

New Tennessee Legislation to Encourage Investment in Small Businesses

By Chris Lowe, King & Ballow Partner & Healthcare Practice Member
clowe@kingballow.com

Qualifying small and start-up health care businesses in Tennessee could find new financial life thanks to \$120 million in tax credits available through legislation signed into law this summer by Governor Bredesen. The Tennessee Small Business Investment Company Credit Act authorizes select investment companies to invest funds in certain new or small businesses, particularly those at the seed or early stages of development.

Under the Act, Tennessee will offer tax credits to insurance companies that invest in businesses selected by the state as TNInvestcos. TNInvestcos will then invest those funds in small and start-up businesses in the form of debt, equity, or a hybrid of debt and equity. Health care businesses that currently or may be able to qualify should be aware of the TNInvestco program. The Tennessee Department of Economic and Community Development is the regulatory body charged with overseeing the relevant activities of the TNInvestcos.

The Act prescribes several requirements for qualification as a TNInvestco or as a company eligible to receive money from a TNInvestco. Generally, to be considered for selection as a TNInvestco, a company must:

- 1) Be a for-profit or nonprofit partnership, corporation, trust, or limited liability company;
- 2) Have equity capitalization of at least \$500,000 in the form of unencumbered cash, marketable securities, or other liquid assets;

- 3) Have at least two investment managers with at least five years of investment experience;
- 4) Have had a principal office in Tennessee for at least five years OR have at least five years of experience in investing primarily in Tennessee domiciled companies;
- 5) Have a demonstrated ability to lead investment rounds, advise and mentor entrepreneurs, and facilitate follow-on investments.

Companies interesting in applying to become a TNInvestco must apply by October 1, 2009. Only six companies will be approved.

To qualify to receive investment funds from a TNInvestco, a company must meet these requirements:

- 1) The business must be headquartered in Tennessee, with principal business operations in the state, and at least sixty percent of its employees in Tennessee;
- 2) The business must have no more than 100 employees;
- 3) The business must not be principally engaged in professional services provided by accountants, doctors, or lawyers; banking or lending; real estate development; insurance; oil and gas exploration; or direct gambling activities; and
- 4) The business must not be a franchise of or have any financial relationship with a TNInvestco or any affiliate of a TNInvestco prior to a TNInvestco's first qualified investment in the business.

The Act provides an incentive for TNInvestcos to invest in seed or early stage companies. Seed or early stage investments are those in young companies that have a

product or service in testing or pilot production that may or may not be commercially available. Forward-thinking, small start-up health care companies could be well-positioned to attract investments from TNInvestcos.

The Act provides exciting opportunities for insurance companies, investment companies, and small and start-up businesses. If you would like to know more about the Act, or if you have any questions about how your business might benefit from the Act, please contact me at (615) 726-5514 or clowe@kingballow.com.

For more information contact: Chris Lowe, Partner & Health Care Practice Member at King & Ballow, clowe@kingballow.com, phone (615) 726-5514.

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