

FIRST REGULAR SESSION

SENATE BILL NO. 193

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHOEMYER.

Read 1st time January 14, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0827S.011

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to a tax credit for equity investments in qualified Missouri businesses.

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

Section A. Chapter 348, RSMo, is amended by adding thereto two new sections, to be known as sections 348.545 and 348.548, to read as follows:

348.545. As used in sections 348.545 and 348.548, the following terms shall mean:

(1) "Department", the Missouri department of economic development;

(2) "Distressed community", as defined in section 135.530, RSMo;

(3) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;

(4) "Investor":

(a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or

(b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated for the purpose of making preseed and seed stage investments in start-up companies, and is approved by the department;

(5) "Qualified Missouri business", a manufacturing business, in need of venture capital, which will base operations in an existing facility located in a distressed community in this state. Such business shall be involved in commerce for the purpose of manufacturing,

22 processing, or assembling products, conducting research and
23 development, or providing services in interstate commerce but
24 excluding retail, real estate, real estate development, insurance, and
25 professional services provided by accountants, lawyers, or
26 physicians. Such business shall create no less than fifty net new jobs;
27 offer health insurance to all full-time employees; pay no less than half
28 of such premiums; and be approved by the department as a qualified
29 Missouri business as provided under section 348.548;

30 (6) "Qualified securities", securities that are not redeemable or
31 repayable within seven years of issuance and that have been approved
32 in form and substance by the department. Forms of such equity
33 securities include:

34 (a) A general or limited partnership interest;

35 (b) Common stock;

36 (c) Preferred stock, with or without voting rights, without regard
37 to seniority position, and whether or not convertible into common
38 stock; or

39 (d) Convertible debt;

40 (7) "Rural area", any city, town, or village with fewer than fifteen
41 thousand inhabitants and located in any county that is not part of a
42 standard metropolitan statistical area as defined by the United States
43 Department of Commerce or its successor agency. However, any such
44 city, town, or village located in any county so defined as a standard
45 metropolitan statistical area may be designated a rural area by the
46 office of rural development if:

47 (a) A substantial number of persons in such county derive their
48 income from agriculture;

49 (b) The county has only one city within the county having a
50 population of more than fifteen thousand and is classified as a standard
51 metropolitan statistical area; and

52 (c) All other cities, towns, and villages in that county have a
53 population of less than fifteen thousand;

54 (8) "State tax liability", in the case of a business taxpayer, any
55 liability incurred by such taxpayer pursuant to the provisions of
56 chapters 143, 147, 148, and 153, RSMo, excluding sections 143.191 to
57 143.265, RSMo, and related provisions, and in the case of an individual
58 taxpayer, any liability incurred by such taxpayer pursuant to the

59 provisions of chapter 143, RSMo, excluding sections 143.191 to 143.265,
60 RSMo, and related provisions.

348.548. 1. The department may authorize tax credits to
2 encourage equity investment into early stage Missouri manufacturing
3 companies.

4 2. If a qualified Missouri business is approved by the
5 department, the investors who contribute the first three million dollars
6 in equity investment in the qualified Missouri business may be issued
7 a tax credit in the year the equity investment is made. The tax credit
8 shall be a credit against an investor's state tax liability in an amount
9 equal to fifty percent of such investors' equity investment in any
10 qualified Missouri business, subject to the limitations set forth in
11 subsection 5 of this section.

12 3. (1) Before an investor may be entitled to receive tax credits,
13 as authorized by this section, such investor shall have made an equity
14 investment in a qualified security of a qualified Missouri
15 business. This business shall have been approved by the department
16 as a qualified Missouri business prior to the date on which the cash
17 investment was made. To be designated as a qualified Missouri
18 business, a business shall make application to the department in
19 accordance with the provisions of this section. Such application shall
20 be in form and substance as required by the department but shall
21 include at least the following:

22 (a) The name of the business and certified copies of the
23 organizational documents of the business;

24 (b) A business plan, including a description of the business and
25 the management, product, market, and financial plan of the business;

26 (c) A statement of the business' product or service;

27 (d) A statement of the potential economic impact of the
28 enterprise including the number, location, and types of jobs expected
29 to be created;

30 (e) A description of the qualified securities to be issued, the
31 consideration to be paid for the qualified securities, the amount of any
32 tax credits requested, and the earliest year in which the tax credits
33 may be redeemed;

34 (f) A statement of the amount, timing, and projected use of the
35 proceeds to be raised from the proposed sale of qualified securities;

36 **and**

37 **(g) Other information as the department may request, such as**
38 **the names, addresses, and taxpayer identification numbers of all**
39 **investors who may qualify for the tax credit. Such list of investors who**
40 **may qualify for the tax credits shall be amended as new qualified**
41 **securities are sold or as any information on the list changes.**

42 **(2) No business shall be designated as a qualified Missouri**
43 **business unless such business meets all of the following criteria:**

44 **(a) The business shall not have had annual gross revenues of**
45 **more than three million dollars in the most recent tax year of the**
46 **business;**

47 **(b) The business shall not have ownership interests including,**
48 **but not limited to, common or preferred shares of stock that can be**
49 **traded by the public via a stock exchange, electronic exchange, bulletin**
50 **board, or other public market place on or before the date that a**
51 **qualifying investment is made;**

52 **(c) The business shall not be engaged primarily in any one or**
53 **more of the following enterprises:**

54 **a. The business of banking, savings and loan or lending**
55 **institutions, credit or finance, or financial brokerage or investments;**

56 **b. Professional services, such as legal, accounting or engineering**
57 **services;**

58 **c. Governmental, charitable, religious or trade organizations;**

59 **d. The ownership, development, brokerage, sales, or leasing of**
60 **real estate;**

61 **e. Insurance;**

62 **f. Construction or construction management or contracting;**

63 **g. Business consulting or brokerage;**

64 **h. Any business engaged primarily as a passive business, having**
65 **irregular or noncontinuous operations, or deriving substantially all of**
66 **the income of the business from passive investments that generate**
67 **interest, dividends, royalties, or capital gains, or any business**
68 **arrangements the effect of which is to immunize an investor from risk**
69 **of loss;**

70 **i. Any Missouri certified capital formation company;**

71 **j. Any activity that is in violation of the law; and**

72 **k. Any business raising money primarily to purchase real estate,**

73 land, or fixtures;

74 (d) The business shall satisfy all other requirements of this
75 section.

76 (3) The portions of documents and other materials submitted to
77 the department that contain trade secrets shall be kept confidential
78 and shall be maintained in a secured environment by the director of
79 the department. For the purposes of this section, such portions of
80 documents and other materials shall mean any customer list, any
81 formula, compound, production data, or compilation of information
82 certain individuals within a commercial concern using such portions
83 of documents and other material means to fabricate, produce, or
84 compound an article of trade, or, any service having commercial value,
85 which gives the user an opportunity to obtain a business advantage
86 over competitors who do not know or use such service.

87 (4) A qualified Missouri business shall have the burden of proof
88 to demonstrate to the department the qualifications of the business
89 under this section and shall have the obligation to notify the
90 department in a timely manner of any changes in the qualifications of
91 the business or in the eligibility of investors to claim a tax credit for
92 cash investment in a qualified security.

93 4. The designation of a business as a qualified Missouri business
94 shall be made by the department, and such designation shall be
95 renewed annually. A business shall be so designated if the department
96 determines, based upon the application submitted by the business and
97 any additional investigation the staff of the department shall make,
98 that the following criteria have been or shall be satisfied:

99 (1) The business has a reasonable chance of success;

100 (2) The ability of investors in the business to receive tax credits
101 for cash investments in qualified securities of the business is necessary
102 because funding otherwise available for the business is not available
103 on commercially reasonable terms;

104 (3) The business has the reasonable potential to create
105 measurable employment within the state;

106 (4) The existing owners of the business and other founders have
107 made or are committed to make a substantial financial and time
108 commitment to the business;

109 (5) The securities to be issued and purchased are qualified

110 securities; and

111 (6) Binding commitments have been made by the business to the
112 department for adequate reporting of financial data, including a
113 requirement for an annual report, or, if required by the department, an
114 annual audit of the financial and operational records of the business,
115 the right of access to the financial records of the business, and the
116 right of the department to record and publish normal and customary
117 data and information related to the issuance of tax credits that are not
118 otherwise determined to be trade or business secrets;

119 5. No more than two million dollars in tax credits authorized
120 under this section shall be issued annually.

121 6. The amount of the tax credit claimed shall not exceed the
122 amount of the investor's state tax liability for the taxable year for
123 which the credit is claimed. However, any tax credit that cannot be
124 claimed in the taxable year the investment was made may be carried
125 over to the next five succeeding taxable years until the full credit has
126 been claimed. Tax credits may be sold, assigned, exchanged, or
127 otherwise transferred.

128 7. A qualified Missouri business for which credits have been
129 issued that, within seven years of such tax credit issuance: relocates
130 its manufacturing facility out of Missouri; fails to comply with the
131 provisions of this section; alters the principal nature of its operations;
132 or divests itself of key assets shall upon demand by the department pay
133 the state of Missouri an amount equal to the amount of credits issued
134 to its investors.

135 8. In addition to reports by the businesses to the department, the
136 department shall also provide in its annual report information on the
137 marketing and use of the investor tax credits. This report shall include
138 the following:

139 (1) The amount of tax credits used in the previous fiscal year
140 including what percentage was claimed by individuals and what
141 percentage was claimed by firms and other entities;

142 (2) The types of businesses that benefited from the tax credits;
143 and

144 (3) Any aggregate job creation or capital investment in Missouri
145 that resulted from the use of the tax credits for a period of five years
146 beginning from the date on which the tax credits were awarded.

147 In addition, the annual report shall provide information regarding
148 what businesses deriving a benefit from the tax credits remained in
149 Missouri, what businesses ceased business, what businesses were
150 purchased, and what businesses may have moved out-of-state and the
151 reason for such move.

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