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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 160

01/24/2013 Authored by Anderson, S.; Davids; Kresha; Petersburg and Barrett

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; individual income; modifying the small business investment
1.3 tax credit; amending Minnesota Statutes 2012, section 116J.8737, subdivisions 1,
1.4 2, 5, 8, by adding a subdivision.

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

1.6 Section 1. Minnesota Statutes 2012, section 116J.8737, subdivision 1, is amended to
1.7 read:

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

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

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

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

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

1.18 (1) \$10,000 in a calendar year by a qualified investor; or

1.19 (2) \$30,000 in a calendar year by a qualified fund.

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

1.23 (f) "Family" means a family member within the meaning of the Internal Revenue
1.24 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.

EFFECTIVE DATE. This section is effective for qualified small businesses certified after June 30, 2013.

Sec. 2. Minnesota Statutes 2012, section 116J.8737, subdivision 2, is amended to read:

Subd. 2. **Certification of qualified small businesses.** (a) Businesses may apply to the commissioner for certification as a qualified small business for a calendar year. The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$150. Application fees are deposited in the small business investment tax credit administration account in the special revenue fund. The application for certification for 2010 must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification must be made available on the department's Web site by November 1 of the preceding year.

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

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

(1) the business has its headquarters in Minnesota;

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

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

(i) using proprietary technology to add value to a product, process, or service in a qualified high-technology field;

(ii) researching or developing a proprietary product, process, or service in a qualified high-technology field; or

(iii) researching, developing, or producing a new proprietary technology for use in the fields of agriculture, tourism, forestry, mining, manufacturing, or transportation;

(4) other than the activities specifically listed in clause (3), the business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, information technology consulting, wholesale or retail trade, leisure, hospitality, transportation, construction, ethanol production from corn, 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 must pay its employees annual wages of at least 175 percent of the federal poverty guideline for the year for a family of four and must pay its interns annual wages of at least 175 percent of the federal minimum wage used for federally covered employers, except that this requirement must be reduced proportionately for employees and interns who work less than full-time, and 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 not been in operation for more than ten years or 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; ~~and~~

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

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

(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 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.

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

(g) For purposes of this subdivision, the following terms have the meanings given:

(1) "qualified high-technology field" includes aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biotechnology, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields; and

(2) "proprietary technology" means the technical innovations that are unique and legally owned or licensed by a business and includes, without limitation, those innovations that are patented, patent pending, a subject of trade secrets, or copyrighted.

EFFECTIVE DATE. This section is effective for qualified small businesses certified after June 30, 2013, except the amendments to paragraph (c), clause (7), are effective the day following final enactment.

Sec. 3. Minnesota Statutes 2012, section 116J.8737, subdivision 5, is amended to read:

Subd. 5. **Credit allowed.** (a) A qualified investor or qualified fund is eligible for a credit equal to 25 percent of the qualified investment in a qualified small business. 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 \$11,000,000 in credits to qualified investors or qualified funds for taxable years beginning after December 31, 2009, and before January 1, 2011, and must not allocate more than \$12,000,000 in credits per year for taxable years beginning after December 31, 2010, and before January 1, 2015 2013, or more than \$17,000,000 in credits per taxable year for taxable years beginning after December 31, 2012, and before January 1, 2017. 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 the investor receives more than 50 percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. 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; 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.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2012.

Sec. 4. Minnesota Statutes 2012, section 116J.8737, is amended by adding a subdivision to read:

Subd. 5a. Promotion of credit in greater Minnesota. (a) By July 1, 2013, the commissioner shall develop a plan to increase awareness of and use of the credit for

investments in greater Minnesota businesses with a target goal that a minimum of 30 percent of the credit will be awarded for those investments during the second half of calendar year 2014 and for each full calendar year thereafter. Beginning with the legislative report due on March 15, 2014, under subdivision 9, the commissioner shall report on its plan under this subdivision and the results achieved.

(b) If the target goal of 30 percent under paragraph (a) is not achieved for the six-month period ending on December 31, 2014, the credit percentage under subdivision 5, paragraph (a), is increased to 40 percent for a qualified investment made after December 31, 2013, in a greater Minnesota business. This paragraph does not apply and the credit percentage for all qualified investments is the rate provided under subdivision 5 for any calendar year beginning after a calendar year for which the commissioner determines the 30 percent target has been satisfied. The commissioner shall timely post notification of changes in the credit rate under this paragraph on the department's Web site.

(c) For purposes of this section, a "greater Minnesota business" means a qualified small business with its headquarters and 51 percent or more of its employees employed at Minnesota locations outside of the metropolitan area as defined in section 473.121, subdivision 2.

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

Sec. 5. Minnesota Statutes 2012, section 116J.8737, subdivision 8, is amended to read:

Subd. 8. **Data privacy.** (a) Data contained in an application submitted to the commissioner under subdivision 2, 3, or 4 are nonpublic data, or private data on individuals, as defined in section 13.02, subdivision 9 or 12, except that the following data items are public:

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

(2) the name of a qualified investor upon approval of the application and certification by the commissioner under subdivision 3;

(3) the name of a qualified fund upon approval of the application and certification by the commissioner under subdivision 4;

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

8.1 (5) for credits revoked under subdivision 7, paragraph (a), the amount revoked and
8.2 the name of the qualified investor or qualified fund; and

8.3 (6) for credits revoked under subdivision 7, paragraphs (b) and (c), the amount
8.4 revoked and the name of the qualified small business.

8.5 (b) The following data, including data classified as nonpublic or private, must be
8.6 provided to the consultant for use in conducting the program evaluation under subdivision
8.7 10:

8.8 (1) the commissioner of employment and economic development shall provide data
8.9 contained in an application for certification received from a qualified small business,
8.10 qualified investor, or qualified fund, and any annual reporting information received on a
8.11 qualified small business, qualified investor, or qualified fund; and

8.12 (2) the commissioner of revenue shall provide data contained in any applicable tax
8.13 returns of a qualified small business, qualified investor, or qualified fund.

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