

1 SB119  
2 147800-1  
3 By Senators Blackwell, Waggoner, Taylor, McGill, Fielding,  
4 Williams, Brewbaker, Marsh, Reed, Whatley, Dial, Allen, Ward,  
5 and Glover  
6 RFD: Finance and Taxation Education  
7 First Read: 05-FEB-13

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8 SYNOPSIS: Under existing law, there is no tax credit  
9 to encourage individual investors to invest in an  
10 Alabama entrepreneurial business, as that term is  
11 defined.

12 This bill would provide a tax credit for  
13 investment in an Alabama entrepreneurial business.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 To provide an income tax credit for investment by  
20 qualified investors in an Alabama entrepreneurial business.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall be known as the Early  
23 Stage Investment Act.

24 Section 2. The provisions of this act shall apply to  
25 any qualified investment made by any person in any Alabama  
26 entrepreneurial business located within the State of Alabama.

1           Section 3. As used in this act, the term "ALABAMA  
2 ENTREPRENEURIAL BUSINESS" shall mean a business which meets  
3 the following requirements:

4           (1) Is domiciled in, and has its principal place of  
5 business in, this state.

6           (2) Employs 20 or fewer full-time employees at the  
7 time the investment is made.

8           (3) Has gross annual revenues of less than five  
9 hundred thousand dollars (\$500,000) in the fiscal year prior  
10 to the investment.

11           (4) Has not raised more than one million dollars  
12 (\$1,000,000) in funding, excluding commercial loans from  
13 banking or loan institutions.

14           (5) Is not in an excluded industry. An excluded  
15 industry means that a business must not be principally engaged  
16 in professional accounting, medical, or legal services;  
17 banking or lending; real estate development; construction;  
18 insurance; oil and gas exploration; or direct gambling  
19 services.

20           (6) Has been in business less than three years.

21           (7) The principal business operations of the  
22 business shall be located in Alabama.

23           (8) The business must demonstrate that it will be,  
24 or is, an early stage, innovative, wealth creating business  
25 for Alabama.

26           Section 4. Qualifying individuals or entities that  
27 invest in an Alabama entrepreneurial business as defined in

1 Section 3 may apply for a refundable tax credit on any income  
2 or corporation franchise tax liability of the taxpayer,  
3 subject to the terms of this act regarding qualification and  
4 allocation of credits. The credits shall be earned and granted  
5 for a period of five tax years as provided in this act. The  
6 administration of applications for these credits and the  
7 provision of these credits shall be called the Early Stage  
8 Investment Credit Program.

9 Section 5. The Early Stage Investment Credit Program  
10 shall be implemented and administered by the Alabama  
11 Department of Commerce. In compliance with the Administrative  
12 Procedure Act and this act, the department shall adopt and  
13 promulgate such rules as are necessary for the efficient and  
14 effective administration of this program. Such rules shall  
15 include, at a minimum, provisions for:

16 (1) Certification by the Alabama Department of  
17 Commerce of the eligibility of any taxpayer applicant pursuant  
18 to subdivision (2) of Section 6 for receipt of the tax credit  
19 provided for in this act and the qualification of any taxpayer  
20 claimant to claim the credit against state tax liability.

21 (2) Adoption of forms and procedures for the  
22 presentation of a taxpayer's eligibility certification and any  
23 other documentation required to be applied for to earn or  
24 claim a credit.

25 (3) Submission of annual reports by the Alabama  
26 entrepreneurial business regarding the use of the proceeds on  
27 the investment, number of employees, amount of payroll, annual

1 revenue, jobs created, number of investors, average wages of  
2 employees, and any other information requested by the Alabama  
3 Department of Commerce.

4 Section 6. To qualify for a tax credit under this  
5 act, the taxpayer must meet the following requirements:

6 (1) The investment in the Alabama entrepreneurial  
7 business must be an investment that is at risk and is not  
8 secured or guaranteed. "At risk" means that the repayment of  
9 the investment is entirely dependent on the success of the  
10 Alabama entrepreneurial business.

11 (2) The funds invested by the applicant cannot have  
12 been raised as a result of other Alabama tax incentive  
13 programs or funds pooled or organized through capital  
14 placement agreements for the purpose of equity and venture  
15 capital investing, unless approved by the Alabama Department  
16 of Commerce.

17 (3) The investor or investors cannot be the  
18 principal owner or owners of the Alabama entrepreneurial  
19 business who are involved in the operation of the business as  
20 a full-time professional activity. For purposes of this  
21 section, any interest owned by persons included as "family  
22 members" under Section 267(c) (4) of the Internal Revenue Code  
23 shall be included in determining whether an investor is a  
24 "principal owner" of the business. A principal owner means one  
25 or more persons who own an aggregate of 50 percent or more of  
26 the Alabama entrepreneurial business.

1           (4) The use of proceeds from the investment must be  
2 used for capital improvements, plant equipment, research and  
3 development, working capital for the business, or other  
4 business activity as may be approved by the Alabama Department  
5 of Commerce. The proceeds cannot be used to pay dividends,  
6 repay shareholders' loans, redeem shares, or repay debt unless  
7 approved by the Alabama Department of Commerce.

8           Section 7. (a) Except as provided in subsection (b),  
9 the taxpayer may earn and apply for and, if qualified, be  
10 granted a tax credit on any income or corporation franchise  
11 tax liability owed to the state by the taxpayer seeking to  
12 claim the credit, in the amount approved by the Secretary of  
13 the Alabama Department of Commerce for the amount of money  
14 invested by the taxpayer in the Alabama entrepreneurial  
15 business, which shall not exceed one hundred thousand dollars  
16 (\$100,000) per year per business. Except as otherwise provided  
17 in this subsection, the tax credit shall be allowed against  
18 the income tax for the taxable period in which the credit is  
19 earned and the franchise tax for the taxable period following  
20 the period in which the credit is earned.

21           (b) (1) The credits approved by the Alabama  
22 Department of Commerce shall be granted at the rate of 50  
23 percent of the amount of money invested by the taxpayer in the  
24 Alabama entrepreneurial business, with the credit divided  
25 equally over five taxable years, subject to the limitations  
26 provided for in subsection (a).

1           (2) The total aggregate tax credits granted by the  
2 Alabama Department of Commerce in any calendar year to all  
3 taxpayers shall not exceed ten million dollars (\$10,000,000).

4           (3) After certifying the eligibility of the Alabama  
5 entrepreneurial business and the amount of the investment, the  
6 Alabama Department of Commerce shall issue a tax credit  
7 voucher, a copy of which is to be attached to the return of  
8 the early stage investor. The tax credit voucher shall contain  
9 the taxpayer's name, address, tax identification number, the  
10 amount of credit, the name of the qualifying business, and  
11 other information required by the Department of Revenue. The  
12 tax credit voucher, unless rescinded by the Alabama Department  
13 of Commerce, shall be accepted by the Department of Revenue as  
14 conclusory proof of the credit.

15           (4) The Alabama Department of Commerce shall  
16 maintain a list of the tax credit vouchers issued.

17           (c)(1) All entities taxed as corporations for  
18 Alabama income or corporation franchise tax purposes shall  
19 claim any credit allowed under this section on their  
20 corporation income and corporation franchise tax return.

21           (2) Individuals shall claim any credit allowed under  
22 this section on their individual income tax return.

23           (3) Estates or trusts shall claim any credit allowed  
24 under this section on their fiduciary income tax returns.

25           (4) Entities not taxed as corporations shall claim  
26 any credit allowed under this section on the returns of the  
27 partners or members as follows:

1           a. Corporate partners or members shall claim their  
2 share of the credit on their corporation income or corporation  
3 franchise tax returns.

4           b. Individual partners or members shall claim their  
5 share of the credit on their individual income tax returns.

6           c. Partners or members that are estates or trusts  
7 shall claim their share of the credit on their fiduciary  
8 income tax returns.

9           (5) A tax credit granted pursuant to the Early Stage  
10 Investor Tax Credit Program may be carried forward for 10  
11 years from the date of issuance to the taxpayer.

12           (6) A tax credit granted pursuant to the Early Stage  
13 Investor Tax Credit Program shall be freely transferable and  
14 assignable.

15           Section 8. The provisions of this act are severable.  
16 If any part of this act is declared invalid or  
17 unconstitutional, that declaration shall not affect the part  
18 which remains.

19           Section 9. This act shall become effective for the  
20 taxable year beginning January 1, 2014, and continuing  
21 thereafter, following its passage and approval by the  
22 Governor, or its otherwise becoming law.