

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H2/6/15
A Bill

HOUSE BILL 1235

By: Representative Sabin

For An Act To Be Entitled

AN ACT TO AMEND THE EQUITY INVESTMENT INCENTIVE ACT OF 2007; TO SPECIFY THAT CONVERTIBLE FINANCING STRUCTURES MAY BE USED FOR CERTAIN COMPANIES UNDER THE EQUITY INVESTMENT INCENTIVE ACT OF 2007; TO CLARIFY THE SALE OF TAX CREDITS UNDER THE EQUITY INVESTMENT INCENTIVE ACT OF 2007; TO GIVE PRIORITY TO CASH INVESTMENTS UNDER THE EQUITY INVESTMENT INCENTIVE ACT OF 2007; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE EQUITY INVESTMENT INCENTIVE ACT OF 2007.

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

SECTION 1. Arkansas Code § 15-4-3303(b)(2), concerning eligibility for an equity investment incentive under the Equity Investment Incentive Act of 2007, is amended to read as follows:

(2) Only cash investments shall qualify for the equity investment incentive tax credit under this subchapter, including without limitation the initial principle amount of a qualifying convertible financing structure if the convertible financing structure is required to be converted to equity by the business receiving the investment no later than five (5) years from the date the convertible financing structure was consummated.

SECTION 2. Arkansas Code § 15-4-3304(b), concerning applications for an equity investment incentive tax credit, is amended to read as follows:



(b) The application shall include:

(1) A business plan describing the proposed business for which an equity investment incentive tax credit is sought;

(2) A projection of the amount of capital being sought for the proposed business; ~~and~~

(3) If the application proposes to use a convertible financing structure, a clear statement concerning the timing and conditions under which the convertible financing structure converts into equity; and

~~(3)~~ (4) Other information requested jointly by the Director of the Arkansas Economic Development Commission, the President of the Arkansas Development Finance Authority, and the President of the Arkansas Science and Technology Authority.

SECTION 3. Arkansas Code § 15-4-3305(a) and (b), concerning the award of an equity investment incentive tax credit, are amended to read as follows:

(a) A person or company that purchases an equity interest in a qualified business under § 15-4-3303(a) in any of the calendar years 2007 – ~~2019~~ 2028 is entitled to a credit against any state income tax liability that may be imposed on the person or company for any tax year, beginning in the tax year in which the equity interest was purchased and for a period not to exceed nine (9) years beyond the tax year in which the equity interest was purchased.

(b) The credit against state income tax liability shall be determined in the following manner:

(1) The credit shall not exceed thirty-three and one-third percent (33 1/3%) of the actual purchase price paid for the equity interest to the business, less any fees or commissions to underwriters or sales agents paid by the business;

(2) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax liability or premium tax liability of the taxpayer ~~after:~~

(A) After all other credits and reductions in tax have been calculated; and

(B) Before the credit allowed by this section is applied;

(3)(A) Any credit in excess of the amount allowed by subdivision (b)(2) of this section for any one (1) tax year may be carried forward and

applied against Arkansas state income tax for the next-succeeding tax year and annually thereafter for a total period of nine (9) years next succeeding the year in which the equity interest in a business was purchased, subject to the provisions of subdivision (b)(2) of this section or until the credit is exhausted, whichever occurs first.

(B) ~~In no event may the~~ The credit allowed by this section shall not be allowed for ~~any~~ a tax year ending after December 31, ~~2028~~ 2037; ~~and~~

(4) If the total amount of credits applied for under this subchapter for the year exceed the cap stated in subsection (f) of this section, the Arkansas Economic Development Commission, when allocating credits under this subchapter for the particular applications that would exceed that cap and in order to not exceed the cap, shall first award credits to investors taking an equity interest through an equity purchase before credits may be allocated to investors that use a convertible financing structure for the investment; and

~~(4)~~ (5) An original purchaser of equity interests who seeks to qualify for the income tax credit or premium tax credit provided in this section shall obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the business stating:

- (A) The name and address of the original purchaser;
- (B) The tax identification number of the person entitled to the credit;
- (C) The original date of purchase of the equity interest;
- (D) The number and type of equity interests purchased;
- (E) The amount paid by the original purchaser for the equity interest;
- (F) The amount of the tax credit associated with the purchase of the equity interest; and
- (G) The amount of dividends and distributions previously paid by the business to the purchaser.

SECTION 4. Arkansas Code § 15-4-3305(e)(1), concerning the award of an equity investment incentive tax credit, is amended to read as follows:

(e)(1) For the purpose of ascertaining the gain or loss from the sale

or other disposition of an equity interest in a business, the owner of the equity interest shall reduce the owner's basis in the equity interest by the amount of cash received from selling the tax credits and the tax credits previously deducted under this section.

SECTION 5. Arkansas Code § 15-4-3305, concerning the award of an equity investment incentive tax credit, is amended to add an additional subsection to read as follows:

(g) The original investor earning tax credits under this section may sell its tax credits only one (1) time, in whole or in part, the balance of which shall be used by the original investor within the time frame allowed under this subchapter.

SECTION 6. Arkansas Code Title 15, Chapter 4, Subchapter 33, is amended to add an additional section to read as follows:

15-4-3307. Definition.

As used in this subchapter, "convertible financing structure" means an investment mechanism that converts into equity at a subsequent event, including without limitation convertible debt, convertible equity, and a convertible note.

/s/Sabin