

SECOND REGULAR SESSION

SENATE BILL NO. 1223

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time March 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5455S.011

AN ACT

To amend chapter 348, RSMo, by adding thereto one new section relating to the Missouri targeted development program.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 348, RSMo, is amended by adding thereto one new section, to be known as section 348.450, to read as follows:

348.450. 1. For purposes of this section, the following words shall mean:

(1) "Missouri technology company", a company that meets the Small Business Administration definition of a small business as defined in Section 13 CFR 121.301 (c) of the Small Business Investment Act of 1958, as amended. Any business classified as a qualified Missouri technology business at the time of the first investment in such business shall, for a period of seven years from the date of such first investment, remain classified as a qualified Missouri business and may receive follow-on investments. In addition, the company must primarily be in the business of research and development or marketing of a product in the biotechnology or life sciences field, or another technology-based product or service, or be housed in a state-sponsored or private business incubator;

(2) "Department", the department of economic development;

(3) "Designated distressed area", a distressed community as defined by section 135.530, RSMo;

(4) "Designated rural area", a county with a population of less than fifty thousand inhabitants;

(5) "Investment", the contribution of property, at a risk of loss, to a qualified company in exchange for stock, a partnership interest, or

22 other ownership interest in the qualified Missouri technology
23 company. For purposes of this section, an investment is at risk of loss
24 when its repayment entirely depends upon the success of the business
25 operations of the qualified Missouri technology company;

26 (6) "Qualified distressed Missouri technology company", a
27 company that:

28 (a) Meets the requirements of subdivision (2) of this subsection;
29 and

30 (b) Has its headquarters and base of operations in a designated
31 distressed area as defined in subdivision (3) of this subsection;

32 (7) "Qualified investor", an investor that is:

33 (a) An individual who invests at least twenty-five thousand
34 dollars in a qualified Missouri technology company; or

35 (b) A corporation that invests at least two hundred fifty
36 thousand dollars in a qualified Missouri technology company;

37 A qualified investor does not include:

38 (c) An officer, director or manager of a qualified Missouri
39 technology company;

40 (d) An individual or corporation that, directly or indirectly,
41 holds or controls an ownership interest or twenty-five percent or more
42 in a qualified Missouri technology company; or

43 (e) A person related, within the meaning of Section 267(B) of the
44 Internal Revenue Code, to an individual or corporation described in
45 paragraph (a) of this subdivision;

46 (8) "Qualified Missouri technology company", a company that:

47 (a) Has its headquarters and base of operations in this state;

48 (b) Has fewer than fifty full-time employees;

49 (c) Has been in active business no longer than ten years; and

50 (d) Has been certified as a qualified Missouri company by the
51 department;

52 (9) "Qualified rural Missouri technology company", a company
53 that:

54 (a) Meets the requirements of the subdivision (5) of this
55 subsection; and

56 (b) Has its headquarters and base of operations in a designated
57 rural area as defined in subdivision (4) of this subsection;

58 (10) "Qualified Missouri venture capital firm", an entity that:

59 (a) Is organized for the purpose of investing funds in privately
60 held companies engaged in the research, development, or
61 commercialization of innovative and proprietary technology;

62 (b) Has at least two principals that each have at least five years
63 of venture capital experience;

64 (c) Has at least five years of experience investing in companies
65 that would have met the definition of qualified Missouri companies
66 when the investments were made; and

67 (d) Has its principal place of operations in this state;

68 2. Subject to subsections 3 and 4 of this section, a qualified
69 investor or a qualified Missouri venture capital firm may claim a
70 credit against the State income tax or premium tax, in an amount equal
71 to the final credit certificate approved by the secretary for an
72 investment in a qualified Missouri company as provided under this
73 section. A qualified investor or a qualified Missouri venture capital
74 firm may first claim a credit allowed under this section in a taxable
75 year beginning after December 31, 2006. The state credit earned by a
76 qualified Missouri venture capital firm pursuant to this subsection may
77 be allocated to and among the equity owners and/or debt holders of the
78 qualified Missouri venture capital firm in any manner determined by
79 the qualified Missouri venture capital firm regardless whether the
80 allocation of such state tax credit reflects the substantial economic
81 effect of the underlying transaction.

82 3. (1) At least thirty days prior to making an investment in a
83 qualified Missouri company for which a qualified investor or qualified
84 Missouri venture capital firm would be eligible for an initial tax credit
85 certificate under subsection 2 of this section, the qualified investor or
86 qualified Missouri venture capital firm shall submit an application to
87 the department.

88 (2) The department shall:

89 (a) Approve all applications that qualify for credits under this
90 section on a first come first served basis; and

91 (b) Within thirty days of receipt of an application, certify the
92 amount of any approved tax credits to a qualified investor or qualified
93 Missouri venture capital firm.

94 (3) The total amount of credits approved by the department
95 under this section may not exceed ten million dollars for any fiscal

96 year.

97 (4) Once the total amount of credits approved under this
98 subsection in any fiscal year exceeds the amount specified under this
99 subsection, the department may not approve any additional credits for
100 such fiscal year. The department shall adopt regulations to establish
101 a procedure to allocate credits among applicants in the event of
102 contemporaneous submission of applications that, if approved, would
103 bring the total amount of credits to an amount in excess of the amount
104 specified under this subsection.

105 (5) After the department has issued an initial tax credit
106 certificate under this section, a qualified investor or qualified Missouri
107 venture capital firm shall have sixty days to make an investment in a
108 qualified Missouri company under this section. Within ten days of
109 making an investment in a Missouri technology company, a qualified
110 investor or qualified Missouri venture capital firm shall provide notice
111 to the department.

112 4. (1) The tax credit allowed in an initial tax credit certificate
113 issued under this section shall be equal to forty percent of a qualified
114 investment in a Missouri technology company or fifty percent of the
115 investment in a qualified Missouri technology company if such company
116 is also a qualified rural Missouri technology company.

117 (2) The tax credits allowed per fiscal year shall be limited to:

118 (a) Fifty thousand dollars for a qualified investor that is an
119 individual;

120 (b) Two hundred fifty thousand dollars for a qualified investor
121 that is a corporation; or

122 (c) Two million five hundred thousand dollars for a qualified
123 Missouri venture capital firm.

124 (3) Aggregate investments in any one qualified rural Missouri
125 technology company may not account for more than the greater of two
126 million dollars or twenty percent of the total credits approved by the
127 department in any fiscal year.

128 (4) If the tax credit allowed under this section in any taxable
129 year exceeds the total tax otherwise payable by the qualified investor
130 or qualified Missouri venture capital firm for that taxable year, the
131 qualified investor or qualified Missouri venture capital firm may apply
132 the excess as a credit against the applicable state tax for five

133 succeeding years or until the excess is fully used.

134 5. (1) In this subsection, "Reserve Fund" means the Missouri
135 investment tax credit reserve fund established under this subsection.

136 (2) The investment tax credit reserve fund is a special
137 continuing, nonlapsing fund. The money in the fund shall be invested
138 and reinvested by the treasurer for the benefit of the fund.

139 (3) Subject to the provisions of this subsection, the secretary
140 shall issue an initial tax credit certificate for each approved investment
141 in a qualified Missouri company eligible for a tax credit. An initial tax
142 credit certificate issued under this subsection shall state the maximum
143 amount of tax credit for which the qualified investor or qualified
144 Missouri venture capital firm is eligible. Except as otherwise provided
145 in this subdivision, for any fiscal year, the secretary may not issue
146 initial tax credit certificates for credit amounts in the aggregate
147 totaling more than the amount appropriated to the reserve fund for
148 that fiscal year in the state budget as approved by the general
149 assembly; provided that, for each of fiscal years 2007-2012, the amount
150 appropriated to the reserve fund shall be fifteen million dollars per
151 year. If the aggregate credit amounts under initial tax credit
152 certificates issued in a fiscal year total less than the amount
153 appropriated to the reserve fund for that fiscal year, any excess amount
154 shall remain in the reserve fund and may be issued under initial tax
155 credit certificates for the next fiscal year.

156 (4) For any fiscal year, if funds are transferred from the reserve
157 fund under the authority of any provision of law other than under this
158 subsection, the maximum credit amounts in the aggregate for which the
159 secretary may issue initial tax credit certificates shall be reduced by
160 the amount transferred.

161 (5) For each fiscal year, the governor shall include in the budget
162 bill an appropriation to the reserve fund, which shall be ten million
163 dollars per year for each of fiscal years 2007-2012.

164 (6) Based on the actual amount of an investment made by a
165 qualified investor or a qualified Missouri venture capital firm, the
166 secretary shall issue a final tax credit certificate to the qualified
167 investor or qualified Missouri venture capital firm.

168 (7) A qualified investor or a qualified Missouri venture capital
169 firm may redeem a final tax credit certificate for a taxable year

170 beginning after December 31, 2006.

171 (8) Except as provided in this subdivision, money appropriated
172 to the reserve fund shall remain in the fund.

173 (9) Within fifteen days after the end of each calendar quarter,
174 the department shall notify the department of revenue as to each final
175 credit certificate issued during the quarter:

176 (a) The maximum credit amount stated in the initial tax credit
177 certificate for the investment; and

178 (b) The final certified credit amount for the investment.

179 (10) Upon notification that an investment has been certified, the
180 comptroller shall transfer an amount equal to the credit amount stated
181 in the initial tax credit certificate for the investment from the reserve
182 fund to the general fund.

183 6. (1) The credit claimed under this section shall be recaptured
184 as provided in this subsection if, within two years from the close of the
185 taxable year in which the credit is approved, the qualified investor
186 sells, transfers, or otherwise disposes of the ownership interest in the
187 qualified Missouri company that gave rise to the credit.

188 (2) The amount required to be recaptured under this subsection
189 is the product of multiplying:

190 (a) The portion of the credit attributable to the ownership
191 interest disposed of as described in this subsection; and

192 (b) One hundred percent, if the disposition occurs during the
193 taxable year in which the tax credit is approved;

194 (c) Sixty-seven percent, if the disposition occurs during the first
195 year after the close of the taxable year for which the tax credit is
196 approved; or

197 (d) Thirty-three percent, if the disposition occurs more than one
198 year but not more than two years after the close of the taxable year for
199 which the tax credit is approved. The credits issued under these
200 provisions are fully transferable. The department may issue
201 regulations regarding the tracking of transferred credits and
202 procedures for notifying the department of revenue of any transfer of
203 credits.

204 (3) The qualified investor or a qualified Missouri venture capital
205 firm that claimed the credit shall pay the amount to be recaptured as
206 determined under this subsection as taxes payable to the state for the

207 taxable year in which the disposition described under this subsection
208 occurs.

209 7. (1) The department may revoke its certification of an
210 approved credit under this section if any material representation in
211 connection with the application for the certification proves to have
212 been false when made.

213 (2) The revocation may be in full or in part as the department
214 may determine and, subject to this subsection, shall be communicated
215 to the qualified investor, the qualified Missouri venture capital firm,
216 and the department of revenue.

217 (3) The qualified investor or a qualified Missouri venture capital
218 firm shall have an opportunity to appeal any revocation to the
219 department prior to notification of the department of revenue.

220 (4) The department of revenue may make an assessment against
221 the qualified investor or a qualified Missouri venture capital firm to
222 recapture any amount of tax credit that the qualified investor or a
223 qualified Missouri venture capital firm has already claimed.

224 8. (1) On or before March first of each year, the department shall
225 report to the governor and to the general assembly, on the initial tax
226 credit certificates awarded under this section for the prior calendar
227 year.

228 (2) The report required under this subsection shall include for
229 each final tax credit certificate awarded:

230 (a) The name of the qualified investor or the name of the
231 qualified Missouri venture capital firm and the amount of credit
232 awarded or allocated to each investor or firm;

233 (b) The name and address of the qualified Missouri company that
234 received the investment giving rise to the credit under this section and
235 the county where the qualified Missouri company is located; and

236 (c) The dates of receipt and approval by the department of all
237 applications for initial tax credit certificates.

238 (3) The report required under this subsection shall summarize
239 for the category of qualified investors and qualified Missouri venture
240 capital firms:

241 (a) The total number of applicants for initial tax credit
242 certificates under this section in each calendar year;

243 (b) The number of applications for which initial tax credit

244 certificates were issued in each calendar year; and

245 (c) The total initial tax credit certificates authorized under this
246 section for all calendar years under this section.

247 9. The department shall adopt regulations to carry out the
248 provisions of this section.

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