

ARIZONA STATE SENATE
Phoenix, Arizona

CORRECTED

FACT SHEET FOR S.B. 1315

small business program; tax credit

Purpose

Establishes a tax credit program for investment in Arizona small businesses, capital funds and bioscience companies overseen by the Arizona Capital Investment Board.

Background

In January of 2003, Governor Napolitano, by executive order, formed the 31-member Governor's Council on Innovation and Technology (Council), replacing the Arizona Science and Technology Council. The Council is charged with developing the framework and vision to enable Arizona to become a global leader in innovation and technology research, development and product creation. Additionally, the Council is responsible for evaluating capital formation in Arizona and to develop recommendations that support Arizona's global competitiveness.

The Capital Formation Committee (Committee) of the Council studied the issue of access to capital in Arizona. The Committee found that only once during the period from 1995 to 2001 did Arizona's share of the United States' venture capital investments exceed one percent. The Committee also found that Arizona ranks last when it is compared to competing states for technology industries. In a report issued by the Department of Commerce (DOC), in 2001, the total number of businesses in Arizona, including home-based businesses, was estimated at 664,454. Of that total, 651,317, or 98 percent, were small businesses (businesses with fewer than 100 employees).

→ S.B. 1315 establishes a tax credit program to encourage taxpayers to invest in capital in new businesses and capital funds that specialize in early stages of investment. The income tax credit is made available to investors who make a qualified investment in qualified small businesses and/or qualified capital funds. The credit is for 30 percent of the investment over a three-year period and is increased to 35 percent if the investment is made in a bioscience company or a company located in a rural county. The Arizona Capital Investment Board is established to oversee the program and the amount of tax credits the Board may certify is capped at \$20 million.

There is a negative fiscal impact of up to \$20 million to the state General Fund over the life of the program.

Provisions

Arizona Capital Investment Board (Board)

1. Establishes the Board constituted as a public trust of Arizona consisting of five Governor-appointed members with knowledge and experience in the management of investments similar in nature and in value to those of the Board.
2. States the members of the Board are public officers subject to conflict of interest and disclosure laws.
3. States the Board is a public body subject to public meeting laws.
4. Subjects the Board to public record laws.
5. Exempts the Board from the Arizona Procurement Code.
6. Provides a process for the treatment of confidential information by the Board
7. Stipulates taxpayer information regarding tax credits is confidential.
8. Stipulates the tax credits offered by the Board are not securities.
9. States obligations of the Board are not obligations of the state and are restricted to the specific funds and assets of the Board.
10. Prescribes the Board's powers including the ability to enter into financial transactions charge fees, hire employees and adopt bylaws and rules.
11. Exempts the Board from rule making requirements.
12. Requires the Board to develop an annual business plan that includes the goals and objectives of the Board and the measurement criteria used for the objectives.
13. Requires the business plan to be reviewed by the Director of DOC to ensure its consistency with the goals of the state's economic development plans.
14. Requires the Board to prepare an additional annual report that reviews and evaluates its mission and programs using the criteria in the business plan.
15. Requires the Board to distribute the reports to the Governor, the Legislature, the State Library, Archives and Public Records, and any other person who requests a copy.
16. Requires the Auditor General to consult with DOC during any performance audit of the Board and to include an examination of quantified results of the Board's programs and plans, comparing them to the criteria in the business plan.
17. Terminates the Board on July 1, 2014.

Tax Credit Program of the Board

18. Requires the Board to establish a corporate and individual income tax credit program for qualified investments made in qualified small businesses or a qualified capital fund by qualified investors.

19. Defines a qualified investment as an investment in an equity security that:

- a) Is at least \$25,000.
- b) Is common stock, preferred stock, an interest in a partnership or limited liability company, a security that is convertible into an equity security or other equity security determined by the Board.
- c) The qualified investor and affiliates do not hold equity securities possessing more than 30 percent of the total voting power of a qualified small business.
- d) The qualified investor has not made a prior investment in the qualified small business or capital fund for which a tax credit was certified.

20. Defines a qualified small business as a business entity that:

- a) Maintains at least a portion of its operations at an office, or manufacturing or research facility located in Arizona.
- b) Has at least one full-time or part-time employee or full-time independent contractor who is a resident of Arizona.
- c) Does not have a principal business involving retail goods or foods, restaurant services, real estate, certain professional services, certain health care services, or any other business the Board deems to be unsuited.
- d) Has total assets of less than \$3 million, excluding investments made under the Board.

21. Defines a qualified capital fund as an investment that:

- a) Has net funds to invest between \$500,000 and \$15 million.
- b) Has at least ten unaffiliated investors.
- c) Does not have a geographic restriction within Arizona.
- d) Is required to invest exclusively in qualified small businesses.

22. Requires a qualified investor to file an application for the tax credit with the Board within 30 days of making a qualified investment.

23. Specifies the information required on the application.

24. Requires the Board to determine whether an investment qualifies for the tax credit and to certify those that are eligible to receive qualified investments.

25. Requires the Board to determine whether a small business or capital fund qualifies for investment under the program and to certify the business or fund as being eligible to receive qualified investments.

26. Stipulates the certification is valid for five consecutive years and may be revoked by the Board if the business or fund fails to maintain the required qualifications.
27. Requires a qualified small business or qualified capital fund to notify the Board within five days of failing to meet the qualifications and requires the Board to revoke the certification.
28. Stipulates tax credits issued before any expiration date or revocation remain valid.
29. Stipulates subsequent investments in a business or fund do not qualify for a tax credit if the certification has been revoked or expires.
30. Requires the Board to determine if a tax credit will be authorized within 90 days of receiving the application.
31. Specifies the amount of the tax credit the Board may authorize is either:
 - a) 12 percent of the amount of the investment per year for the first and second taxable year after the investment is made if the qualified investment is made in a qualified small business or qualified capital fund with its principal place of business in a rural county or is a bioscience enterprise or capital fund, and 11 percent for the third taxable year.
 - b) 10 percent of the amount of the investment for each of the three taxable years after the year the qualified investment is made if the investment is made in any other qualified small business or qualified capital fund.
32. Requires the Board to certify to the qualified investor and the Department of Revenue (DOR) the amount of the tax credit authorized for each taxable year and requires the taxpayer to include a copy of the Board's certification when filing with DOR to claim the credit.
33. Requires the investor to file the tax credit for the tax year the credit is available with DOR by the due date of the return.
34. Specifies the credit expires for that taxable year if the investor fails to file the credit.
35. Prohibits the Board from offering tax credits after December 31, 2009.
36. Caps the total tax credit amount the Board may authorize at \$20 million for the life of the program.
37. Prescribes an authorization process for the Board if the qualifying applications exceed \$20 million.
- 38. Caps the total amount of all qualified investments by a qualified investor and its affiliates in qualified small businesses and qualified capital funds in any calendar year at \$250,000.

39. Allows the tax credit to be carried forward to the next three consecutive taxable years if the allowable tax credit exceeds the amount of taxes due or there are no taxes due.

40. Requires co-owners of a business, including partners in a partnership, shareholders in an S corporation and corporate partners in a partnership to only claim the pro rata share of the credit allowed based on the ownership interest.

Misrepresentation of Information

41. Requires the applicant and the qualified small business or qualified capital fund, as part of the application, to provide written authorization to allow the Board to receive limited tax information from DOR for the purpose of verifying information on the application.

42. Requires the Board to notify DOR of any misrepresentation of information on an application for a tax credit.

43. Requires DOR to deny a tax credit if the misrepresentation relates to whether the applicant was a qualified investor or made a qualified investment.

44. Requires DOR to deny a tax credit for investment in a qualified small business or qualified capital fund if the applicant knew or should have known information on the application was false.

45. Requires DOR to decrease the amount of the tax credit for investment in a bioscience enterprise, bioscience capital fund or a rural business or fund if the applicant knew or should have known information on the application was false.

Miscellaneous

46. Adds the tax credits to Arizona gross income when computing taxable income for corporations or adjusted gross income for individuals.

47. Adds the tax credits to the review schedule of the Joint Legislative Income Tax Credit Review Committee.

48. Contains a purpose statement.

49. Prescribes definitions.

50. Makes conforming changes.

51. Provides for a general effective date.