LEGISLATIVE GENERAL COUNSEL
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UTAH VENTURE CAPITAL ENHANCEMENT ACT AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Kevin S. Garn

LONG TITLE

General Description:

This bill amends provisions of the Utah Venture Capital Enhancement Act related to the amount of contingent tax credits that could be redeemed in any fiscal year.

Highlighted Provisions:

This bill:

- provides that the Utah Capital Investment Board may issue contingent tax credits in a manner that would allow for the redemption of not more than $20,000,000 for each increment of $100,000,000 of outstanding certificates in any fiscal year; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-1-1218, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and amended by Laws of Utah 2008, Chapter 382

Be it enacted by the Legislature of the state of Utah:

S.B. 160

Section 1. Section **63M-1-1218** is amended to read:

63M-1-1218. Certificates and contingent tax credits.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the form, issuance, transfer, and redemption of certificates.

(2) The board's issuance of certificates and related contingent tax credits to designated investors is subject to the following:

(a) the aggregate outstanding certificates may not exceed a total of $300,000,000 of contingent tax credits;

(b) the board shall issue a certificate contemporaneously with an investment in the Utah fund of funds by a designated investor;

(c) the board shall issue contingent tax credits in a manner that not more than $20,000,000 of contingent tax credits for each $100,000,000 increment of contingent tax credits may be [~~initially~~] redeemable in any fiscal year; and

(d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63M-1-1220(3)(b).

(3) In determining the $300,000,000 maximum limit in Subsection (2)(a) and the $20,000,000 limitation for each $100,000,000 increment of contingent tax credits in Subsection (2)(c):

(a) the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors;

(b) certificates and related contingent tax credits which have expired may not be included; and

(c) certificates and related contingent tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.

(4) Contingent tax credits are subject to the following:

(a) a contingent tax credit may not be redeemed except by a designated investor in accordance with the terms of a certificate from the board;

(b) a contingent tax credit may not be redeemed prior to the time the Utah fund of funds receives full payment from the designated investor for the certificate;

(c) a contingent tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate;

(d) an investor who redeems a certificate and the related contingent tax credit shall allocate the amount of the contingent tax credit to the taxpayers of the investor based on the taxpayer's pro rata share of the investor's earnings; and

(e) a contingent tax credit shall be claimed as a refundable credit.

(5) In calculating the amount of a contingent tax credit:

(a) the board shall certify a contingent tax credit [~~shall be certified by the board~~] only if the actual return or payment of principal and interest to the designated investor is less than that targeted at the issuance of the certificate;

(b) the amount of the contingent tax credit for a designated investor with an equity interest may not exceed the difference between:

(i) the sum of:

(A) the initial private investment of the designated investor in the Utah fund of funds; and

(B) the scheduled aggregate return to the designated investor at rates of return authorized by the board at the issuance of the certificate; and

(ii) the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment;

(c) the rates, whether fixed rates or variable rates, shall be determined by a formula stipulated in the certificate; and

(d) the amount of the contingent tax credit for a designated investor with a loan or other debt obligation from the Utah fund of funds shall be equal to the amount of any principal, interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.

(6) The board shall clearly indicate on the certificate:

(a) the targeted return on the invested capital, if the private investment is an equity interest;

(b) the payment schedule of principal, interest, or interest equivalent, if the private investment is a loan or other debt obligation;

(c) the amount of the initial private investment;

(d) the calculation formula for determining the scheduled aggregate return on the initial equity investment, if applicable; and

(e) the calculation formula for determining the amount of the contingent tax credit that may be claimed.

(7) Once moneys are invested by a designated investor, the certificate:

(a) is binding on the board; and

(b) may not be modified, terminated, or rescinded.

(8) Funds invested by a designated investor for a certificate shall be paid to the corporation for placement in the Utah fund of funds.

(9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

Legislative Review Note
as of 1-15-09 2:55 PM

Office of Legislative Research and General Counsel

S.B. 160 - Utah Venture Capital Enhancement Act Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill would increase the contingent tax credits authorized in a given year from $20 million to $60 million. There is no current revenue impact anticipated.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

2/9/2009, 11:14:59 AM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst