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Fast-Track Regulation Agency Background Document

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| Agency name | Department of Taxation |
| Virginia Administrative Code (VAC) citation(s) | 23 VAC 10-110-145 and 23 VAC 10-120-103 |
| Regulation title(s) | Individual Income Tax and Corporate Income Tax |
| Action title | Subtraction for Income Attributable to an Investment in a Virginia Venture Capital Account |
| Date this document prepared | November 1, 2017 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action will establish procedures regarding how an investment fund may apply for certification as a Virginia venture capital account. During the 2017 Session, the General Assembly enacted legislation establishing a new individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account. This legislation requires that the Department of Taxation (“the Department”) promulgate regulations prior to December 31, 2017, regarding how an investment fund is to apply for certification as a Virginia venture capital account for purposes of the subtraction. This regulatory action is necessary to comply with such requirement.

This regulatory action will define certain terms that are not defined in the legislation. This regulatory action is necessary for purposes of the certification process and to provide guidance to taxpayers regarding such terms.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Not applicable.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Tax Commissioner approved the amendments to the Individual Income Tax and Corporation Income Tax Regulations on November 1, 2017.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

2017 House Bill 2074 (2017 Acts of Assembly, Chapter 762) requires the Department to promulgate regulations regarding the newly established individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account prior to December 31, 2017. To the extent that this regulatory action sets forth the process that an investment fund will use to apply for certification as a Virginia venture capital account, the authority for this regulatory action is mandatory.

Code of Virginia § 58.1-203 provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." To the extent that this regulatory action will define terms that were left undefined by the legislation, the authority for this regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

During the 2017 Session, the General Assembly enacted House Bill 2074 (2017 Acts of Assembly, Chapter 762), which established an individual and corporate income tax subtraction for income attributable to an investment in an investment fund that has been certified by the Department as a Virginia venture capital account. This subtraction was codified in *Va. Code* § 58.1-322.02 27 for individual income tax purposes and *Va. Code* § 58.1-402 C25 for corporate income tax purposes.

In order to be certified as a Virginia venture capital account for purposes of this subtraction, an investment fund must first register with the Department prior to December 31, 2023. As part of such registration, the investment fund must:

- Indicate that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies; and
- Provide documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.

Once the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies, it must notify the Department. The Department is then required to certify such investment fund as a Virginia venture capital account.

2017 House Bill 2074 did not provide procedures regarding the registration and certification process. Instead, the second enactment clause of 2017 House Bill 2074 requires the Department to promulgate regulations prior to December 31, 2017, establishing procedures regarding the:

- Registration of an investment fund as a Virginia venture capital account;
- The provision of documentation regarding an investor's training, education, or experience; and
- The certification of an investment fund as a Virginia venture capital account by the Department.

This regulatory action will establish such procedures regarding the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account.

Va. Code § 58.1-322.02 27 and *Va. Code* § 58.1-402 C25 provide that any income, including investment services partnership interest income, attributable to an investment made in a Virginia venture capital account may qualify for the subtraction. However, this legislation does not define the term "investment services partnership interest income." This regulatory action will define such term for purposes of the subtraction.

Va. Code § 58.1-322.02 27 and *Va. Code* § 58.1-402 C25 provide that the subtraction may not be claimed for an investment in a company that is an affiliate of the taxpayer. However, this legislation does not define the term "affiliate." This regulatory action will define such term for purposes of the subtraction.

Va. Code § 58.1-322.02 27 provides that the subtraction may not be claimed for individual income tax purposes for an investment in a company that is owned or operated by a family member of the taxpayer. However, this legislation does not define the term "family member." This regulatory action will define such term for purposes of the individual income tax subtraction.

Government must have predictable and adequate revenue to provide for the health, safety and welfare of its citizens. Tax regulations enhance customer service and voluntary compliance. The interpretations, examples, and other guidance in tax regulations ensure uniform application of the tax laws to taxpayers. Business taxpayers in particular find regulations essential in predicting the tax consequences of transactions and avoiding unanticipated tax assessments as the result of audits. Tax regulations also ensure that audits and other compliance activity cause the assessment and collection of the correct amount of tax.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast-track process is intended for proposed regulations that are expected to be noncontroversial. As this regulatory action will establish the process that an investment fund will be required to utilize to apply for certification as a Virginia venture capital account and define certain terms for purposes of providing guidance to taxpayers regarding the subtraction, this action is not expected to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This regulatory action will require that every investment fund desiring to be certified by the Department as a Virginia venture capital account for purposes of the subtraction first register with the Department by submitting an application indicating that it:

- Intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies; and
- Employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.

For purposes of the experienced investor requirement, this regulatory action will require an investment fund to include with its registration application documentation of the investor's work experience, training, and education demonstrating that such individual meets the experienced investor requirement.

Va. Code § 58.1-322.02 27 and Va. Code § 58.1-402 C25 do not define the term "professional experience." This regulatory action will define "professional experience" for purposes of subtraction as "full-time employment involving venture capital investment."

In defining "substantially equivalent experience," *Va. Code § 58.1-322.02 27 and Va. Code § 58.1-402 C25* state that the term "includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study." However, the legislation does not provide further guidance regarding what experience, aside from an undergraduate degree, would qualify. In order to provide additional guidance regarding other types of experience that would meet the experienced investor requirement, this regulatory action will define "substantially equivalent experience" for purposes of the subtraction as "an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study, or a combination of professional experience totaling less than four years, professional training, and undergraduate education from an accredited college or university in economics, finance, or a similar field of study demonstrating competency in venture capital investing."

Upon approval of an investment fund’s registration application, this regulatory action will require the Department to provide certification to the investment fund stating that such application has been approved. Such certification will only be valid for the calendar year for which it is issued.

This regulatory action will provide that, once an investment fund that has met the experienced investor requirement actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies, it may apply to the Department for certification as a Virginia venture capital account. This regulatory action will require the investment fund to provide documentation demonstrating that it has met the investment requirement. This regulatory action may require the investment fund to provide certain information regarding its investors as determined by the Department.

Upon approval of an investment fund’s application for certification as a Virginia venture capital account, this regulatory action will require the Department to provide certification to the investment fund stating that it is a Virginia venture capital account for purposes of the subtraction. Such certification will only be valid for the calendar year for which it is issued.

This regulatory action will require an investment fund to submit both applications to the Department and all necessary attachments no later than January 31 of the calendar year following the calendar year for which the investment fund is applying for certification as a Virginia venture capital account.

This regulatory action will define “investment services partnership interest income” for purposes of the subtraction as income from an investment partnership treated as carried interest income for federal income tax purposes.

This regulatory action will define “affiliated” for purposes of the subtraction as a direct or indirect ownership of at least 80 percent in an entity.” This portion of the regulatory action will include that “an indirect ownership interest includes, but is not limited to, direct ownership interests held by a taxpayer’s family members or an entity affiliated with such taxpayer or family members, or any combination of these.”

This regulatory action will define “family member” for purposes of the individual income tax subtraction as an individual’s spouse, children, grandchildren, parents, spouse’s parents, and grandparents.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

This regulatory action will establish procedures regarding the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account and define certain terms for purposes of providing guidance to taxpayers regarding the subtraction. Therefore, it will provide advantages to investment funds desiring certification as a Virginia venture capital account, and to individual and corporate taxpayers eligible to claim the subtraction. Establishing such procedures will enhance the efficiency of the application process and of the overall administration of the subtraction.

This regulatory action will result in no apparent disadvantages to the public or to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this regulatory action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Department considered alternatives to the proposed regulatory action for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> | <p>For purposes of the Fiscal Impact Statement for 2017 House Bill 2074, the Department determined that the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account would result in no administrative costs for the Department. Because the Department is the only state agency</p> |
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| | <p>impacted by the subtraction and the required regulations, there will be no cost to the state to implement and enforce the application process set forth in this regulatory action.</p> | |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>Because the intent of this regulatory action is to establish procedures regarding the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account and define certain terms for purposes of providing guidance to taxpayers regarding the subtraction, this regulatory action will result in no impact on localities. Therefore, there will be no cost to localities to implement and enforce this regulatory action.</p> | |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>This regulatory action will impact investment funds desiring certification as a Virginia venture capital account, the individuals and businesses who administer such funds, and individual and corporate taxpayers that invest in an investment fund that qualifies as a Virginia venture capital account.</p> | |
| <p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>It is unknown how many investment funds will apply for certification as a Virginia venture capital account and how many businesses will qualify for the subtraction. Therefore, it is also unknown how many small businesses will be affected by this regulatory action.</p> | |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>This regulatory action will require an investment fund desiring to be certified as a Virginia venture capital account to maintain records regarding the education and/or professional experience of at least one employee, the fund's investors, and the companies in which the fund invests. This regulatory action will require such investment fund to submit such information along with applications to the Department for purposes of determining whether it qualifies as a Virginia venture capital account. Such investment funds may incur expenses in complying with the application process, but such requirements already generally exist under current law.</p> | |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>The intent of this regulatory action is to establish procedures regarding the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account and define certain terms for purposes of providing guidance to taxpayers. This will provide important guidance to investment funds desiring certification as a Virginia venture capital account, and individual and corporate taxpayers that invest in an investment fund that qualifies as a Virginia venture capital account. Establishing such procedures will enhance the efficiency of the application process and of the overall administration of the subtraction.</p> | |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department considered alternatives to the proposed regulatory action. Taking no action on the process for certifying an investment fund as a Virginia venture capital account would ignore an explicit requirement in 2017 House Bill 2074 requiring that the Department promulgate regulations regarding the subtraction prior to December 31, 2017 and would make it difficult for the Department to administer the application process. Taking no action on defining terms left undefined by this legislation would make the subtraction difficult to administer and leave taxpayers without important guidance regarding the meaning of such terms.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

| Commenter | Comment | Agency response |
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This fast-track is not a result of a periodic review/small business impact review.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

| Section number | Proposed requirements | Other regulations and law that apply | Intent and likely impact of proposed requirements |
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| 23 VAC 10-110-145(A) and 23 VAC 10-120-103(A) | Provides a description of the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account. This provision provides that the subtraction only applies to the extent the investment income was included in federal adjusted gross income (individual taxpayers) or federal taxable income (corporate taxpayers) for federal income tax purposes. This provision also provides that | Va. Code § 58.1-322.02 27(a) and Va. Code § 58.1-402 C25(a) | The portion of this regulatory action describing the subtraction is substantially similar to the description of the subtraction in Va. Code § 58.1-322.02 27(a) and Va. Code § 58.1-402 C25(a). This is intended to provide context for the portion of the regulation regarding the procedure an investment fund must use to apply for certification as a Virginia venture capital account. It will have no impact on the application procedure. The portion of this regulatory action regarding when and to |

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| | <p>the income may not be subtracted for Virginia income tax purposes if it has already been excluded from Virginia taxable income.</p> | | <p>what extent a subtraction will be allowed reflects the Department’s existing policy regarding taxpayers claiming subtractions as set forth in the first paragraph of 23 VAC 10-110-142 and 23 VAC 10-120-102. This is intended to emphasize that the Department’s existing policies apply to this subtraction. This is not a change in existing policy.</p> |
| <p>23 VAC 10-110-145(B) and 23 VAC 10-120-103(B)</p> | <p>Defines the terms “affiliated,” “the Department,” “family member,” “investment services partnership interest income,” “professional experience,” “qualified portfolio company,” “substantially equivalent experience,” and “Virginia venture capital account” for purposes of this regulatory action.</p> | <p><i>Va. Code</i> § 58.1-322.02 27(a) and (b) and <i>Va. Code</i> § 58.1-402 C25(a) and (b)</p> | <p>The terms “qualified portfolio company”, “investment services partnership interest income,” and “Virginia venture capital account” are defined by reference to the definitions of such terms used in <i>Va. Code</i> § 58.1-322.02 27(a) and (b) and <i>Va. Code</i> § 58.1-402 C25(a) and (b). Because these terms are defined the same as they are in the statutory text, this is not a change in existing policy.</p> <p>To receive certification as a Virginia venture capital account, the statutory text requires an investment fund to employ at least one investor with at least four years of professional experience in venture capital investment or substantially equivalent experience. The statutory text defines the term “substantially equivalent experience” by stating that such term includes, but is not limited to, certain undergraduate degrees. The definition does not provide any additional guidance regarding what other types of experience qualify. The statutory text does not define the term “professional experience.”</p> <p>This regulatory action provides additional information regarding the meaning of “substantially equivalent experience” in the definition of such term and defines “professional experience.” This will provide</p> |

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| | | | <p>helpful guidance regarding the meaning of these terms to taxpayers, tax practitioners, and the Department.</p> <p>The terms “affiliated” and “family member” are defined in this regulatory action using the same definitions of such terms used in the Qualified Equity and Subordinated Debt Investments Tax Credit regulation section, 23 VAC10-110-225. Both the subtraction for income from investments in Virginia venture capital account and the Qualified Equity and Subordinated Debt Investments Tax Credit provide tax incentives to taxpayers related to investments. It is therefore appropriate to define terms used for purposes of both incentives identically. This will provide helpful guidance regarding the meaning of these terms to taxpayers, tax practitioners, and the Department.</p> |
| <p>23 VAC 10-110-145(C) and 23 VAC 10-120-103(C)</p> | <p>Provides that the subtraction may not be claimed for an investment in a company that is owned or operated by a family member or an affiliate of an individual taxpayer, or a company that is owned or operated by an affiliate of a corporate taxpayer.</p> <p>Also, provides that the subtraction may not be claimed for an investment that was used to claim the subtraction for certain long-term capital gains or the Qualified Equity and Subordinated Debt Investments Tax Credit.</p> | <p><i>Va. Code § 58.1-322.02 27(a), Va. Code § 58.1-402 C25(a)</i></p> | <p>The portion of this regulatory action describing when investments do not qualify for the subtraction is identical to the statutory language describing such limitation in <i>Va. Code § 58.1-322.02 27(a)</i> and <i>Va. Code § 58.1-402 C25(a)</i>. This was included to provide context regarding when investments qualify for the subtraction. This is not a change in existing policy.</p> |
| <p>23 VAC 10-110-145(D) and 23 VAC 10-120-103</p> | <p>Provides the procedure that an investment fund that desires certification as a Virginia venture capital account must follow when submitting its registration application. This is the first</p> | <p><i>Va. Code § 58.1-322.02 27(b), Va. Code § 58.1-402 C25(b), and the second enactment clause of 2017 House Bill 2074.</i></p> | <p>This regulatory action will require an investment fund that desires certification as a Virginia venture capital account to first register with the Department by submitting an application indicating that it</p> |

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| | <p>step of the two-step certification process.</p> | <p>intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and that it currently employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.</p> <p>For purposes of the experienced investor requirement, this regulatory action will require an investment fund to include with its registration application documentation of the investor's work experience, training, and education adequately demonstrating that such individual meets the professional experience or substantially equivalent experience requirement.</p> <p>This regulatory action will require the investment fund to submit its registration application before or at the time it submits its application for certification as a Virginia venture capital account, step two of the two-step certification process.</p> <p>Upon approving an investment fund's registration application, this regulatory action will require the Department to provide certification to the investment fund stating that such application has been approved. Such certification will only be valid for the calendar year for which it is issued.</p> <p>The portion of this regulatory action regarding the registration application is based on text in <i>Va. Code</i> § 58.1-322.02 27(b), <i>Va. Code</i> § 58.1-402 C25(b), and the second enactment clause of 2017 House Bill 2074 requiring an investment fund to</p> |
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| | | | <p>first register with the Department. This procedure is intended to comply with the requirements of 2017 House Bill 2074 and to simplify the registration process for taxpayers, tax practitioners, and the Department.</p> |
| <p>23 VAC 10-110-145(E) and 23 VAC 10-120-103(E)</p> | <p>Provides the procedure an investment fund that desires certification as a Virginia venture capital account is required to follow when submitting its application for certification as a Virginia venture capital account. This is the second step of the two-step certification process.</p> | <p><i>Va. Code</i> § 58.1-322.02 27(b), <i>Va. Code</i> § 58.1-402 C25(b), and the second enactment clause of 2017 House Bill 2074.</p> | <p>Once an investment fund that has met the experienced investor requirement actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies, this regulatory action will require that it submit an application to the Department for certification as a Virginia venture capital account.</p> <p>This regulatory action will require the investment fund to include with its application documentation that it has invested at least 50 percent of the capital committed to its fund in qualified portfolio companies and certain information regarding its investors as required by the Department.</p> <p>Upon approving an investment fund's application for certification as a Virginia venture capital account, the Department will be required to provide certification to the investment fund stating that it is a Virginia venture capital account for purposes of the subtraction for income attributable to an investment made in a Virginia venture capital account. Such certification will only be valid for the calendar year for which it is issued.</p> <p>The portion of this regulatory action regarding the application for certification as a Virginia venture capital account is based on text in <i>Va. Code</i> § 58.1-322.02 27(b), <i>Va. Code</i> § 58.1-402 C25(b), and the</p> |

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| | | | second enactment clause of 2017 House Bill 2074 requiring an investment fund to submit an application for such certification. This procedure is intended to comply with the requirements of 2017 House Bill 2074 and to simplify the certification process for taxpayers, tax practitioners, and the Department. |
| 23 VAC 10-110-145(F) and 23 VAC 10-120-103(F) | Provides the deadline for both applications an investment fund must submit to be certified as a Virginia venture capital account. | The second enactment clause of 2017 House Bill 2074. | This regulatory action will require that an investment fund submit its registration application and application for certification as a Virginia venture capital account no later than January 31 of the calendar year following the calendar year in which the investment fund is applying for certification as a Virginia venture capital account. This deadline is intended to provide certainty to taxpayers and tax practitioners, and to simplify the administration of the registration and certification process for the Department. |