recertification
8 from the department pursuant to rules and regulations promulgated by the department, that its
9 organization, operation, and proposed programs comply with the requirements of this chapter;
10 and

11 ~~(v)~~(v) Has not violated the requirements prescribed in this chapter, or the conditions and
12 requirements imposed by the department.

13 (3) "Certified angel investor" means a taxpayer who is an "accredited investor" as defined
14 by the United States Securities and Exchange Commission that:

15 (i) Has filed with the department information as may be requested describing its
16 organization, operation, and programs and has received certification and annual recertification
17 from the department pursuant to rules and regulations promulgated by the department, that its
18 organization, operation, and proposed programs comply with the requirements of this chapter;
19 and

20 (ii) Has not violated the requirements prescribed in this chapter, or the conditions and
21 requirements imposed by the department.

22 ~~(4)~~(4) "Department" means the Rhode Island economic development corporation.

23 ~~(5)~~(5) "Entrepreneur" means any individual in the employ on a full-time basis of a
24 qualifying business entity who owns an interest in the entity equal to at least five percent (5%) in
25 value of the entity.

26 ~~(6)~~(6) "Qualifying activities" means to provide capital:

27 (i) To invest in one or more qualifying business entities whose principal office and the
28 majority of whose assets are located in Rhode Island;

29 (ii) To invest a portion of its funds, as stated in this section, in one or more qualifying
30 business entities whose principal office is located outside of Rhode Island and who have entered
31 into binding commitments to establish, expand, or increase its operations at a regular place of
32 business in Rhode Island; or

33 (iii) To invest a portion of its funds, as stated in this section, in research and experimental
34 expenditures (as defined in 26 U.S.C. section 174) conducted in Rhode Island to assist those

1 qualifying business entities in which the partnership has or would be able to invest. A certified
2 venture capital partnership commencing with its first year of operation, or after there has been a
3 forty percent (40%) change in ownership or the admission of new partners whose contributions
4 have increased the capital of the partnership by at least sixty-five percent (65%), may invest in
5 the aggregate up to the following total portion of its investments made during each year in the
6 types of investments described in subdivisions (6)(ii) and (6)(iii) of this section.

7	Year	Portion
8	1	50%
9	2	40%
10	3	30%
11	4	30%
12	5	30%
13	6 and subsequent years	20%

14 ~~(6)~~(7) "Qualifying business entity" means any corporation, partnership or other business
15 entity that meets all of the following criteria and the predecessors and successors of any
16 corporation, partnership or other business entity:

17 (i) Whose average annual gross revenue is less than two million five hundred thousand
18 dollars (\$2,500,000);

19 (ii) Which has been in business for less than four (4) years; and

20 (iii) Which will expend an amount which is not less than the amounts allowed as a
21 deduction under section 44-43-2 to establish, expand or increase its operations at a regular place
22 of business in Rhode Island or to purchase the interest of one or more prior owners of the entity if
23 the entity has entered into binding commitments to expend an amount not less than the amount
24 paid to establish, expand or increase the entity's operations at a regular place of business in Rhode
25 Island; and

26 (iv) Has received certification and annual recertification from the department, pursuant to
27 rules and regulations promulgated by the department, that the preceding requirements have been
28 satisfied.

29 ~~(7)~~(8) "Qualifying investment" means that portion, determined based on a taxpayer's
30 interest in a certified venture capital partnership under 26 U.S.C. section 702(a)(8), of the
31 taxpayer's investment in the partnership that is invested by the partnership in qualifying activities
32 during the taxpayer's taxable year.

33 **44-43-2. Deduction or modification.** -- (a) In the year in which a taxpayer first makes a
34 qualifying investment in a certified venture capital partnership or the year in which an

1 entrepreneur [or certified angel investor](#) first makes an investment in a qualifying entity, the
2 taxpayer [or certified angel investor](#) or the entrepreneur shall be allowed:

3 (1) A deduction for purposes of computing net income or net worth in accordance with
4 chapter 11 of this title; or

5 (2) A deduction from gross earnings for purposes of computing the public service
6 corporation tax in accordance with chapter 13 of this title; or

7 (3) A deduction for the purposes of computing net income in accordance with chapter 14
8 of this title; or

9 (4) A deduction for the purposes of computing gross premiums in accordance with
10 chapter 17 of this title; or

11 (5) A modification reducing federal adjusted gross income in accordance with chapter 30
12 of this title.

13 (b) The deduction or modification shall be in an amount equal to the taxpayer's
14 qualifying investment in a certified venture capital partnership or an entrepreneur's [or certified](#)
15 [angel investor's](#) investment in a qualifying business entity and shall be measured at the year end
16 of the certified venture capital partnership, the year end of the qualifying business entity, or the
17 year end of the investing taxpayer, whichever comes first.

18 **44-43-3. Wage credit.** -- (a) There shall be allocated among the entrepreneurs of a
19 qualifying business entity (based on the ratio of each entrepreneur's interest in the entity to the
20 total interest held by all entrepreneurs) with respect to each entity on an annual basis commencing
21 with the calendar year in which the entity first qualified as a qualifying business entity a credit
22 against the tax imposed by chapter 30 of this title. The credit shall be equal to three percent (3%)
23 of the wages (as defined in 26 U.S.C. section 3121(a)) in excess of ~~fifty thousand dollars~~
24 ~~(\$50,000)~~ [one hundred thousand dollars \(\\$100,000\)](#) paid during each calendar year to employees
25 of the entity; provided, that there shall be excluded from the amount on which the credit is based
26 any wages:

27 (1) Paid to any owner of the entity;

28 (2) Paid more than five (5) years after the entity commenced business or five (5) years
29 after the purchase of the business entity by new owners, whichever occurs later; or

30 (3) Paid to employees who are not principally employed in Rhode Island and whose
31 wages are not subject to withholding pursuant to chapter 30 of this title.

32 (b) The credit authorized by this section shall cease in the taxable year next following
33 after the taxable year in which the average annual gross revenue of the business entity equals or
34 exceeds ~~one million five hundred thousand dollars (\$1,500,000)~~ [three million dollars](#)

1 [\(\\$3,000,000\).](#)

2 **44-43-5. Exemption.** -- To the extent that a long-term capital gain was included in the
3 calculations of taxes imposed by chapters 11, 13, 14 or 30 of this title, that long-term capital gain
4 shall be excluded. The long-term capital gain is the long-term capital gain as defined in 26 U.S.C.
5 section 1222(3) which is:

6 (1) Recognized by a partner in a certified venture capital partnership from the sale or
7 exchange of an interest in the partnership; or

8 (2) A partner's distributive share (in a certified venture capital partnership) of any long-
9 term capital gain recognized by the partnership from the sale or exchange of an interest in any
10 entity which at the time the interest was acquired was a qualifying business entity; or

11 [\(3\) The long-term capital gain recognized by a certified angel investor from the sale or](#)
12 [exchange of an interest in any entity which at the time the interest was acquired was a qualifying](#)
13 [business entity; or](#)

14 ~~(3)~~(4) The long-term capital gain recognized by an entrepreneur from the sale or
15 exchange of an interest in an entity, which at the time the interest was acquired was a qualifying
16 business entity.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would modify the law regarding tax incentives for capital investments in small
2 businesses by including certified angel investors and venture capital funds to the statute. This act
3 would also eliminate the requirement for private equity or venture capital funds to be bonded, and
4 would also increase the amounts utilized to calculate the applicable wage credit applied under the
5 statute.

6 This act would take effect upon passage.

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