

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2931

03/10/2016 Authored by Hertaus, Albright and Whelan

The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance

1.1 A bill for an act
1.2 relating to taxation; individual income; modifying the small business investment
1.3 credit; repealing the sunset; amending Minnesota Statutes 2014, section
1.4 116J.8737, subdivisions 1, 5; repealing Minnesota Statutes 2014, section
1.5 116J.8737, subdivision 12.

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

1.7 Section 1. Minnesota Statutes 2014, section 116J.8737, subdivision 1, is amended to
1.8 read:

1.9 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms
1.10 have the meanings given.

1.11 (b) "Qualified small business" means a business that has been certified by the
1.12 commissioner under subdivision 2.

1.13 (c) "Qualified investor" means an investor who has been certified by the
1.14 commissioner under subdivision 3.

1.15 (d) "Qualified fund" means a pooled angel investment network fund that has been
1.16 certified by the commissioner under subdivision 4.

1.17 (e) "Qualified investment" means a cash investment in a qualified small business
1.18 of a minimum of:

1.19 (1) \$10,000 in a calendar year by a qualified investor; or

1.20 (2) \$30,000 in a calendar year by a qualified fund.

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

1.24 (f) "Family" means a family member within the meaning of the Internal Revenue
1.25 Code, section 267(c)(4).

(g) "Pass-through entity" means a corporation that for the applicable taxable year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable taxable year is not taxed as a corporation under chapter 290.

(h) "Intern" means a student of an accredited institution of higher education, or a former student who has graduated in the past six months from an accredited institution of higher education, who is employed by a qualified small business in a nonpermanent position for a duration of nine months or less that provides training and experience in the primary business activity of the business.

(i) "Liquidation event" means a conversion of qualified investment for cash, cash and other consideration, or any other form of equity or debt interest.

(j) "Qualified greater Minnesota business" means a qualified small business that is also certified by the commissioner as a qualified greater Minnesota business under subdivision 2, paragraph (h).

(k) "Minority group member" means a United States citizen who is Asian, Pacific Islander, Black, Hispanic, or Native American.

(l) "Minority-owned business" means a business for which one or more minority group members:

(1) own at least 50 percent of the business, or, in the case of a publicly owned business, own at least 51 percent of the stock; and

(2) manage the business and control the daily business operations.

(m) "Women" means persons of the female gender.

(n) "Women-owned business" means a business for which one or more women:

(1) own at least 50 percent of the business, or, in the case of a publicly owned business, own at least 51 percent of the stock; and

(2) manage the business and control the daily business operations.

(o) "Officer" means a person elected or appointed by the board of directors to manage the daily operations of the qualified small business;

(p) "Principal" means a person having authority to act on behalf of the qualified small business.

(q) "Pediatric medical device" means a medical device intended for human use, as defined under section 510 of the federal Food, Drug, and Cosmetic Act, designed to be used for a pediatric population and requiring approval under section 515A of the federal Food, Drug, and Cosmetic Act for a pediatric indication.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2014, section 116J.8737, subdivision 5, is amended to read:

Subd. 5. **Credit allowed.** (a)(1) A qualified investor or qualified fund is eligible for a credit equal to ~~25 percent~~ a percentage of the qualified investment in a qualified small business. The credit equals 40 percent of the qualified investment in a qualified small business engaged primarily in the development and production of pediatric medical devices, and 25 percent of the qualified investment in all other qualified small businesses. Investments made by a pass-through entity qualify for a credit only if the entity is a qualified fund. The commissioner must not allocate more than \$15,000,000 in credits to qualified investors or qualified funds for taxable years beginning after December 31, 2013, and before January 1, ~~2017~~ 2015, and must not allocate more than \$20,000,000 in credits per year for taxable years beginning after December 31, 2014; and

(2) for taxable years beginning after December 31, 2014, and before January 1, 2017, \$7,500,000 must be allocated to credits for qualifying investments in qualified greater Minnesota businesses and minority- or women-owned qualified small businesses in Minnesota; and \$5,000,000 must be allocated to credits for qualifying investments in qualified small businesses engaged primarily in the development and production of pediatric medical devices. Any portion of a taxable year's credits that is reserved for qualifying investments in greater Minnesota businesses ~~and~~ minority- or women-owned qualified small businesses in Minnesota, and qualified small businesses engaged primarily in the development and production of pediatric medical devices that is not allocated by September 30 of the taxable year is available for allocation to other credit applications beginning on October 1. Any portion of a taxable year's credits that is not allocated by the commissioner does not cancel and may be carried forward to subsequent taxable years until all credits have been allocated.

(b) The commissioner may not allocate more than a total maximum amount in credits for a taxable year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund; for married couples filing joint returns the maximum is \$250,000, and for all other filers the maximum is \$125,000. The commissioner may not allocate more than a total of \$1,000,000 in credits over all taxable years for qualified investments in any one qualified small business.

(c) The commissioner may not allocate a credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if, at the time the investment is proposed:

(1) the investor is an officer or principal of the qualified small business; or

(2) the investor, either individually or in combination with one or more members of the investor's family, owns, controls, or holds the power to vote 20 percent or more of the outstanding securities of the qualified small business.

A member of the family of an individual disqualified by this paragraph is not eligible for a credit under this section. For a married couple filing a joint return, the limitations in this paragraph apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this paragraph, the rules under section 267(c) and 267(e) of the Internal Revenue Code apply.

(d) Applications for tax credits for 2010 must be made available on the department's Web site by September 1, 2010, and the department must begin accepting applications by September 1, 2010. Applications for subsequent years must be made available by November 1 of the preceding year.

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

(f) All tax credit request applications filed with the department 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;

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

(5) the qualified investor dies before the end of the three-year period.

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

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **REPEALER.**

Minnesota Statutes 2014, section 116J.8737, subdivision 12, is repealed.

EFFECTIVE DATE. This section is effective the day following final enactment.

APPENDIX
Repealed Minnesota Statutes: 16-5408

116J.8737 SMALL BUSINESS INVESTMENT TAX CREDIT.

Subd. 12. **Sunset.** This section expires for taxable years beginning after December 31, 2016, except that reporting requirements under subdivision 6 and revocation of credits under subdivision 7 remain in effect through 2018 for qualified investors and qualified funds, and through 2020 for qualified small businesses, reporting requirements under subdivision 9 remain in effect through 2021, and the appropriation in subdivision 11 remains in effect through 2020.