Legislative Analysis

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SMALL BUSINESS INVESTMENT CREDIT

House Bill 5921 as enrolled
Public Act 235 of 2010
Sponsor: Rep. Ellen Cogen Lipton
House Committee: New Economy and Quality of Life
Senate Committee: Economic Development and Regulatory Reform

Complete to 12-15-10

A SUMMARY OF HOUSE BILL 5921 AS ENROLLED

The bill amended the Income Tax Act to create a small business investment credit. Generally speaking, the bill applies to investments in young, smaller firms. The new credit (and act) would be known as the Venture Investment Credit.

Under the bill, for tax years 2010-2013, a taxpayer could claim a credit equal to 25 percent of the amount of a qualified investment in a qualified business. To qualify for the credit, the taxpayer must receive certification from the Michigan Strategic Fund. The MSF cannot certify more than $9 million in credits in a calendar year. An individual taxpayer cannot claim more than $250,000 in credits in any one tax year. Further, a taxpayer cannot claim a credit of more than $250,000 based on an investment in any one business. Overall, the MSF cannot certify more than $1 million in investments in any one business. A credit must be taken in equal installments over two years beginning with the year in which MSF certification was issued. The credit is not refundable, but if a credit exceeds tax liability it can be carried forward for up to 5 years or until used up, whichever occurs first.

Certifications. The Michigan Strategic Fund must forward a copy of each certificate to the governor, the president of the MSF, the chairs of the House Tax Policy Committee and Senate Finance Committee, and the directors of the House and Senate fiscal agencies.

Qualified Investment. A qualified investment is defined as an investment of at least $20,000 certified by the MSF that is made alongside of or through a seed venture capital or angel investor group registered with and approved by the MSF. The venture capital or investor group cannot be in a business in which any member of the investor's family is an employee or owner of the business or in which the investor or any member of the investor's family has a pre-existing fiduciary relationship with the business. An investment in life sciences technology does not qualify unless the activities fall within the definition of "life sciences" found in Section 88A of the Michigan Strategic Fund Act.

Qualified Business. A qualified business (for investments) would have to meet all of the following criteria:

** Be a seed or early stage business (as defined in the Michigan Early Stage Venture Investment Act.)

** Have its headquarters in the state, be domiciled in the state, and have a majority of its employees working in the state.

** Have a pre-investment valuation of under $10 million and fewer than 100 full-time employees.

** Have been existence less than 5 years. (However, when the business activity is derived from research at a university of higher education in Michigan or a 501(c)(3) nonprofit located in the state, the business would need to have in business for less than 10 years.)

** Not be a retail establishment.

** Have not claimed other credits under the Michigan Business Tax Act. This applies to the credits under Section 431 (MEGA credits); or Sections 455, 457, and459 (film-related credits).

Application Process. The board of the MSF is to develop an application and approval process for use in certifying investments and must adopt a program describing parameters and criteria to be used in approving investments. As part of that program adoption, the board could determine and describe the conditions that an investment must meet to be considered an investment alongside or through an approved angel group, seed capital firm, or venture capital firm.

Disqualifications. A credit could not be approved for a taxpayer who had been convicted of a felony involving a fiduciary obligation or the conversion or misappropriation of funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption. Also a taxpayer who had not paid or entered in an installment agreement regarding a final assessment of an unpaid liability for a state tax for which all appeals had been exhausted is not be eligible to claim a credit. Additionally, a taxpayer currently in bankruptcy proceedings is not eligible to claim a credit.

MCL 206.278

FISCAL IMPACT:

House Bill 5921 would provide an income tax credit not to exceed $9.0 million per calendar year. This bill would reduce income tax revenue by an estimated $4.5 million for FY 2010-11 and on a full-year basis the revenue decrease would be $9.0 million. To the extent this credit is taken through refunds, the revenue decrease would affect the General Fund/General Purpose (GF/GP). However, there could be a minimal impact on School Aid Fund (SAF) revenue. This bill would have no direct impact on local units of government.

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