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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2634

03/03/2014

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The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance and Policy

1.1

A bill for an act

1.2

relating to taxation; income and franchise; establishing a greater Minnesota

1.3

angel investment credit; appropriating money; proposing coding for new law in

1.4

Minnesota Statutes, chapters 116J; 290.

1.5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6

Section 1. [116J.8739] GREATER MINNESOTA ANGEL INVESTMENT

1.7

CREDIT.

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Subdivision 1. Definitions. (a) For the purposes of this section, the following terms

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have the meanings given.

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(b) "Family" means a family member within the meaning of the Internal Revenue

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Code, section 267(c)(4).

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(c) "Greater Minnesota" means the area of Minnesota located outside of the

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metropolitan area as defined in section 473.121, subdivision 2.

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(d) "Liquidation event" means a conversion of qualified investment for cash, cash

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and other consideration, or any other form of equity or debt interest.

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(e) "Pass-through entity" means a corporation that for the applicable taxable year is

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treated as an S corporation or means a general partnership, limited partnership, limited

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liability partnership, trust, or limited liability company and which for the applicable

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taxable year is not taxed as a corporation under chapter 290.

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(f) "Qualified fund" means a pooled angel investment network fund that has been

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certified by the commissioner under section 116J.8737, subdivision 4, for the taxable year.

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(g) "Qualified investment" means a cash investment in a qualified small business

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of a minimum of:

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(1) \$10,000 in a calendar year by a qualified investor; or

2.1 (2) \$30,000 in a calendar year by a qualified fund.

2.2 A qualified investment must be made in exchange for common stock, a partnership or
2.3 membership interest, preferred stock, debt with mandatory conversion to equity, or an
2.4 equivalent ownership interest as determined by the commissioner.

2.5 (h) "Qualified investor" means an investor who has been certified by the
2.6 commissioner under section 116J.8737, subdivision 3, for the taxable year.

2.7 (i) "Qualified small business" means a business that has been certified by the
2.8 commissioner under subdivision 2.

2.9 Subd. 2. **Certification of qualified small businesses.** (a) Businesses may apply
2.10 to the commissioner for certification as a qualified small business for a calendar year.
2.11 The application must be in the form and manner specified by the commissioner, and
2.12 accompanied by an application fee of \$150. Application fees are deposited in the greater
2.13 Minnesota angel investment credit administration account in the special revenue fund.
2.14 The application for certification for 2014 must be made available on the department's Web
2.15 site by August 1, 2014. Applications for subsequent years' certification must be made
2.16 available on the department's Web site by November 1 of the preceding year.

2.17 (b) Within 30 days of receiving an application for certification under this subdivision,
2.18 the commissioner must either certify the business as satisfying the conditions required of a
2.19 qualified small business, request additional information from the business, or reject the
2.20 application for certification. If the commissioner requests additional information from the
2.21 business, the commissioner must either certify the business or reject the application within
2.22 30 days of receiving the additional information. If the commissioner neither certifies the
2.23 business nor rejects the application within 30 days of receiving the original application or
2.24 within 30 days of receiving the additional information requested, whichever is later, then
2.25 the application is deemed rejected, and the commissioner must refund the \$150 application
2.26 fee. A business that applies for certification and is rejected may reapply.

2.27 (c) To receive certification, a business must satisfy all of the following conditions:

2.28 (1) the business has its headquarters in greater Minnesota;

2.29 (2) at least 51 percent of the business's employees are employed in greater Minnesota,
2.30 and 51 percent of the business's total payroll is paid or incurred in greater Minnesota;

2.31 (3) the business is engaged in, or is committed to engage in, greater Minnesota in
2.32 one of the following as its primary business activity:

2.33 (i) manufacturing;

2.34 (ii) agricultural processing or other business activities related to agriculture, but
2.35 excluding the operation of a farm; or

2.36 (iii) research and development related to activities under item (i) or (ii);

(4) other than as part of or incidental to the activities in clause (3), the business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, wholesale or retail trade, leisure, hospitality, transportation, or professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants;

(5) the business has fewer than 25 employees;

(6) the business pays its employees wages, whether paid on an hourly basis or otherwise, equal to the average hourly wage of employees in greater Minnesota, as determined by the commissioner, except that this requirement does not apply to an executive, officer, or member of the board of the business, or to any employee who owns, controls, or holds power to vote more than 20 percent of the outstanding securities of the business;

(7) the business has:

(i) not been in operation for more than ten years; or

(ii) not been in operation for more than 20 years if the business is engaged in the research, development, or production of medical devices or pharmaceuticals for which United States Food and Drug Administration approval is required for use in the treatment or diagnosis of a disease or condition;

(8) the business has not previously received private equity investments of more than \$4,000,000;

(9) the business is not an entity disqualified under section 80A.50, paragraph (b), clause (3);

(10) the business has not issued securities that are traded on a public exchange; and

(11) the business has not been certified as a qualified business under section 116J.8737, subdivision 2, or has elected to have its certification under that section canceled.

(d) In applying the limit under paragraph (c), clause (5), the employees in all members of the unitary business, as defined in section 290.17, subdivision 4, must be included.

(e) In order for a qualified investment in a business to be eligible for tax credits:

(1) the business must have applied for and received certification for the calendar year in which the qualified investment was made prior to the date on which the qualified investment was made;

(2) the business must not have issued securities that are traded on a public exchange;

(3) the business must not issue securities that are traded on a public exchange within 180 days after the date on which the qualified investment was made; and

(4) the business must not have a liquidation event within 180 days after the date on which the qualified investment was made.

4.1 (f) The commissioner must maintain a list of businesses certified under this
4.2 subdivision for the calendar year and make the list accessible to the public on the
4.3 department's Web site.

4.4 Subd. 3. **Credit allowed.** (a) A qualified investor or qualified fund is eligible for
4.5 a credit equal to 50 percent of the qualified investment in a qualified small business.
4.6 Investments made by a pass-through entity qualify for a credit only if the entity is a qualified
4.7 fund. The commissioner must not allocate more than \$5,000,000 in credits to qualified
4.8 investors or qualified funds. Any credits that are not allocated by the commissioner, that
4.9 are canceled, or that are revoked and repaid are available to be allocated and used.

4.10 (b) The commissioner must not allocate more than \$125,000 (\$250,000 for married
4.11 joint filers) in credits for a taxable year to a qualified investor for the investor's cumulative
4.12 qualified investments as an individual qualified investor and as an investor in a qualified
4.13 fund. The commissioner may not allocate more than a total of \$1,000,000 in credits over
4.14 all taxable years for qualified investments in any one qualified small business.

4.15 (c) The commissioner may not allocate a credit to a qualified investor either as an
4.16 individual qualified investor or as an investor in a qualified fund if the investor receives
4.17 more than 50 percent of the investor's gross annual income from the qualified small
4.18 business in which the qualified investment is proposed. A member of the family of an
4.19 individual disqualified by this paragraph is not eligible for a credit under this section. For
4.20 a married couple filing a joint return, the limitations in this paragraph apply collectively
4.21 to the investor and spouse. For purposes of determining the ownership interest of an
4.22 investor under this paragraph, the rules under sections 267(c) and 267(e) of the Internal
4.23 Revenue Code apply.

4.24 (d) Applications for tax credits must be made available on the department's Web
4.25 site by September 1, 2014, and the commissioner must begin accepting applications by
4.26 that date.

4.27 (e) Qualified investors and qualified funds must apply to the commissioner for tax
4.28 credits. Tax credits must be allocated to qualified investors or qualified funds in the order
4.29 that the tax credit request applications are filed. The commissioner must approve or reject
4.30 tax credit request applications within 15 days of receiving the application. The investment
4.31 specified in the application must be made within 60 days of the allocation of the credits. If
4.32 the investment is not made within 60 days, the credit allocation is canceled and available
4.33 for reallocation. A qualified investor or qualified fund that fails to invest as specified in the
4.34 application, within 60 days of allocation of the credits, must notify the commissioner of the
4.35 failure to invest within five business days of the expiration of the 60-day investment period.

(f) All tax credit request applications filed on the same day must be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit request applications on the same day and the aggregate amount of credit allocation claims exceeds the aggregate limit of credits under this section or the lesser amount of credits that remain unallocated on that day, then the credits must be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation for any one qualified investor or qualified fund is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a qualified investor and the denominator of which is the total of all credit allocation claims filed on behalf of all applicants on that day, by the amount of credits that remain unallocated on that day for the taxable year.

(g) A qualified investor or qualified fund, or a qualified small business acting on their behalf, must notify the commissioner when an investment for which credits were allocated has been made, and the taxable year in which the investment was made. A qualified fund must also provide the commissioner with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the investment was made, the commissioner must issue credit certificates for the taxable year in which the investment was made to the qualified investor or, for an investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate must state that the credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following years. The three-year holding period does not apply if:

(1) the investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(2) 80 percent or more of the assets of the qualified small business is sold before the end of the three-year period;

(3) the qualified small business is sold before the end of the three-year period; or

(4) the qualified small business's common stock begins trading on a public exchange before the end of the three-year period.

(h) The commissioner must notify the commissioner of revenue of credit certificates issued under this section.

Subd. 4. Annual reports. (a) By February 1 of each year, each qualified small business that received an investment that qualified for a credit, and each qualified investor and qualified fund that made an investment that qualified for a credit, must submit an

annual report to the commissioner and pay a filing fee of \$100. Each qualified investor and qualified fund must submit reports for three years following each year in which it made an investment that qualified for a credit, and each qualified small business must submit reports for five years following the year in which it received an investment qualifying for a credit. Reports must be made in the form required by the commissioner. All filing fees collected must be deposited in the greater Minnesota angel investment credit administration account in the special revenue fund.

(b) A report from a qualified small business must certify that the business satisfies the following requirements:

- (1) the business has its headquarters in greater Minnesota;
- (2) at least 51 percent of the business's employees are employed in greater Minnesota, and 51 percent of the business's total payroll is paid or incurred in greater Minnesota; and
- (3) that the business meets the payroll requirements in subdivision 2, paragraph (c), clause (6).

(c) Reports from qualified investors must certify that the investor remains invested in the qualified small business as required by subdivision 3, paragraph (g).

(d) Reports from qualified funds must certify that the fund remains invested in the qualified small business as required by subdivision 3, paragraph (g).

(e) A qualified small business that ceases all operations and becomes insolvent must file a final annual report in the form required by the commissioner documenting its insolvency. In the following years, the business is exempt from the annual reporting requirement, the report filing fee, and the fine for failure to file a report.

(f) A qualified small business, qualified investor, or qualified fund that fails to file an annual report as required under this subdivision is subject to a \$500 fine.

Subd. 5. **Revocation of credits.** (a) If the commissioner determines that a qualified investor or qualified fund did not meet the three-year holding period required in subdivision 3, paragraph (g), any credit allocated and certified to the investor or fund is revoked and must be repaid by the investor.

(b) If the commissioner determines that a business did not meet the employment and payroll requirements in subdivision 2, paragraph (c), clause (2), in any of the five calendar years following the year in which an investment in the business that qualified for a tax credit under this section was made, the business must repay the following percentage of the credits allowed for qualified investments in the business:

<u>Year following the year in which</u>	<u>Percentage of credit required</u>
<u>the investment was made:</u>	<u>to be repaid:</u>
<u>First</u>	<u>100%</u>

7.1	<u>Second</u>	<u>80%</u>
7.2	<u>Third</u>	<u>60%</u>
7.3	<u>Fourth</u>	<u>40%</u>
7.4	<u>Fifth</u>	<u>20%</u>
7.5	<u>Sixth and later</u>	<u>0</u>

7.6 (c) The commissioner must notify the commissioner of revenue of every credit
 7.7 revoked and subject to full or partial repayment under this section.

7.8 (d) For the repayment of credits allowed under this section and section 290.0693,
 7.9 a qualified small business, qualified investor, or investor in a qualified fund must file an
 7.10 amended return with the commissioner of revenue and pay any amounts required to be
 7.11 repaid within 30 days after becoming subject to repayment under this section.

7.12 Subd. 6. **Data privacy.** Data contained in an application submitted to the
 7.13 commissioner under this section are nonpublic data, or private data on individuals, as
 7.14 defined in section 13.02, subdivision 9 or 12, except that the following data items are public:

7.15 (1) the name, mailing address, telephone number, e-mail address, contact person's
 7.16 name, and industry type of a qualified small business upon approval of the application
 7.17 and certification by the commissioner under subdivision 2;

7.18 (2) for credit certificates issued under subdivision 5, the amount of the credit
 7.19 certificate issued, amount of the qualified investment, the name of the qualified investor or
 7.20 qualified fund that received the certificate, and the name of the qualifying small business
 7.21 in which the qualifying investment was made;

7.22 (3) for credits revoked under subdivision 5, the amount revoked and the name of the
 7.23 qualified investor or qualified fund; and

7.24 (4) for credits revoked under subdivision 5, paragraphs (b) and (c), the amount
 7.25 revoked and the name of the qualified small business.

7.26 Subd. 7. **Report to the legislature.** The commissioner must annually report by
 7.27 March 15 to the chairs and ranking minority members of the legislative committees
 7.28 having jurisdiction over taxes and economic development in the senate and the house of
 7.29 representatives, in compliance with sections 3.195 and 3.197, on the tax credits issued
 7.30 under this section. The report must include:

7.31 (1) the number and amount of the credits issued;

7.32 (2) the recipients of the credits;

7.33 (3) for each qualified small business, its location, line of business, and if it received
 7.34 an investment resulting in certification of tax credits;

7.35 (4) the total amount of investment in each qualified small business resulting in
 7.36 certification of tax credits;

(5) for each qualified small business that received investments resulting in tax credits, the total amount of additional investment that did not qualify for the tax credit;

(6) the number and amount of credits revoked under subdivision 5;

(7) the number and amount of credits that are no longer subject to the three-year holding period because of the exceptions under subdivision 3, paragraph (g), clauses (1) to (4); and

(8) any other information relevant to evaluating the effect of these credits.

Subd. 8. **Appropriation.** Amounts in the greater Minnesota angel investment credit administration account in the special revenue fund are appropriated to the commissioner for costs associated with certifying applications and refunding application fees under subdivision 2, and for expenses of administering the credit.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to taxable years beginning after December 31, 2013.

Sec. 2. **[290.0693] GREATER MINNESOTA ANGEL INVESTMENT CREDIT.**

Subdivision 1. **Definitions.** For purposes of this section, terms defined in section 116J.8739 have the meaning given in that section.

Subd. 2. **Credit allowed.** A qualified investor is allowed a credit against the tax imposed under this chapter for qualified investments made in a qualified small business for the taxable year. The credit equals the amount and applies to the taxable year indicated on the certificate provided to the qualified investor under section 116J.8738, but the maximum credit in any taxable year is \$250,000 for a married couple filing a joint return, and \$125,000 for all other claimants.

Subd. 3. **Proportional credits.** Each pass-through entity must provide each investor a statement indicating the investor's share of the credit amount certified to the pass-through entity based on its share of the pass-through entity's capital assets at the time of the qualified investment.

Subd. 4. **Credit refundable.** If the amount of the credit under this section for any taxable year exceeds the claimant's liability for tax under this chapter, the commissioner shall refund the excess to the claimant. An amount sufficient to pay the refunds is appropriated to the commissioner from the general fund.

Subd. 5. **Audit powers.** Notwithstanding the certification of eligibility issued by the commissioner of employment and economic development under sections 116J.8737 and 116J.8738, the commissioner may utilize any audit and examination powers under chapter 270C or 289A to the extent necessary to verify that the taxpayer is eligible for the credit and to assess for the amount of any improperly claimed credit.

- 9.1 **EFFECTIVE DATE.** This section is effective the day following final enactment
- 9.2 and applies to taxable years beginning after December 31, 2013.