4/13/18 10:40 AM.

Chapter No. 458
18/HR26/R1959SG
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HOUSE BILL NO. 1557

Originated in House _____ Clerk

HOUSE BILL NO. 1557

AN ACT TO AMEND SECTION 57-115-5, MISSISSIPPI CODE OF 1972, TO INCREASE BY $45,000,000.00 THE AGGREGATE AMOUNT OF INVESTMENT TAX CREDITS THAT MAY BE ALLOCATED TO PARTICIPATING INVESTORS OF MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANIES UNDER THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY ACT; TO PROVIDE THE TAXABLE YEARS IN WHICH A PARTICIPATING INVESTOR MAY CLAIM THE ADDITIONAL CREDITS SO ALLOCATED AGAINST HIS PREMIUM TAX LIABILITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 57-115-5, Mississippi Code of 1972, is amended as follows:

57-115-5. (1) (a) The MDA must provide a standardized format for applying for the Mississippi small business investment credit authorized under this chapter, and for certification as a Mississippi small business investment company.

(b) An applicant for certification as a primary Mississippi small business investment company must:

(i) File an application with the MDA which shall include a business plan detailing:

1. The approximate percentage of designated capital the applicant will invest in qualified businesses by the second, fourth and sixth anniversaries of its allocation date;

2. The industry segments listed by the North American Industrial Classification System code and percentage of designated capital in which the applicant will invest; and

3. The number of jobs that will be created or retained as a result of the applicant's investments once all designated capital has been invested. A job shall be considered created or retained if the job pays one hundred twenty-five percent (125%) of the state average annual wage and is maintained for at least three (3) years. The application shall project, at a minimum, that one (1) job shall be created or maintained for each One Hundred * * * Fifty Thousand Dollars ($150,000.00) in credits awarded to the participating investors of the Mississippi small business investment company;

(ii) Pay a nonrefundable application fee of Seven Thousand Five Hundred Dollars ($7,500.00) at the time of filing the application;

(iii) Submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than thirty-five (35) days before the application date that states that the applicant has an equity capitalization of Five Hundred

Thousand Dollars ($500,000.00) or more in the form of unencumbered cash, marketable securities or other liquid assets; and

(iv) Have at least two (2) principals or persons, at least one (1) of which is primarily located in Mississippi, employed or engaged to manage the funds who each have a minimum of five (5) years of money management experience in the venture capital or private equity or lending industry.

(c) An applicant for certification as a secondary Mississippi small business investment company must:

(i) File an application with the MDA which shall include a business plan detailing:

1. The approximate percentage of designate capital the applicant will invest in qualified businesses by the second, fourth and sixth anniversaries of its allocation date;

2. The industry segments listed by the North American Industrial Classification System code and percentage of designated capital in which the applicant will invest; and

3. The number of jobs that will be crested or retained as a result of the applicant's investments once all designated capital has been invested. A job shall be considered created or retained if the job pays one hundred twenty-five percent (125%) of the state average annual wage and is maintained for at least three (3) years. The application shall project, at a minimum, that one (1) job shall be created or maintained for each One Hundred * * * Fifty Thousand Dollars ($150,000.00) in credits

awarded to the participating investors of the Mississippi small business investment company;

(ii) Pay a nonrefundable application fee of Three Thousand Seven Hundred Fifty Dollars ($3,750.00) at the time of filing the application;

(iii) Submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than thirty-five (35) days before the application date that states that the applicant has an equity capitalization of One Hundred Fifty Thousand Dollars ($150,000.00) or more in the form of unencumbered cash, marketable securities or other liquid assets;

(iv) Demonstrate that fifty percent (50%) of all secondary investment company investments have been in Mississippi, and all of the applicant's employees have lived in Mississippi for at least two (2) years prior to the application being filed, and that those who are employed or engaged to manage the funds have a minimum of three (3) years of money management experience in the venture capital or private equity or lending industry; * * *

(v) Submit as part of its application a signed and notarized partnership agreement letter with a certified primary Mississippi small business investment company * * *; and

(vi) Any participating partner or individual in a certified secondary small business investment company that successfully participated in the initial authorization and

allocation of credits in 2012, and which is a partner in a submitted application for credits allocated in subsection (4)(b) of this section, while partnered with the same primary small business investment company from the previous 2012 allocation, shall have the requirements in subparagraphs (iii) and (iv) of this paragraph (c) waived as having been completed through the previous allocation.

(d) The MDA may certify partnerships, corporations, trusts, or limited liability companies, organized on a for-profit basis, which submit an application to be designated as a Mississippi small business investment company if the applicant is located, headquartered, and licensed or registered to conduct business in Mississippi, has as its primary business activity the investment of cash in qualified businesses, and meets all of the criteria of this section.

(e) The MDA must:

(i) Review the organizational documents of each applicant for certification and the business history of each applicant;

(ii) Determine whether the applicant has satisfied all of the requirements of this section; and

(iii) Determine whether the officers and the board of directors, general partners, trustees, managers or members are trustworthy and are thoroughly acquainted with the requirements of this chapter.

(f) Within forty-five (45) days after the receipt of an application, the MDA may issue the certification or refuse the certification and may communicate in detail to the applicant the grounds for refusal, including suggestions for the removal of the grounds.

(g) The MDA must begin accepting applications to become a Mississippi small business investment company not later than August 1, 2012, for credits allocated in subsection (4)(a) of this section, and not later than August 1, 2018, for credits allocated in subsection (4)(b) of this section.

(h) Certification by the MDA and operation of a primary Mississippi small business investment company is not subject to completion of any relationship or agreement with a secondary Mississippi small business investment company, and it is not the intent of this chapter to compel any such agreement.

(2) (a) An insurance company or affiliate of an insurance company must not, directly or indirectly:

(i) Beneficially own, whether through rights, options, convertible interest, or otherwise, fifteen percent (15%) or more of the voting securities or other voting ownership interest of a Mississippi small business investment company;

(ii) Manage a Mississippi small business investment company; or

(iii) Control the direction of investments for a Mississippi small business investment company.

(b) A Mississippi small business investment company may obtain one * * * or more guaranties, indemnities, bonds, insurance policies, or other payment undertakings for the benefit of its participating investors from any entity, except that in no case can more than one (1) participating investor of a Mississippi small business investment company on an aggregate basis with all affiliates of the participating investor, be entitled to provide guaranties, indemnities, bonds, insurance policies, or other payment undertakings in favor of the participating investors of a Mississippi small business investment company and its affiliates in this state.

(c) This subsection (2) does not preclude a participating investor, insurance company or other party from exercising its legal rights and remedies, including, without limitation, interim management of a Mississippi small business investment company, in the event that a Mississippi small business investment company is in default of its statutory obligations or its contractual obligations to a participating investor, insurance company, or other party, or from monitoring a Mississippi small business investment company to ensure its compliance with this chapter or disallowing any investments that have not been approved by the MDA.

(d) The MDA may contract with an independent third party to review, investigate, and certify that the applications comply with the provisions of this chapter.

(3) (a) At the time of its investment of designated capital a participating investor shall earn a vested credit against the participating investor's state premium tax liability in an amount equal to one hundred percent (100%) of the participating investor's investment of designated capital in a Mississippi small business investment company, subject to the limits imposed by this section.

(b) From and after January 1, 2015, a participating investor may claim the credit allocated in subsection (4)(a) of this section as follows:

(i) For the 2015 taxable year, an amount equal to twenty percent (20%) of the participating investor's investment of designated capital;

(ii) For the 2016 taxable year, an amount equal to twenty percent (20%) of the participating investor's investment of designated capital;

(iii) For the 2017 taxable year, an amount equal to twenty percent (20%) of the participating investor's investment of designated capital;

(iv) For the 2018 taxable year, an amount equal to twenty percent (20%) of the participating investor's investment of designated capital; and

(v) For the 2019 taxable year, an amount equal to twenty percent (20%) of the participating investor's investment of designated capital.

(c) From and after January 1, 2021, a participating investor may claim the credit allocated in subsection (4)(b) of this section as follows:

(i) For the 2021 taxable year, an amount equal to sixteen and sixty-six one-hundredths percent (16.66%) of the participating investor's investment of designated capital;

(ii) For the 2022 taxable year, an amount equal to sixteen and sixty-six one-hundredths percent (16.66%) of the participating investor's investment of designated capital;

(iii) For the 2023 taxable year, an amount equal to sixteen and sixty-six one-hundredths percent (16.66%) of the participating investor's investment of designated capital;

(iv) For the 2024 taxable year, an amount equal to sixteen and sixty-six one-hundredths percent (16.66%) of the participating investor's investment of designated capital;

(v) For the 2025 taxable year, an amount equal to sixteen and sixty-six one-hundredths percent (16.66%) of the participating investor's investment of designated capital; and

(vi) For the 2026 taxable year, an amount equal to sixteen and seven-tenths percent (16.7%) of the participating investor's investment of designated capital.

(* * *d) The credit for any taxable year cannot exceed the state premium tax liability of the participating investor for the taxable year. If the amount of the credit exceeds the state premium tax liability of the participating investor for the

taxable year, the excess is an investment tax credit carryover for five (5) years from the date the credit is first able to be utilized in accordance with paragraph (a) of this subsection (3).

(* * *e) Notwithstanding any provision of this chapter to the contrary, the granting of any credits against the insurance premium tax shall not affect the insurance premium tax receipts distributed pursuant to Sections 83-1-37, 83-1-39, 83-34-39, 45-11-5 and 21-29-233, which shall take priority over all other distributions of premium tax receipts and shall be calculated based upon gross insurance premium tax liability before the application of the tax credits.

(* * *f) A participating investor claiming a credit under this chapter is not required to pay any additional retaliatory tax under Section 27-15-123 levied as a result of claiming the credit.

(* * *g) A participating investor is not required to reduce the amount of tax pursuant to the state premium tax liability included by the participating investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the participating investor's tax liability based on the tax credit allowed under this chapter.

(* * *h) If the taxes paid by a participating investor with respect to its state premium tax liability constitute a credit against any other tax that is imposed by this state, the participating investor's credit against the other tax shall not be

reduced by virtue of the reduction in the participating investor's tax liability based on the tax credit allowed under this chapter.

(* * *i) Final decertification of a Mississippi small business investment company under this chapter prior to such Mississippi small business investment company meeting the requirements of Section 57-115-7(1)(a)(ii), shall result in the disallowance and the recapture of all of the credits allocated to its participating investors under this chapter. Once a Mississippi small business investment company has satisfied the requirements of Section 57-115-7(1)(a)(ii), any subsequent decertification shall not cause the disallowance or recapture of any credits allocated to its participating investors under this chapter.

(* * *j) The credits allowed under this chapter are not transferable; however, a participating investor may transfer credits to an affiliated insurance company provided it gives prior written notice of such transfer to the MDA and the Department of Revenue.

(4) (a) (i) Through January 1, 2018, the aggregate amount of investment tax credits that may be allocated to all participating investors of Mississippi small business investment companies under this section shall not exceed Fifty Million Dollars ($50,000,000.00), and no Mississippi small business investment company, on an aggregate basis with its affiliates, may

file credit allocation claims that exceed Fifty Million Dollars ($50,000,000.00).

(ii) The Fifty Million Dollars ($50,000,000.00) aggregate amount of investment tax credits allocated in this paragraph (a) shall be divided into a primary tax credit pool which may be applied for by certified primary Mississippi small business investment companies and a secondary tax credit pool which may be applied for by certified secondary Mississippi small business investment companies. The secondary tax credit pool shall be Three Million Five Hundred Thousand Dollars ($3,500,000.00) of the total Fifty Million Dollars ($50,000,000.00) aggregate amount of investment tax credits. Secondary Mississippi small business investment companies may not apply for more than One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00) worth of credits on a single application. A certified secondary Mississippi small business investment company may apply for additional tax credit allocation from the secondary tax credit pool, if the credits are available, after fifty percent (50%) of its previously allocated credits are used in qualified investments.

(iii) If there are any tax credits remaining available for allocation in the secondary tax credit pool on August 1, 2013, those available tax credits shall revert to the primary tax credit pool and be made available to primary Mississippi small business investment companies according to rules

and regulations promulgated by the MDA. Prior to August 1, 2013, primary Mississippi small business investment companies, including any wholly owned subsidiary company, shall be prohibited from making application to the MDA to be additionally certified as a secondary Mississippi small business investment company for purposes of the tax credits allocated in this paragraph (a) and prohibited from applying for any tax credit allocation from the secondary tax credit pool. A certified primary Mississippi small business investment company may have ownership equity in a certified secondary Mississippi small business investment company, but the equity interest owned by the certified primary Mississippi small business investment company shall not exceed forty percent (40%).

(b) (i) From and after July 1, 2018, an additional aggregate amount of investment tax credits may be allocated to all participating investors of Mississippi small business investment companies under this section. The amount so allocated shall not exceed Forty-five Million Dollars ($45,000,000.00), and no Mississippi small business investment company, on an aggregate basis with its affiliates, may file credit allocation claims on the additional aggregate amount of tax credits that exceed Forty-five Million Dollars ($45,000,000.00).

(ii) The Forty-five Million Dollars ($45,000,000.00) aggregate amount of investment tax credits allocated in this paragraph (b) shall be divided into a primary

tax credit pool which may be applied for by certified primary Mississippi small business investment companies and a secondary tax credit pool which may be applied for by certified secondary Mississippi small business investment companies. The secondary tax credit pool shall be Three Million Five Hundred Thousand Dollars ($3,500,000.00) of the total Forty-five Million Dollars ($45,000,000.00) aggregate amount of investment tax credits. Secondary Mississippi small business investment companies may not apply for more than One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00) worth of credits on a single application. A certified secondary Mississippi small business investment company may apply for additional tax credit allocation from the secondary tax credit pool, if the credits are available, after fifty percent (50%) of its previously allocated credits are used in qualified investments.

(iii) If there are any tax credits remaining available for allocation in the secondary tax credit pool on August 1, 2019, those available tax credits shall revert to the primary tax credit pool and be made available to primary Mississippi small business investment companies according to rules and regulations promulgated by the MDA. Prior to August 1, 2022, primary Mississippi small business investment companies, including any wholly owned subsidiary company, shall be prohibited from making application to the MDA to be additionally certified as a secondary Mississippi small business investment company for

purposes of the tax credits allocated in this paragraph (b) and prohibited from applying for any tax credit allocation from the secondary tax credit pool. A certified primary Mississippi small business investment company may have ownership equity in a certified secondary Mississippi small business investment company, but the equity interest owned by the certified primary Mississippi small business investment company shall not exceed forty percent (40%).

(* * *c) Credits must be allocated to investors in the order that the credit allocation claims are filed with the MDA.

(* * *d) Any credit allocation claims filed with the MDA before the initial credit allocation claim filing date will be deemed to have been filed on the initial credit allocation claim filing date. The MDA will set the initial credit allocation claim filing date to be not less than one hundred twenty (120) days and not more than one hundred fifty (150) days after the date the MDA begins accepting applications for certification. Credit allocation claims filed on the same day with the MDA must be treated as having been filed contemporaneously.

(* * *e) If two (2) or more Mississippi small business investment companies file credit allocation claims with the MDA on behalf of their respective participating investors on the same day and the aggregate amount of credit allocation claims exceeds the aggregate limit of credits authorized under this subsection (4) or the lesser amount of credits that remain unallocated on that day,

then the credits shall be allocated among the participating investors who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation for any one (1) participating investor is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a participating investor and the denominator of which is the total of all credit allocation claims filed on behalf of all participating investors on that day, by the aggregate limit of credits authorized under this subsection (4) or the lesser amount of credits that remain unallocated on that day.

(* * *f) Within ten (10) business days after the MDA receives a credit allocation claim filed by a Mississippi small business investment company on behalf of one or more of its participating investors, the MDA may notify the Mississippi small business investment company of the amount of credits allocated to each of the participating investors of that Mississippi small business investment company. In the event a Mississippi small business investment company does not receive an investment of designated capital from each participating investor required to earn the amount of credits allocated to the participating investor within ten (10) business days of the Mississippi small business investment company's receipt of notice of allocation, then it shall notify the MDA on or before the next business day, and the credits allocated to the participating investor of the Mississippi

small business investment company will be forfeited. The MDA may then reallocate those forfeited credits among the participating investors of the other Mississippi small business investment companies on a pro rata basis with respect to the credit allocation claims filed on behalf of the participating investors. The MDA may levy a fine of not more than Fifty Thousand Dollars ($50,000.00) on any participating investor that does not invest the full amount of designated capital required to fund the credits allocated to it by the MDA in accordance with the credit allocation claim filed on its behalf.

(* * *g) No participating investor, on an aggregate basis with its affiliates, may file an allocation claim for more than twenty-five percent (25%) of the maximum amount of investment tax credits authorized under this subsection (4), regardless of whether the claim is made in connection with one or more Mississippi small business investment companies.

SECTION 2. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 25, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 26, 2018

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

April 13, 2018
10:40 am