HB 783

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 783 (Delegates Barve and Heller)
Ways and Means

Certified Capital Company Investment Tax Credit

This bill allows an income tax credit against the insurance premium tax for investments made by insurers in certified capital companies that make investments in qualified technology or bioscience businesses in the State. The bill provides that no more than $12.5 million in credits may be claimed in any year that they are allowed and limits the total certified capital for which premium tax credits may be allowed for all years to $100 million. The Department of Business and Economic Development (DBED) is required to adopt regulations to administer the tax credit program.

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: General fund revenues could decrease by up to $12.5 million annually beginning in FY 2005. General fund revenues could increase due to application and renewal fees, administrative penalties, the recapture of credits, and payback based on realized profit. These revenues could be significant in future years, depending upon any realized profit. Expenditure increase of approximately $69,400 to administer the program. Future year expenditures reflect annualization and growth.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	$0	$0	($12,500,000)	($12,500,000)	($12,500,000)
GF Expenditure	69,400	79,700	83,000	86,500	90,300
Net Effect	($69,400)	($79,700)	($12,583,000)	($12,586,500)	($12,590,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill provides for the creation of a certified capital company investment tax program to be administered by DBED. Under the tax credit program established by the bill, an insurer who makes an investment of certified capital in a certified capital company is entitled to a State income tax credit against the insurance premium tax once the certified capital company makes a qualified investment in a qualified technology or bioscience business in the State.

Specifically, the bill requires DBED to: (1) establish certification requirements for initial and continued certification; (2) determine whether investments meet specified requirements; (3) provide certification applications; (4) request, receive, and process payment of non-refundable application and annual fees; (5) receive and review reports and financial statements; (6) review and monitor the certified capital companies, providing annual reviews of each; (7) provide for decertification of eligible status and imposition of administrative fees for violations; (8) monitor the status of associated used and unused tax credits; (9) provide for the transfer of specified tax credits under specified circumstances; and (10) report to the Governor and the General Assembly each even-numbered years on the status of the program.

The bill defines the following terms:

Certified capital is defined as an investment of cash by a certified investor in a certified capital company that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the company.

A certified capital company is a partnership, corporation, or trust or limited liability company, whether organized on a profit or not-for-profit basis, that has as its primary business activity the investment of cash in qualified technology or bioscience businesses and that is certified as meeting the criteria specified by the bill.

A certified investor is an insurer or other person having insurance premium tax liability that contributes certified capital pursuant to an allocation of premium tax credits.

A qualified investment is defined as the investment of cash by a certified capital company in a qualified technology or bioscience business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants.

An early stage technology business is a qualified technology or bioscience business that satisfies at least one of the following criteria: (1) is involved, at the time of a certified capital company's first investment, in activities related to the development of initial technology-related product or service offerings, such as prototype development or establishment of initial production or service processes; (2) was initially organized less than three years before the date of the certified capital company's first investment; or (3) during the fiscal year immediately preceding the year of the certified capital company's first investment had, on a consolidated basis with its affiliates, gross revenues of not more than $4 million as determined in accordance with generally accepted accounting principles.

A qualified technology or bioscience business is a business that, at the time of a certified capital company's first investment in the business:

(1) is headquartered in this State and intends to remain in this State after receipt of the investment by the certified capital company, or is headquartered in another state and intends to relocate its headquarters to Maryland after receipt of the investment by the certified capital company; and has its principal business operations located in this State and intends to maintain business operations in this State after receipt of the investment by the certified capital company, or has its principal business operations located in another state, and intends to relocate business operations to Maryland within 90 days after receipt of investment by the certified capital company; or is a subsidiary of a company headquartered outside the United States;

(2) has agreed to use the qualified investment primarily to: support business operations in this State or, in the case of a start-up company, establish and support business operations in this State;

(3) has not more than 100 employees and employs at least 80% of its employees in Maryland or pays 80% of its payroll to employees in Maryland;

(4) is primarily engaged in: manufacturing, processing, or assembling technology or bioscience products; conducting technological or bioscience research and development; or providing technology or bioscience related services; and

(5) is not primarily engaged in: retail sales, real estate development, the business of insurance, banking, or lending or, the provision of professional services provided by accountants, attorneys, or physicians.

Current Law: No tax credit of this type exists.

Background: Several states have similar certified capital company programs: Louisiana (enacted in 1983), Missouri (1997), New York (1997), Wisconsin (1998), Florida (1998), Colorado (2001), and Texas (2001). Several of these states have renewed their programs multiple times. Studies conducted in Florida, Missouri, and New York indicate a positive economic benefit as a result of the program.

State Revenues: The bill provides that if an insurer that meets the requirements of being a certified investor, makes an investment of certified capital in a certified capital company, the insurer will earn a vested credit against the insurance premium tax once the certified capital company has made investments in a qualified technology or bioscience business in the State. The insurer is allowed to take up to 12.5% of the vested credit in any one taxable year. However, the bill limits the amount of tax credits that may be claimed to $12.5 million per year up to a total of $100 million. Credits could begin to be claimed in tax year 2004 (fiscal 2005). Credits taken against the insurance premiums tax reduce general fund revenues in the amount of the credit claimed. Therefore, if the maximum amount of credits is claimed for each year beginning in tax year 2004, general fund revenues would decrease by $12.5 million each year in fiscal 2005 through fiscal 2012.

Revenues would increase by $7,500 for each application fee and by $5,000 for each annual certification renewal fee, and by $5,000 for each late fee submitted to DBED. The bill also provides for the recapture of credits if a certified capital company is decertified. In addition, DBED is authorized to levy administrative penalties of up to $25,000 a day for certified capital companies found to be in violation of the provisions of the bill. Finally, once the certified capital company has realized profit above the amount that it has invested in a qualified technology or bioscience business, it is required to pay 10% of that amount to the State.

To the extent that: (1) the tax credit program generates economic activity that would otherwise have not taken place without the program; and (2) that additional economic activity generates additional sales tax, income tax, or property tax revenue, then there may be some partial offset of the revenue loss resulting from the tax credit program. Legislative Services advises, however, that it cannot be determined how much of this economic activity would have taken place without the tax credit program, reducing the impact of any indirect tax revenue recoupment.

State Expenditures: General fund expenditures could increase by an estimated $69,420 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of hiring one tax credit analyst to administer the new tax credit program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Small Business Effect: Certified capital companies and qualified technology or bioscience businesses that are small businesses could benefit under the bill. DBED indicates that the average biotech company has 60 employees with an average salary of $50,000. Many of Maryland's biotech companies would not be considered small businesses (50 employees or less).

Additional Information

Prior Introductions: None.

Cross File: SB 536 (Senator Hogan) – Budget and Taxation.

Information Source(s): Department of Business and Economic Development, Comptroller's Office (Bureau of Revenue Estimates), Maryland Insurance Administration, Department of Legislative Services

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