

By the Committee on Financial Services and Representatives
Feeney and Livingston

1 A bill to be entitled
2 An act relating to certified capital companies;
3 amending s. 14.2015, F.S.; requiring the Office
4 of Tourism, Trade, and Economic Development of
5 the Executive Office of the Governor to
6 administer tax credits; creating s. 288.99,
7 F.S.; creating the "Certified Capital Company
8 Act"; providing a short title; providing a
9 purpose; providing definitions; providing
10 certification procedures; providing deadlines;
11 requiring an application fee; providing grounds
12 for application denial or decertification;
13 requiring the Department of Banking and Finance
14 to enforce certification and decertification
15 procedures; requiring certification reports
16 filed with the Office of Tourism, Trade, and
17 Economic Development; requiring an annual
18 renewal fee; specifying investment benchmarks;
19 specifying depositories for funds not invested
20 in qualified businesses; providing a credit
21 against premium tax liability; specifying
22 effect of credit on retaliatory tax; providing
23 an aggregate premium tax credit cap; providing
24 a tax credit allocation formula; requiring
25 forfeiture of tax credits under certain
26 circumstances; providing for an annual report
27 by each certified capital company; requiring
28 the Office of Tourism, Trade, and Economic
29 Development to review and verify annual
30 reports; authorizing the Department of Revenue
31 to audit and examine books of certified capital

1 companies and investors; providing for
2 distributions to debt holders; requiring the
3 Department of Banking and Finance to conduct
4 annual reviews of certified capital companies;
5 providing decertification procedures; providing
6 a cure period; providing recapture of tax
7 credits under certain circumstances; providing
8 a schedule for tax credit recapture and
9 penalties; providing for transfer of tax
10 credits; requiring the Office of Tourism,
11 Trade, and Economic Development to annually
12 report to the Governor and the Legislature;
13 providing for application and renewal fees;
14 providing rulemaking authority; providing
15 appropriations; providing effective dates.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraphs (g) and (j) of subsection (2) of
20 section 14.2015, Florida Statutes, are amended to read:

21 14.2015 Office of Tourism, Trade, and Economic
22 Development; creation; powers and duties.--

23 (2) The purpose of the Office of Tourism, Trade, and
24 Economic Development is to assist the Governor in working with
25 the Legislature, state agencies, business leaders, and
26 economic development professionals to formulate and implement
27 coherent and consistent policies and strategies designed to
28 provide economic opportunities for all Floridians. To
29 accomplish such purposes, the Office of Tourism, Trade, and
30 Economic Development shall:

31

1 (g)1. Administer the Florida Enterprise Zone Act under
2 ss. 290.001-290.016, the community contribution tax credit
3 program under ss. 220.183 and 624.5105, the tax refund program
4 for qualified target industry businesses under s. 288.106,
5 contracts for transportation projects under s. 288.063, the
6 sports franchise facility program under s. 288.1162, the
7 professional golf hall of fame facility program under s.
8 288.1168, the Florida Jobs Siting Act under ss.
9 403.950-403.972, the Rural Community Development Revolving
10 Loan Fund under s. 288.065, the Regional Rural Development
11 Grants Program under s. 288.018, the Certified Capital Company
12 Act under s. 288.99, the Florida State Rural Development
13 Council, and the Rural Economic Development Initiative.

14 2. The office may enter into contracts in connection
15 with the fulfillment of its duties concerning the Florida
16 First Business Bond Pool under chapter 159, tax incentives
17 under chapters 212 and 220, tax incentives under the Certified
18 Capital Company Act in chapter 288, foreign offices under
19 chapter 288, the Enterprise Zone program under chapter 290,
20 the Seaport Employment Training program under chapter 311, the
21 Florida Professional Sports Team License Plates under chapter
22 320, Spaceport Florida under chapter 331, Job Siting and
23 Expedited Permitting under chapter 403, and in carrying out
24 other functions that are specifically assigned to the office
25 by law.

26 (j) Promulgate rules to carry out its functions in
27 connection with the administration of the Qualified Target
28 Industry program, the Qualified Defense Contractor program,
29 the Certified Capital Company Act, the Enterprise Zone
30 program, and the Florida First Business Bond pool.

31

1 Section 2. Section 288.99, Florida Statutes, is
2 created to read:
3 288.99 Certified Capital Company Act.--
4 (1) SHORT TITLE.--This section may be cited as the
5 "Certified Capital Company Act."
6 (2) PURPOSE.--The primary purpose of this act is to
7 stimulate a substantial increase in venture capital
8 investments in this state by providing an incentive for
9 insurance companies to invest in certified capital companies
10 in this state which, in turn, will make investments in new
11 businesses or in expanding businesses. The increase in
12 investment capital flowing into new or expanding businesses is
13 intended to contribute to employment growth, create jobs which
14 exceed the average wage for the county in which the jobs are
15 created, and expand or diversify the economic base of this
16 state.
17 (3) DEFINITIONS.--For purposes of this act:
18 (a) "Affiliate of an insurance company" means:
19 1. Any person directly or indirectly beneficially
20 owning, whether through rights, options, convertible
21 interests, or otherwise, controlling, or holding power to vote
22 10 percent or more of the outstanding voting securities or
23 other ownership interests of the insurance company;
24 2. Any person 10 percent or more of whose outstanding
25 voting securities or other ownership interest is directly or
26 indirectly beneficially owned, whether through rights,
27 options, convertible interests, or otherwise, controlled, or
28 held with power to vote by the insurance company;
29 3. Any person directly or indirectly controlling,
30 controlled by, or under common control with the insurance
31 company;

1 4. A partnership in which the insurance company is a
2 general partner; or

3 5. Any person who is a principal, director, employee,
4 or agent of the insurance company or an immediate family
5 member of the principal, director, employee, or agent.

6 (b) "Certified capital" means an investment of cash by
7 a certified investor in a certified capital company which
8 fully funds the purchase price of either or both its equity
9 interest in the certified capital company or a qualified debt
10 instrument issued by the certified capital company.

11 (c) "Certified capital company" means a corporation,
12 partnership, or limited liability company which:

13 1. Is certified by the department in accordance with
14 this act.

15 2. Receives investments of certified capital.

16 3. Makes qualified investments as its primary
17 activity.

18 (d) "Certified investor" means any insurance company
19 subject to premium tax liability pursuant to s. 624.509 that
20 contributes certified capital.

21 (e) "Department" means the Department of Banking and
22 Finance.

23 (f) "Director" means the director of the Office of
24 Tourism, Trade, and Economic Development.

25 (g) "Office" means the Office of Tourism, Trade, and
26 Economic Development.

27 (h) "Premium tax liability" means any liability
28 incurred by an insurance company under the provisions of s.
29 624.509.

30 (i) "Principal" means an executive officer of a
31 corporation, partner of a partnership, manager of a limited

1 liability company, or any other person with equivalent
2 executive functions.

3 (j) "Qualified business" means a business that meets
4 the following conditions:

5 1. The business is headquartered in this state and its
6 principal business operations are located in this state.

7 2. At the time a certified capital company makes an
8 initial investment in a business, the business is a small
9 business concern as defined in 13 C.F.R., s. 121.201, "Size
10 Standards Used to Define Small Business Concerns" of the
11 United States Small Business Administration.

12
13 A business predominantly engaged in professional services
14 provided by accountants, lawyers, or physicians does not
15 constitute a qualified business.

16 (k) "Qualified debt instrument" means a debt
17 instrument, or a hybrid of a debt instrument, issued by a
18 certified capital company, at par value or a premium, with an
19 original maturity date of at least 5 years after the date of
20 issuance, a repayment schedule which is no faster than a level
21 principal amortization over a 5-year period, and interest,
22 distribution, or payment features which are not related to the
23 profitability of the certified capital company or the
24 performance of the certified capital company's investment
25 portfolio.

26 (l) "Qualified distribution" means any distribution or
27 payment to equity holders of a certified capital company for:

28 1. Costs and expenses of forming, syndicating,
29 managing, and operating the certified capital company,
30 including an annual management fee in an amount that does not
31 exceed 2.5 percent of the certified capital of the certified

1 capital company, plus reasonable and necessary fees in
2 accordance with industry custom for professional services,
3 including, but not limited to, legal and accounting services,
4 related to the operation of the certified capital company.

5 2. Any projected increase in federal or state taxes,
6 including penalties and interest related to state and federal
7 income taxes, of the equity owners of a certified capital
8 company resulting from the earnings or other tax liability of
9 the certified capital company to the extent that the increase
10 is related to the ownership, management, or operation of a
11 certified capital company.

12 (m) "Qualified investment" means the investment of
13 cash by a certified capital company in a qualified business
14 for the purchase of any debt, equity, or hybrid security of
15 any nature and description whatsoever, including a debt
16 instrument or security which has the characteristics of debt
17 but which provides for conversion into equity or equity
18 participation instruments such as options or warrants.

19 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
20 DECERTIFICATION.--

21 (a) To operate as a certified capital company, a
22 corporation, partnership, or limited liability company must be
23 certified by the department pursuant to this act.

24 (b) An applicant for certification as a certified
25 capital company must file a verified application with the
26 department on or before October 1, 1998, in a form which the
27 department may prescribe by rule. The applicant shall submit
28 a nonrefundable application fee of \$7,500 to the department.
29 The applicant shall provide:

30 1. The name of the applicant and the address of its
31 principal office and each office in this state.

1 2. The applicant's form and place of organization and
2 the relevant organizational documents, bylaws, and amendments
3 or restatements of such documents, bylaws, or amendments.

4 3. Evidence from the Department of State that the
5 applicant is registered with the Department of State as
6 required by law, maintains an active status with the
7 Department of State, and has not been dissolved or had its
8 registration revoked, canceled, or withdrawn.

9 4. The applicant's proposed method of doing business.

10 5. The applicant's financial condition and history,
11 including a certified financial statement prepared in
12 accordance with generally accepted accounting principles
13 showing net capital of not less than \$500,000 within 90 days
14 after the date the application is submitted to the department.
15 The financial statement shall be audited by an independent
16 certified public accountant. If the date of the application
17 is more than 90 days after preparation of the applicant's
18 fiscal year-end financial statements, the applicant may file a
19 certified financial statement reviewed by an independent
20 certified public accountant, together with the audited
21 financial statement for the most recent fiscal year. If the
22 applicant has been in business fewer than 12 months, and has
23 not prepared an audited financial statement, the applicant may
24 file a certified financial statement reviewed by an
25 independent certified public accountant.

26 (c) Within 90 days after receipt of the completed
27 application, or December 31, 1998, whichever comes first, the
28 department shall grant or deny certification as a certified
29 capital company. If the department denies certification
30 within the time period specified, the department shall inform
31 the applicant of the grounds for the denial. If the

1 department has not granted or denied certification within the
2 time specified, the application shall be deemed approved. The
3 department shall approve the application if the department
4 finds that:

5 1. The applicant satisfies the requirements of
6 paragraph (b).

7 2. No evidence exists that the applicant has committed
8 any act specified in paragraph (d).

9 3. At least two of the principals have a minimum of 3
10 years of experience managing venture capital investments or a
11 minimum of 3 years of experience in investment banking or
12 business finance with an investment banking or securities
13 firm.

14 (d) The department may deny certification or decertify
15 a certified capital company if the certified capital company
16 fails to maintain a net worth of at least \$500,000 or the
17 department determines that the applicant, or any principal or
18 director of the certified capital company, has:

19 1. Violated any provision of this act;

20 2. Made a material misrepresentation or false
21 statement or concealed any essential or material fact from any
22 person during the application process or with respect to
23 information and reports required of certified capital
24 companies under this act;

25 3. Been convicted of, or entered a plea of guilty or
26 nolo contendere to, a crime against the laws of this state or
27 any other state or of the United States or any other country
28 or government, including a fraudulent act in connection with
29 the operation of a certified capital company, or in connection
30 with the performance of fiduciary duties in another capacity;
31

1 4. Been adjudicated liable in a civil action on
2 grounds of fraud, embezzlement, misrepresentation, or deceit;
3 or

4 5.a. Been the subject of any decision, finding,
5 injunction, suspension, prohibition, revocation, denial,
6 judgment, or administrative order by any court of competent
7 jurisdiction, administrative law judge, or any state or
8 federal agency, national securities, commodities, or option
9 exchange, or national securities, commodities, or option
10 association, involving a material violation of any federal or
11 state securities or commodities law or any rule or regulation
12 adopted under such law, or any rule or regulation of any
13 national securities, commodities, or options exchange or
14 national securities, commodities, or options association; or

15 b. Been the subject of any injunction or adverse
16 administrative order by a state or federal agency regulating
17 banking, insurance, finance or small loan companies, real
18 estate, mortgage brokers, or other related or similar
19 industries.

20
21 For purposes of this subparagraph, the department may not deny
22 registration to any applicant who has been continuously
23 registered with the department for 5 years from the entry of
24 such decision, finding, injunction, suspension, prohibition,
25 revocation, denial, judgment, or administrative order,
26 provided such decision, finding, injunction, suspension,
27 prohibition, revocation, denial, judgment, or administrative
28 order has been timely reported to the department pursuant to
29 the department's rules and regulations.

30 (e) The certified capital company shall file a copy of
31 its certification with the office by January 15, 1999.

1 (f) Any offering material involving the sale of
2 securities of the certified capital company shall include the
3 following statement: "By authorizing the formation of a
4 certified capital company, this state does not endorse the
5 quality of management or the potential for earnings of such
6 company and is not liable for damages or losses to a certified
7 investor in the company. Use of the word 'certified' in an
8 offering does not constitute a recommendation or endorsement
9 of the investment by the State of Florida. Investments in a
10 certified capital company prior to the time such company is
11 certified are not eligible for premium tax credits. If
12 applicable provisions of law are violated, the state may
13 require forfeiture of unused premium tax credits and repayment
14 of used premium tax credits by the certified investor."

15 (g) No insurance company or any affiliate of an
16 insurance company shall be a managing general partner of, or
17 control the direction of investments of, a certified capital
18 company. This prohibition shall not preclude a certified
19 investor, insurance company, or any other party from
20 exercising its legal rights and remedies, which may include
21 interim management of a certified capital company, if a
22 certified capital company is in default of its obligations
23 under law or its contractual obligations to such certified
24 investor, insurance company, or other party.

25 (h) On or before December 31 of each year, each
26 certified capital company shall pay to the department an
27 annual, nonrefundable renewal certification fee of \$5,000. No
28 renewal fees shall be required within 6 months after the date
29 of initial certification.

30 (i) The department shall administer and provide for
31 the enforcement of certification requirements for certified

1 capital companies as provided in this act. The department may
2 adopt any rules necessary to carry out its duties,
3 obligations, and powers related to certification, renewal of
4 certification, or decertification of certified capital
5 companies and may perform any other acts necessary for the
6 proper administration and enforcement of such duties,
7 obligations, and powers.

8 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--
9 (a) To remain certified, a certified capital company
10 must make qualified investments according to the following
11 schedule:

12 1. At least 30 percent of its certified capital must
13 be placed in qualified investments by December 31, 2001.

14 2. At least 40 percent of its certified capital must
15 be placed in qualified investments by December 31, 2002.

16 3. At least 50 percent of its certified capital must
17 be placed in qualified investments by December 31, 2003.

18 (b) All capital not placed in qualified investments by
19 the certified capital company:

20 1. Must be held in a financial institution as defined
21 by s. 655.005(1)(h) or held by a broker-dealer registered
22 under s. 517.12.

23 2. Must not be invested in a certified investor of the
24 certified capital company or any affiliate of the certified
25 investor of the certified capital company.

26 3. Must be invested only in:

27 a. Any U. S. Treasury obligations;
28 b. Certificates of deposit or other obligations,
29 maturing within 3 years after acquisition of such certificates
30 or obligations, issued by any financial institution or trust
31 company incorporated under the laws of the United States;

1 c. Marketable obligations, maturing within 5 years or
2 less after the acquisition of such obligations, which are
3 rated "A" or better by any nationally recognized credit rating
4 agency;

5 d. Mortgage-backed securities, with an average life of
6 5 years or less, after the acquisition of such securities,
7 which are rated "A" or better by any nationally recognized
8 credit rating agency; or

9 e. Interests in money market funds, the portfolio of
10 which is limited to cash and obligations described in
11 sub-subparagraphs a.-d.

12 (c) The aggregate amount of all qualified investments
13 made by the certified capital company from the date of its
14 certification shall be considered in the calculation of the
15 percentage requirements under paragraph (a).

16 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.--

17 (a) Any certified investor who makes an investment of
18 certified capital shall earn a vested credit against premium
19 tax liability equal to 100 percent of the certified capital
20 invested by the certified investor. Certified investors shall
21 be entitled to use no more than 10 percentage points of the
22 vested premium tax credit, including any carryforward credits
23 under this act, per year beginning with premium tax filings
24 for calendar year 2001. Any premium tax credits not used by
25 certified investors in any single year may be carried forward
26 and applied against the premium tax liabilities of such
27 investors for subsequent calendar years. The carryforward
28 credit may be applied against subsequent premium tax filings
29 through calendar year 2017.

1 (b) The credit to be applied against premium tax
2 liability in any single year may not exceed the premium tax
3 liability of the certified investor for that taxable year.
4 (c) A certified investor claiming a credit against
5 premium tax liability earned through an investment in a
6 certified capital company shall not be required to pay any
7 additional retaliatory tax levied pursuant to s. 624.5091 as a
8 result of claiming such credit. The amount of any credit
9 granted under this subsection as well as any credit granted
10 under a comparable program by the foreign or alien insurer's
11 state of domicile, shall be added back to the net insurance
12 premium tax used when calculating such retaliatory tax.
13 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
14 PROCESS.--
15 (a) The total amount of tax credits which may be
16 allocated by the office shall not exceed \$500 million. The
17 total amount of tax credits which may be used by certified
18 investors under this act shall not exceed \$50 million
19 annually.
20 (b) The office shall be responsible for allocating
21 premium tax credits as provided for in this act to certified
22 capital companies.
23 (c) Each certified capital company must apply to the
24 office for an allocation of premium tax credits for potential
25 certified investors by February 15, 1999, on a form developed
26 by the office with the cooperation of the Department of
27 Revenue. The form shall be accompanied by an affidavit from
28 each potential certified investor confirming that the
29 potential certified investor has agreed to make an investment
30 of certified capital in a certified capital company of a
31

1 specified amount, subject only to the receipt of a premium tax
2 credit allocation pursuant to this subsection.

3 (d) On or before April 1, 1999, the office shall
4 inform each certified capital company of its share of total
5 premium tax credits available for allocation to each of its
6 potential investors.

7 (e) If a certified capital company does not receive
8 certified capital equaling the amount of premium tax credits
9 allocated to a potential certified investor for which the
10 investor filed a premium tax allocation claim within 10
11 business days after the investor received a notice of
12 allocation, the certified capital company shall notify the
13 office by overnight common carrier delivery service of the
14 company's failure to receive the capital. That portion of the
15 premium tax credits allocated to the certified capital company
16 shall be forfeited. If the office must make a pro rata
17 allocation under paragraph (f), the office shall reallocate
18 such available credits among the other certified capital
19 companies on the same pro rata basis as the initial
20 allocation.

21 (f) If the total amount of capital committed by all
22 certified investors to certified capital companies in premium
23 tax allocation claims exceeds the aggregate cap on the amount
24 of credits that may be awarded, the percentage increment of
25 premium tax credits that may be used shall be allocated using
26 the following formula:

$$\text{A/B} = \text{X}/\$500,000,000$$

27
28
29
30 where the letter "A" represents the total amount of certified
31 capital each certified investor has agreed to invest in a

1 certified capital company, the letter "B" represents the
2 aggregate amount of certified capital that all certified
3 investors have agreed to invest in all certified capital
4 companies, the letter "X" represents the total amount of tax
5 credits that may be allocated to a certified capital company
6 for use by certified investors beginning fiscal year 2001-2002
7 in an amount not to exceed 10 percent annually, and \$500
8 million represents the total amount of premium tax credits
9 that may be used beginning fiscal year 2001-2002 in an amount
10 not to exceed 10 percent annually.

11 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

12 (a) On an annual basis, on or before December 31, each
13 certified capital company shall file with the department and
14 the office, on a form prescribed by the office, for each
15 calendar year:

16 1. The total dollar amount the certified capital
17 company received from certified investors, the identify of the
18 certified investors, and the amount received from each
19 certified investor during the calendar year.

20 2. The total dollar amount the certified capital
21 company invested and the amount invested in qualified
22 businesses, together with the identity and location of those
23 businesses and the amount invested in each qualified business.

24 3. The total number of permanent, full-time jobs
25 either created or retained by the qualified business during
26 the calendar year.

27 (b) The form shall be verified by one or more
28 principals of the certified capital company submitting the
29 form. Verification shall be accomplished as provided in s.
30 92.525(1)(b) and subject to the provisions of s. 92.525(3).

31

1 (c) The office shall review the form, and any
2 supplemental documentation, submitted by each certified
3 capital company for the purpose of verifying:

4 1. That the businesses in which certified capital has
5 been invested by the certified capital company are in fact
6 qualified businesses, and that the amount of certified capital
7 invested by the certified capital company is as represented in
8 the form.

9 2. The amount of certified capital invested in the
10 certified capital company by the certified investors.

11 3. The amount of premium tax credit available to
12 certified investors.

13 (d) By February 1 of the calendar year following the
14 calendar year in which the certified capital company meets the
15 investment benchmarks in subsection (5), the director shall
16 notify each certified investor of the amount of vested premium
17 tax credits such investor may use, and provide each certified
18 investor with a form that may be attached to the investor's
19 premium tax return for the purpose of using the tax credit.
20 Credits shall not result in the payment of refunds if total
21 credits exceed the amount of tax owed.

22 (e) The Department of Revenue is authorized to audit
23 and examine the accounts, books, or records of certified
24 capital companies and certified investors for the purpose of
25 ascertaining the correctness of any report and financial
26 return which has been filed, and to ascertain a certified
27 capital company's compliance with the tax-related provisions
28 of this act.

29 (f) This subsection shall take effect January 1, 1999.

30 (9) DISTRIBUTIONS.--A certified capital company may
31 make qualified distributions at any time. In order to make a

1 distribution to its equity holders, other than a qualified
2 distribution, a certified capital company must have invested
3 an amount cumulatively equal to 100 percent of its certified
4 capital in qualified investments. Payments to debt holders of
5 a certified capital company, however, may be made without
6 restriction with respect to repayments of principal and
7 interest on indebtedness owed to them by a certified capital
8 company, including indebtedness of the certified capital
9 company on which certified investors earned premium tax
10 credits. A debt holder that is also a certified investor or
11 equity holder of a certified capital company may receive
12 payments with respect to such debt without restrictions.

13 (10) DECERTIFICATION.--

14 (a) The department shall conduct an annual review of
15 each certified capital company to determine if the certified
16 capital company is abiding by the requirements of
17 certification, to advise the certified capital company as to
18 the eligibility status of its qualified investments, and to
19 ensure that no investment has been made in violation of this
20 act. The cost of the annual review shall be paid by each
21 certified capital company.

22 (b) Any material violation of this act shall be
23 grounds for decertification of the certified capital company.
24 If the department determines that a certified capital company
25 is no longer in compliance with the certification requirements
26 of this act, the department shall, by written notice, inform
27 the officers of such company that the company may be subject
28 to decertification 90 days after the date of mailing of the
29 notice, unless the deficiencies are corrected and such company
30 is again found to be in compliance with all certification
31 requirements.

1 (c) At the end of the 90-day grace period, if the
2 certified capital company is still not in compliance with the
3 certification requirements, the department may decertify such
4 company and send notice of the decertification to such company
5 and to all other appropriate state agencies.

6 (d) If the department revokes a certification, such
7 revocation shall also deny, suspend, or revoke the
8 certifications of all affiliates of the certified capital
9 company.

10 (e) Decertification of a certified capital company may
11 cause the recapture of premium tax credits previously claimed
12 by such company and the forfeiture of future premium tax
13 credits to be claimed by certified investors with respect to
14 such certified capital company, as follows:

15 1. Decertification of a certified capital company
16 within 3 years after its certification date shall cause the
17 recapture of all premium tax credits previously claimed by
18 such company and the forfeiture of all future premium tax
19 credits to be claimed by certified investors with respect to
20 such company.

21 2. When a certified capital company meets all
22 requirements for continued certification under subparagraph
23 (5)(a)1. and subsequently fails to meet the requirements for
24 continued certification under the provisions of subparagraph
25 (5)(a)2., those premium tax credits which have been or will be
26 taken by certified investors within 3 years after the
27 certification date of the certified capital company shall not
28 be subject to recapture or forfeiture; however, all premium
29 tax credits that have been or will be taken by certified
30 investors after the third anniversary of the certification
31

1 date of the certified capital company shall be subject to
2 recapture or forfeiture.

3 3. When a certified capital company meets all
4 requirements for continued certification under subparagraphs
5 (5)(a)1. and 2. and subsequently fails to meet the
6 requirements for continued certification under the
7 subparagraph (5)(a)3., those premium tax credits which have
8 been or will be taken by certified investors within 4 years
9 after the certification date of the certified capital company
10 shall not be subject to recapture or forfeiture; however, all
11 premium tax credits that have been or will be taken by
12 certified investors after the fourth anniversary of the
13 certification date of the certified capital company shall be
14 subject to recapture and forfeiture.

15 4. If a certified capital company has met all
16 requirements for continued certification under paragraph
17 (5)(a), but such company is subsequently decertified, those
18 premium tax credits which have been or will be taken by
19 certified investors within 5 years after the certification
20 date of such company shall not be subject to recapture or
21 forfeiture. Those premium tax credits to be taken subsequent
22 to the 5th year of certification shall be subject to
23 forfeiture only if the certified capital company is
24 decertified within 5 years after its certification date.

25 5. If a certified capital company has invested an
26 amount cumulatively equal to 100 percent of its certified
27 capital in qualified investments, all premium tax credits
28 claimed or to be claimed by its certified investors shall not
29 be subject to recapture or forfeiture.

30 (f) The office shall send written notice to the
31 address of each certified investor whose premium tax credit

1 has been subject to recapture or forfeiture, using the address
2 last shown on the last premium tax filing.

3 (g) The certified investor is responsible for
4 returning to the Department of Revenue any forfeited insurance
5 premium tax credits and such funds shall be paid into the
6 General Revenue Fund of the state.

7 (h) The certified investor shall file with the
8 Department of Revenue an amended return or such other report
9 as the department may prescribe by regulation and pay any
10 required tax, not later than 60 days after such
11 decertification has been agreed to or finally determined,
12 whichever shall first occur.

13 (i) A notice of deficiency may be issued:

14 1. At any time within 5 years after the date such
15 notification is given; or

16 2. At any time if a certified investor fails to notify
17 the Department of Revenue.

18
19 In either case, the amount of any proposed assessment set
20 forth in such notice shall be limited to the amount of any
21 deficiency resulting under this act from the recomputation of
22 the certified investor's insurance premium tax and, if
23 applicable, its retaliatory tax for the taxable year giving
24 effect only to the item or items reflected in the
25 decertification adjustment.

26 (j) Any certified investor who fails to report and
27 timely pay any tax due as a result of the forfeiture of its
28 insurance premium tax credit is in violation of this
29 subsection and is subject to a penalty of 10 percent of any
30 underpayment or delinquent taxes due and payable.

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1 (k) When any taxpayer fails to pay any amount due as a
2 result of the forfeiture of its insurance premium tax credit
3 as provided for in this subsection, on or before the due date
4 as specified in this subsection, interest shall be due on any
5 insurance premium or retaliatory tax deficiency resulting from
6 such forfeiture, at the rate of 12 percent per year from the
7 due date of such amended return until paid.

8 (11) TRANSFERABILITY.--The claim of a transferee of a
9 certified investor's unused premium tax credit shall be
10 permitted in the same manner and subject to the same
11 provisions and limitations of this act as the original
12 certified investor. The term "transferee" means any person
13 who:

14 (a) Through the voluntary sale, assignment, or other
15 transfer of the business or control of the business of the
16 certified investor, including the sale or other transfer of
17 stock or assets by merger, consolidation, or dissolution,
18 succeeds to all or substantially all of the business and
19 property of the certified investor;

20 (b) Becomes by operation of law or otherwise the
21 parent company of the certified investor; or

22 (c) Directly or indirectly owns, whether through
23 rights, options, convertible interests, or otherwise,
24 controls, or holds power to vote 10 percent or more of the
25 outstanding voting securities or other ownership interest of
26 the certified investor.

27 (12) REPORTING REQUIREMENTS.--

28 (a) The office shall report on an annual basis to the
29 Governor, the President of the Senate, and the Speaker of the
30 House of Representatives on or before April 1:

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1 1. The total dollar amount each certified capital
2 company received from all certified investors and any other
3 investor, the identity of the certified investors, and the
4 total amount of premium tax credit used by each certified
5 investor for the previous calendar year.

6 2. The total dollar amount invested by each certified
7 capital company and that portion invested in qualified
8 businesses, the identity and location of those businesses, the
9 amount invested in each qualified business, and the total
10 number of permanent, full-time jobs created or retained by
11 each qualified business.

12 3. The return for the state as a result of the
13 certified capital company investments, including the extent to
14 which:

15 a. Certified capital company investments have
16 contributed to employment growth.

17 b. The wage level of businesses in which certified
18 capital companies have invested exceed the average wage for
19 the county in which the jobs are located.

20 c. The investments of the certified capital companies
21 in qualified businesses have contributed to expanding or
22 diversifying the economic base of the state.

23 (13) FEES.--All fees and charges of any nature
24 collected by the department pursuant to this act shall be paid
25 into the State Treasury and credited to the General Revenue
26 Fund.

27 (14) RULEMAKING AUTHORITY.--

28 (a) The Department of Revenue may adopt any rules
29 necessary to carry out its duties, obligations, and powers
30 related to the tax-related provisions of this act and may
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1 perform any other acts necessary for the proper administration
2 and enforcement of such duties, obligations, and powers.

3 (b) The office may adopt any rules necessary to carry
4 out its duties, obligations, and powers related to the
5 administration, review, and reporting provisions of this act
6 and may perform any other acts necessary for the proper
7 administration and enforcement of such duties, obligations,
8 and powers.

9 Section 3. There is hereby appropriated \$240,434 for
10 fiscal year 1998-1999 from the General Revenue Fund to the
11 Department of Banking and Finance to implement this act.

12 Section 4. There is hereby appropriated \$100,000 from
13 the General Revenue Fund to the Office of Tourism, Trade, and
14 Economic Development to implement this act.

15 Section 5. Except as otherwise provided herein, this
16 act shall take effect upon becoming a law.

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