

SENATE BILL 1238

By Yager

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 2, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 2, is amended by adding Sections 2- 9 as a new, appropriately designated part:

SECTION 2. For the purposes of this part:

(1) "Accredited investor" has the same meaning as defined in 17 C.F.R. § 230.501, as in effect on the effective date of this act;

(2) "Angel investor" means an accredited investor who may seek active involvement, such as consulting and mentoring, in a Tennessee business, but "angel investor" does not include:

(A) A person controlling, or whose spouse or relative within the third degree of consanguinity or affinity control, fifty percent (50%) or more of the Tennessee business invested in by the angel investor;

(B) A venture capital company; or

(C) Any bank, bank and trust company, insurance company, trust company, national bank, savings association or building and loan association for activities that are a part of its normal course of business;

(3) "Cash investment" means the contribution of cash, at a risk of loss, to a qualified Tennessee business in exchange for qualified securities;

(4) "Proprietary information" has the same meaning as the term is defined in § 4-3-730;

(5) "Qualified securities" means any form of equity, including a general or limited partnership interest, common stock, preferred stock, with or without voting rights, without regard to seniority position that must be convertible into common stock;

(6) "Qualified Tennessee small business" means any business that is designated as a qualified Tennessee business by the commissioner of economic and community development pursuant to Section 4;

(7) "Risk of loss" means that the repayment of the investment is entirely dependent on the success of the Tennessee qualified business; and

(8) "Trade secrets" has the same meaning as the term is defined in § 4-3-730.

### SECTION 3.

(a) There shall be allowed a credit against the tax imposed under this chapter for cash investments in the qualified securities of a qualified Tennessee business by an angel investor. For aggregate investments within a tax year:

(1) Of no less than ten thousand dollars (\$10,000) and no more than one hundred thousand dollars (\$100,000), the credit shall be in an amount equal to thirty-five percent (35%) of such investor's cash investment; and

(2) Exceeding one hundred thousand dollars (\$100,000), the credit shall be in an amount equal to fifty percent (50%) of such investor's cash investment.

(b) The total tax credits allowed to an angel investor shall not exceed two hundred and fifty thousand dollars (\$250,000) annually.

### SECTION 4.

(a) A Tennessee business may apply to the department of economic and community development for designation as a qualified Tennessee small business. The application shall include:

- (1) The name of the business and a copy of the organizational documents of such business;
- (2) A business plan, including a description of the business and the management, product, market and financial plan of the business;
- (3) A statement of the potential economic impact of the business, including the number, location and types of jobs expected to be created;
- (4) A description of the qualified securities to be issued and the amount of cash investment sought by the qualified Tennessee small business;
- (5) A statement of the amount, timing and projected use of the proceeds to be raised from the proposed sale of qualified securities; and
- (6) Such other information as the commissioner of economic and community development may require.

(b)

- (1) To be designated as a qualified Tennessee small business, a business shall be independently owned and operated and:
  - (A) Have its principal place of business in this state and at least sixty percent (60%) of its employees located in this state;
  - (B) Have had annual total gross revenues of less than one million dollars (\$1,000,000) in the most recent income year of such business prior to application;
  - (C) Have no more than one hundred (100) employees;
  - (D) Have been operating in this state for less than seven (7) consecutive years;
  - (E) Have received less than two million dollars (\$2,000,000) in cash investments eligible for the tax credits provided by this part; and

(F) Not be principally engaged in:

(i) Professional services provided by accountants, doctors, or lawyers;

(ii) Banking or lending;

(iii) Real estate development;

(iv) Insurance;

(v) Oil and gas exploration; or

(vi) Gambling activities.

(2) In addition to the requirements of subdivision (b)(1), a Tennessee small business shall only be designated as a qualified Tennessee small business if the commissioner of economic development determines, based upon the application submitted by the business, and any additional investigation conducted by the department of economic and community development for the purpose of this section, that:

(A) The business has a reasonable chance of success;

(B) The business has the reasonable potential to create measurable employment within the state;

(C) The existing owners of the business and other founders have made or are committed to make a substantial financial and time commitment to the business;

(D) The securities to be issued and purchased are qualified securities; and

(E)

(1) Binding commitments have been made by the business to the commissioner of economic and community

development for adequate reporting of financial data, including the requirement for an annual report, and if requested by the department of economic and community development, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business, and the right of the commissioner of economic and community development to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be proprietary information or trade secrets.

(2) A copy of each annual report received by, and the results of any audit performed by, the department of economic and community development pursuant to this subsection (b) shall be posted on the department of economic and community development's web site.

(c)

(1) The commissioner of economic and community development shall, on or before August 1, 2011, and quarterly thereafter, compile a list of Tennessee businesses that the commissioner has determined are qualified Tennessee small businesses, categorized by the cash investments being sought by the qualified Tennessee small business and type of qualified securities offered. Such list shall be posted on the department of economic and development's web site and submitted to the commissioner of revenue.

(2) The commissioner of economic and community development shall remove, as soon as is practicable, a Tennessee business from the list of qualified

Tennessee businesses if the Tennessee business no longer meets the requirements of this section. No investment in a Tennessee business made on or after the date the Tennessee business is removed from list will be a qualifying investment for tax credit certification.

#### SECTION 5.

(a) Any information submitted to, or issued by, the department of economic and community development pursuant to Section 4 or Section 6 shall constitute a public record, as defined in § 10-7-503, and shall be open for personal inspection by any citizen of this state; provided, however, that information constituting proprietary information or trade secrets shall be confidential as provided for such information in title 4, chapter 3, part 7.

(b) None of the information submitted to, or issued by, the department of economic and community development pursuant to Section 4 or Section 6 shall be considered "tax information" or "tax administration information" as defined in § 67-1-1701, and shall not be subject to chapter 1, part 1 of this title.

#### SECTION 6.

(a) An investor, or a designee of the investor on the investor's behalf, shall apply to the department of economic and community development for a certification of tax credit eligibility during the tax year in which the investments for which the investor seeks a tax credit are made. The investor shall submit, in the manner required by the department of economic and community development, documentation sufficient to demonstrate:

(1) That the investor is an angel investor; and

(2) The value of the cash investments intended to be made by the investor in the qualified securities of a qualified Tennessee small business.

(b)

(1) If the department of economic and community development determines that the investor qualifies to receive a certification of tax credit eligibility, then the department shall issue to the investor a tax credit certificate reservation in the amount authorized by Section 3. No reservation shall be issued if the reservation will cause the total value of reservations and credits issued to equal or exceed the applicable limit prescribed in subsection (c).

(2) The department of economic and community development shall issue a tax credit certificate to the investor upon submission by the investor of documentation evidencing the occurrence of such investment in the manner required by the department of economic and community development. The department of economic and community development shall develop the certificate in consultation with the department. The tax credit certificate shall contain:

- (A) The investor's name, address, and tax identification number;
- (B) The amount of the credit;
- (C) The name of the qualifying business;
- (D) A unique tax credit certificate number; and
- (E) Other information required by the department.

(3) The department of economic and community development shall transmit to the department a copy of any tax credit certificate issued. In the alternative, the department of economic and community development and the department are authorized to establish a means of electronically transmitting the information necessary for administration of the tax credit authorized by this part.

(c) The aggregate amount of all tax credit certifications under this section that may be issued by the department of economic and community development shall not exceed ten million dollars (\$10,000,000) annually for the fiscal years commencing July 1, 2011, to July 1, 2013, and shall not exceed five million dollars (\$5,000,000) in each fiscal year thereafter. No tax credit certifications shall be issued by the department of economic and community development under this section for any investment made on or after July 1, 2015.

#### SECTION 7.

(a)

(1) An angel investor shall attach a copy of any tax credit certificate issued pursuant to Section 5 to the return filed under this chapter for the tax year in which the certificate or certificates were issued.

(2) The amount of the credit allowed to any investor pursuant to this part shall not exceed the amount of tax due from such investor under this chapter with respect to such taxable year. Any tax credit that is claimed by the angel investor but not applied against the tax due under this chapter may be carried forward for the five (5) immediately succeeding taxable years until the full credit has been applied.

(b) If the angel investor is an S corporation or an entity treated as a partnership for federal income tax purposes, the tax credit may be claimed by the shareholders or partners of the angel investor. If the angel investor is a single member limited liability company that is disregarded as an entity separate from its owner, the tax credit may be claimed by such limited liability company's owner, provided such owner is a person subject to the tax imposed this chapter.



SECTION 8. The department, the department of economic and community development, and the comptroller of the treasury shall each prepare a report concerning the effectiveness of this part in promoting the establishment and growth of Tennessee small businesses. Such reports shall be submitted to the chairs of the finance, ways and means committees of the senate and house of representatives no later than January 1, 2014. The committees shall evaluate the effectiveness of this part based on the reports submitted, and any additional information obtained by the committees, and shall make recommendations to their respective houses as to continuation of this part.

SECTION 9.

(a) The departments of revenue and the department of economic and community development shall promulgate rules to effectuate the purposes of this act in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The departments shall endeavor to make the procedures authorized by this part as uncomplicated and effortless to comply with as possible.

SECTION 10. Tennessee Code Annotated, Section 67-2-101, is amended by adding the following language as a new, appropriately designated subdivision:

( ) "Department" means the department of revenue;

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.