

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-SEVENTH LEGISLATURE**

**S.F. No. 283**

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DATE	D-PG	OFFICIAL STATUS
02/10/2011	206	Introduction and first reading Referred to Jobs and Economic Growth
02/24/2011	284a	Comm report: To pass as amended and re-refer to Taxes

1.1 A bill for an act  
1.2 relating to taxation; insurance; providing a credit for investment in start-up and  
1.3 emerging Minnesota businesses; proposing coding for new law in Minnesota  
1.4 Statutes, chapters 116J; 297I.

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

1.6 Section 1. [116J.665] MINNESOTA BUSINESS INVESTMENT COMPANY

1.7 CREDIT.

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

1.10 (b) "Affiliate" means:

1.11 (1) any person who, directly or indirectly, beneficially owns, controls, or holds  
1.12 power to vote 15 percent or more of the outstanding voting securities or other voting  
1.13 ownership interest of a Minnesota business investment company or insurance company; or

1.14 (2) any person, 15 percent or more of whose outstanding voting securities or other  
1.15 voting ownership interests are directly or indirectly beneficially owned, controlled, or held  
1.16 with power to vote by a Minnesota business investment company or insurance company.

1.17 Notwithstanding this subdivision, an investment by a participating investor in a  
1.18 Minnesota business investment company pursuant to an allocation of premium tax credits  
1.19 under this section does not cause that Minnesota business investment company to become  
1.20 an affiliate of that participating investor.

1.21 (c) "Allocation date" means the date on which credits under section 297I.23 are  
1.22 allocated to the participating investors of a Minnesota business investment company  
1.23 under this section.

1.24 (d) "Designated capital" means an amount of money that:

2.1 (1) is invested by a participating investor in a Minnesota business investment  
2.2 company; and

2.3 (2) fully funds the purchase price of either or both participating investor's equity  
2.4 interest in a Minnesota business investment company or a qualified debt instrument issued  
2.5 by a Minnesota business investment company.

2.6 (e) "Minnesota business investment company" means a partnership, corporation,  
2.7 trust, or limited liability company, organized on a for-profit basis, that:

2.8 (1) has its principal office located or is headquartered in Minnesota;

2.9 (2) has as its primary business activity the investment of cash in qualified businesses;

2.10 and

2.11 (3) is certified by the Department of Employment and Economic Development as  
2.12 meeting the criteria in this section.

2.13 (f) "Participating investor" means any insurance company as defined in section  
2.14 60A.02, subdivision 4, excluding health maintenance organizations, that contributes  
2.15 designated capital pursuant to this section.

2.16 (g) "Person" means any natural person or entity, including, but not limited to, a  
2.17 corporation, general or limited partnership, trust, or limited liability company.

2.18 (h)(1) "Qualified business" means a business that is independently owned and  
2.19 operated and meets all of the following requirements:

2.20 (i) it is headquartered in Minnesota, its principal business operations are located in  
2.21 this state, and at least 80 percent of its employees are located in Minnesota;

2.22 (ii) it has no more than 100 employees;

2.23 (iii) it is not engaged in:

2.24 (A) professional services provided by accountants, doctors, or lawyers;

2.25 (B) banking or lending;

2.26 (C) real estate development;

2.27 (D) insurance;

2.28 (E) oil and gas exploration;

2.29 (F) direct gambling activities;

2.30 (G) retail sales; or

2.31 (H) making loans to or investments in a Minnesota business investment company  
2.32 or an affiliate; and

2.33 (iv) it is not a franchise of and has no financial relationship with a Minnesota business  
2.34 investment company or any affiliate of a Minnesota business investment company prior to  
2.35 a Minnesota business investment company's first qualified investment in the business;

3.1 (2) a business classified as a qualified business at the time of the first qualified  
3.2 investment in the business remains classified as a qualified business and may receive  
3.3 continuing qualified investments from any Minnesota business investment company.  
3.4 Continuing investments constitute qualified investments even though the business may not  
3.5 meet the definition of a qualified business at the time of the continuing investments.

3.6 (i) "Qualified debt instrument" means a debt instrument issued by a Minnesota  
3.7 business investment company which meets all of the following criteria:

3.8 (1) it is issued at par value or a premium; and

3.9 (2) it has an original maturity date of at least four years from the date of issuance,  
3.10 and a repayment schedule which is not faster than a level principal amortization over  
3.11 four years.

3.12 (j) "Qualified distribution" means any distribution or payment made by a Minnesota  
3.13 business investment company in connection with any of the following:

3.14 (1) costs and expenses of forming, syndicating, and organizing the Minnesota  
3.15 business investment company, including fees paid for professional services, and the costs  
3.16 of financing and insuring the obligations of a Minnesota business investment company,  
3.17 provided no payment is made to a participating investor;

3.18 (2) an annual management fee not to exceed one percent of designated capital on  
3.19 an annual basis to offset the costs and expenses of managing and operating a Minnesota  
3.20 business investment company;

3.21 (3) reasonable and necessary fees in accordance with industry custom for ongoing  
3.22 professional services, including, but not limited to, legal and accounting services related  
3.23 to the operation of a Minnesota business investment company, not including lobbying or  
3.24 governmental relations;

3.25 (4) any increase or projected increase in federal or state taxes, including penalties  
3.26 and related interest of the equity owners of a Minnesota business investment company  
3.27 resulting from the earnings or other tax liability of a Minnesota business investment  
3.28 company to the extent that the increase is related to the ownership, management, or  
3.29 operation of a Minnesota business investment company.

3.30 (5) Payments of principal and interest to holders of qualified debt instruments issued  
3.31 by a Minnesota business investment company may be made without restriction whatsoever.

3.32 (k) "Qualified investment" means the investment of money by a Minnesota  
3.33 business investment company in a qualified business for the purchase of any debt,  
3.34 debt participation, equity, or hybrid security of any nature and description whatsoever,  
3.35 including a debt instrument or security that has the characteristics of debt but that provides  
3.36 for conversion into equity or equity participation instruments such as options or warrants.

4.1 Any repayment of a qualified investment prior to one year from the date of issuance shall  
4.2 result in the amount of the qualified investment being reduced by 50 percent for purposes  
4.3 of the cumulative investment requirement in subdivision 8, paragraph (d).

4.4 (1) "State premium tax liability" means any liability incurred by an insurance  
4.5 company under chapter 297I or in the case of a repeal or a rate reduction by the state of  
4.6 the liability imposed by chapter 297I, any other tax liability imposed upon an insurance  
4.7 company by the state, other than the tax imposed on taxpayers under section 290.05.

4.8 Subd. 2. **Certification.** (a) The department must provide a standardized format for  
4.9 applying for the business investment credit under section 297I.23, and for certification as a  
4.10 Minnesota business investment company.

4.11 (b) An applicant for certification as a Minnesota business investment company  
4.12 is required to:

4.13 (1) file an application with the department that includes, without limitation, a  
4.14 statement that the applicant has read and understands the requirements of this chapter;

4.15 (2) pay a nonrefundable application fee of \$7,500 at the time of filing the application;

4.16 (3) submit as part of its application an audited balance sheet that contains an  
4.17 unqualified opinion of an independent certified public accountant issued not more than 35  
4.18 days before the application date that states that the applicant has an equity capitalization  
4.19 of \$500,000 or more in the form of unencumbered cash, marketable securities, or other  
4.20 liquid assets; and

4.21 (4) have at least two principals or persons, at least one of which is primarily located  
4.22 in Minnesota, employed or engaged to manage the funds who each have a minimum of  
4.23 five years of money management experience in the venture capital or business industry.

4.24 (c) The department may certify partnerships, corporations, trusts, or limited liability  
4.25 companies, organized on a for-profit basis, which submit an application to be designated as  
4.26 a Minnesota business investment company if the applicant is located, headquartered, and  
4.27 licensed or registered to conduct business in Minnesota, has as its primary business activity  
4.28 the investment of cash in qualified businesses, and meets the other criteria in this section.

4.29 (d) The department must review the organizational documents of each applicant  
4.30 for certification and the business history of each applicant and determine whether the  
4.31 applicant has satisfied the requirements of this section.

4.32 (e) Within 45 days after the receipt of an application, the department must issue the  
4.33 certification or refuse the certification and communicate in detail to the applicant the  
4.34 grounds for refusal, including suggestions for the removal of such grounds.

4.35 (f) The department must begin accepting applications to become a Minnesota  
4.36 business investment company as defined under section 297I.23 by August 1, 2011.

5.1 (g) Application fees collected by the commissioner under this subdivision must be  
5.2 deposited in the state treasury and appropriated to the commissioner of employment and  
5.3 economic development for the purposes of this act.

5.4 Subd. 3. **Requirements.** (a) A participating investor or affiliate of a participating  
5.5 investor must not, directly or indirectly:

5.6 (1) beneficially own, whether through rights, options, convertible interest, or  
5.7 otherwise, 15 percent or more of the voting securities or other voting ownership interest of  
5.8 a Minnesota business investment company;

5.9 (2) manage a Minnesota business investment company; or

5.10 (3) control the direction of investments for a Minnesota business investment  
5.11 company.

5.12 (b) A Minnesota business investment company may obtain one or more guaranties,  
5.13 indemnities, bonds, insurance policies, or other payment undertakings for the benefit  
5.14 of its participating investors from any entity, except that in no case can more than one  
5.15 participating investor of a Minnesota business investment company on an aggregate  
5.16 basis with all affiliates of the participating investor be entitled to provide the guaranties,  
5.17 indemnities, bonds, insurance policies, or other payment undertakings in favor of the  
5.18 participating investors of a Minnesota business investment company and its affiliates in  
5.19 this state.

5.20 (c) This subdivision does not preclude a participating investor, insurance company,  
5.21 or other party from exercising its legal rights and remedies, including, without limitation,  
5.22 interim management of a Minnesota business investment company, in the event that a  
5.23 Minnesota business investment company is in default of its statutory obligations or its  
5.24 contractual obligations to the participating investor, insurance company, or other party, or  
5.25 from monitoring a Minnesota business investment company to ensure its compliance with  
5.26 this section or disallowing any investments that have not been approved by the department.

5.27 (d) The department may contract with an independent third party to review,  
5.28 investigate, and certify that the applications comply with this section.

5.29 Subd. 4. **Aggregate limitations on investment tax credits; allocation.** (a)  
5.30 The aggregate amount of investment tax credits to be allocated to all participating  
5.31 investors of Minnesota business investment companies under this section shall not exceed  
5.32 \$160,000,000. No Minnesota business investment company, on an aggregate basis with its  
5.33 affiliates, may file credit allocation claims that exceed \$160,000,000.

5.34 (b) Credits must be allocated to participating investors in the order that the credit  
5.35 allocation claims are filed with the department, provided that all credit allocation  
5.36 claims filed with the department on the same day must be treated as having been filed

6.1 contemporaneously. Any credit allocation claims filed with the department prior to the  
6.2 initial credit allocation claim filing date are deemed to have been filed on the initial credit  
6.3 allocation claim filing date. The department must set the initial credit allocation claim  
6.4 filing date not less than 120 days and not greater than 150 days after the department  
6.5 begins accepting applications for certification.

6.6 (c) In the event that two or more Minnesota business investment companies file  
6.7 credit allocation claims with the department on behalf of their respective participating  
6.8 investors on the same day, and the aggregate amount of credit allocation claims exceeds  
6.9 the aggregate limit of investment tax credits under this section or the lesser amount of  
6.10 credits that remain unallocated on that day, then the department must allocate the credits  
6.11 among the participating investors who filed on that day on a pro rata basis with respect  
6.12 to the amounts claimed. The pro rata allocation for any one participating investor is the  
6.13 product obtained by multiplying a fraction, the numerator of which is the amount of the  
6.14 credit allocation claim filed on behalf of a participating investor and the denominator of  
6.15 which is the total of all credit allocation claims filed on behalf of all participating investors  
6.16 on that day, by the aggregate limit of credits under this section or the lesser amount of  
6.17 credits that remain unallocated on that day.

6.18 (d) Within ten business days after the department receives a credit allocation claim  
6.19 filed by a Minnesota business investment company on behalf of one or more of its  
6.20 participating investors, the department must notify the Minnesota business investment  
6.21 company of the amount of credits allocated to each of the participating investors of that  
6.22 Minnesota business investment company. In the event a Minnesota business investment  
6.23 company does not receive an investment of designated capital from each participating  
6.24 investor required to earn the amount of credits allocated to the participating investor  
6.25 within ten business days of the Minnesota business investment company's receipt of notice  
6.26 of allocation, then it shall notify the department on or before the next business day, and  
6.27 the credits allocated to the participating investor of the Minnesota business investment  
6.28 company are forfeited. The department must then reallocate those forfeited credits among  
6.29 the participating investors of the other Minnesota business investment companies on a pro  
6.30 rata basis with respect to the credit allocation claims filed on behalf of the participating  
6.31 investors. The commissioner is authorized, but not required, to levy a fine of not more than  
6.32 \$50,000 on any participating investor that does not invest the full amount of designated  
6.33 capital required to fund the credits allocated to it by the department in accordance with  
6.34 the credit allocation claim filed on its behalf. Fine receipts must be deposited in the state  
6.35 treasury and credited to the general fund.

7.1 (e) No participating investor, on an aggregate basis with its affiliates, may file an  
7.2 allocation claim for more than 25 percent of the maximum amount of investment tax  
7.3 credits authorized under this subdivision, regardless of whether the claim is made in  
7.4 connection with one or more Minnesota business investment companies.

7.5 Subd. 5. Requirements for continuance of certification. (a) To maintain its  
7.6 certification, a Minnesota business investment company must make qualified investments  
7.7 as follows:

7.8 (1) within two years after the allocation date, a Minnesota business investment  
7.9 company must invest an amount equal to at least 35 percent of its designated capital in  
7.10 qualified investments; and

7.11 (2) within three years after the allocation date, a Minnesota business investment  
7.12 company must invest an amount equal to at least 50 percent of its designated capital  
7.13 in qualified investments.

7.14 (b) Prior to making a proposed qualified investment in a specific business, a  
7.15 Minnesota business investment company must request from the department a written  
7.16 determination that the proposed investment qualifies as a qualified investment in a qualified  
7.17 business. The department must notify a Minnesota business investment company within  
7.18 ten business days from the receipt of a request of its determination and an explanation  
7.19 of its determination. If the department fails to notify the Minnesota business investment  
7.20 company of its determination within the ten-business-day period, the proposed investment  
7.21 is deemed a qualified investment in a qualified business. If the department determines that  
7.22 the proposed investment does not meet the definition of a qualified investment or qualified  
7.23 business, or both, the department may nevertheless consider the proposed investment a  
7.24 qualified investment and, if necessary, the business a qualified business, if the department  
7.25 determines that the proposed investment furthers state economic development.

7.26 (c) All designated capital not invested in qualified investments by a Minnesota  
7.27 business investment company shall be held or invested in such manner as the Minnesota  
7.28 business investment company, in its discretion, deems appropriate. Designated capital  
7.29 and proceeds of designated capital returned to a Minnesota business investment company  
7.30 after being originally invested in qualified investments may be invested again in qualified  
7.31 investments and the investment shall count toward the requirements of paragraph (a) with  
7.32 respect to making investments of designated capital in qualified investments.

7.33 (d) If, within four years after its allocation date, a Minnesota business investment  
7.34 company has not invested at least 60 percent of its designated capital in qualified  
7.35 investments, the Minnesota business investment company must not be permitted to pay  
7.36 management fees.

8.1 (e) If, within six years after its allocation date, a Minnesota business investment  
8.2 company has not invested at least 100 percent of its designated capital in qualified  
8.3 investments, the Minnesota business investment company must not be permitted to pay  
8.4 management fees.

8.5 (f) A Minnesota business investment company may not invest more than 15 percent  
8.6 of its designated capital in any one qualified business without the specific approval  
8.7 of the department.

8.8 (g) For purposes of calculating the investment percentage thresholds of paragraph  
8.9 (a), the cumulative amount of all qualified investments made by a Minnesota business  
8.10 investment company from the allocation date must be considered.

8.11 **Subd. 6. Minnesota business investment company reporting requirements. (a)**  
8.12 Each Minnesota business investment company must report the following to the department  
8.13 in the form designated by the commissioner:

8.14 (1) as soon as practicable after the receipt of designated capital:

8.15 (i) the name of each participating investor from which the designated capital was  
8.16 received, including such participating investor's insurance tax identification number;

8.17 (ii) the amount of each participating investor's investment of designated capital; and

8.18 (iii) the date on which the designated capital was received;

8.19 (2) on an annual basis, on or before January 31 of each year:

8.20 (i) the amount of the Minnesota business investment company's designated capital  
8.21 that remains to be invested in qualified investments at the end of the immediately  
8.22 preceding taxable year;

8.23 (ii) whether or not the Minnesota business investment company has invested more  
8.24 than 15 percent of its total designated capital in any one business;

8.25 (iii) all qualified investments that the Minnesota business investment company has  
8.26 made in the previous taxable year, including the number of employees of each qualified  
8.27 business in which it has made investments at the time of such investment, and as of  
8.28 December 1 of the preceding taxable year; and

8.29 (iv) for any qualified business where the Minnesota business investment company  
8.30 no longer has an investment, the Minnesota business investment company must provide  
8.31 employment figures for that company as of the last day before the investment was  
8.32 terminated;

8.33 (3) other information that the department may reasonably request that helps the  
8.34 department ascertain the impact of the Minnesota business investment company program  
8.35 both directly and indirectly on the economy of the state including, but not limited to, the  
8.36 number of jobs created by qualified businesses that have received qualified investments;

9.1 (4) within 90 days of the close of its fiscal year, annual audited financial statements  
9.2 of the Minnesota business investment company, which must include the opinion of an  
9.3 independent certified public accountant; and

9.4 (5) an agreed upon procedures report or equivalent regarding the operations of the  
9.5 Minnesota business investment company.

9.6 (b) A Minnesota business investment company must pay to the department an  
9.7 annual, nonrefundable certification fee of \$5,000 on or before April 1, or \$10,000 if later.  
9.8 The certification fee must be deposited in the state treasury and appropriated to the  
9.9 commissioner of employment and economic development for the purposes of this act. No  
9.10 annual certification fee is required if the payment date for the fee is within six months of  
9.11 the date a Minnesota business investment company is first certified by the department.

9.12 (c) Upon satisfying the requirements of subdivision 5, paragraph (a), clause (2),  
9.13 a Minnesota business investment company must provide the notice to the department  
9.14 and the department shall, within 60 days of receipt of the notice, either confirm that the  
9.15 Minnesota business investment company has satisfied the requirements of subdivision  
9.16 5, paragraph (a), clause (2), as of such date or provide notice of noncompliance and an  
9.17 explanation of any existing deficiencies. If the department does not provide notification  
9.18 within 60 days, the Minnesota business investment company is deemed to have met the  
9.19 requirements of subdivision 5, paragraph (a), clause (2).

9.20 Subd. 7. **Distributions.** (a) A Minnesota business investment company may  
9.21 make qualified distributions at any time. In order for a Minnesota business investment  
9.22 company to make a distribution other than a qualified distribution to its equity holders,  
9.23 the cumulative amount of all qualified investments of the Minnesota business investment  
9.24 company must equal or exceed 100 percent of its designated capital.

9.25 (b) The state shall receive ten percent of the net profits on qualified investments.  
9.26 For purposes of this paragraph, "net profits on qualified investments" means the amount  
9.27 of money returned to the Minnesota business investment company in exchange for or  
9.28 repayment of its qualified investments in qualified businesses in excess of the amount  
9.29 invested by the Minnesota business investment company in qualified investments. The  
9.30 net profits on qualified investments are the aggregate of all of the Minnesota business  
9.31 investment company's qualified investments where gains on qualified investments are  
9.32 netted against losses on qualified investments.

9.33 Subd. 8. **Decertification.** (a) The department shall conduct an annual review of  
9.34 each Minnesota business investment company to determine if a Minnesota business  
9.35 investment company is abiding by the requirements of certification and to ensure that no  
9.36 investment has been made in violation of this section. The cost of the annual review must

10.1 be paid by each Minnesota business investment company according to a reasonable fee  
10.2 schedule adopted by the department. Fee receipts must be deposited in the state treasury  
10.3 and credited to the general fund.

10.4 (b) Any material violation of this section, including any material misrepresentation  
10.5 made to the department in connection with the application process, is grounds for  
10.6 decertification of a Minnesota business investment company and the disallowance of  
10.7 credits under section 297I.23, provided that in all instances the department shall provide  
10.8 notice to the Minnesota business investment company of the grounds of the proposed  
10.9 decertification and the opportunity to cure the violation before any decertification becomes  
10.10 effective.

10.11 (c) The department shall send written notice of decertification to the commissioner  
10.12 of revenue and to the address of each participating investor whose tax credit may be  
10.13 subject to recapture or forfeiture, using the address shown on the last filing submitted  
10.14 to the department.

10.15 (d) Once a Minnesota business investment company has invested an amount  
10.16 cumulatively equal to 100 percent of its designated capital in qualified investments,  
10.17 provided that the Minnesota business investment company has met all other requirements  
10.18 under this section as of such date, the Minnesota business investment company is no  
10.19 longer subject to regulation by the department or the reporting requirements under  
10.20 subdivision 6. Upon receiving certification by a Minnesota business investment company  
10.21 that it has invested an amount equal to 100 percent of its designated capital, the department  
10.22 shall notify a Minnesota business investment company within 60 days that it has or has not  
10.23 met the requirements, with a reason for the determination if it has not. If the department  
10.24 does not provide notification of deregulation within 60 days, the Minnesota business  
10.25 investment company is deemed to have met the requirements and is deemed to no longer  
10.26 be subject to regulation by the department.

10.27 Subd. 9. **Registration requirements.** All investments by participating investors  
10.28 for which tax credits are awarded under this section must be registered or specifically  
10.29 exempt from registration.

10.30 Subd. 10. **Rulemaking.** The commissioner's actions in establishing procedures and  
10.31 requirements and in making determinations and certifications to administer this section are  
10.32 not a rule for purposes of chapter 14, are not subject to the Administrative Procedure Act  
10.33 contained in chapter 14, and are not subject to section 14.386.

10.34 Subd. 11. **Reports to governor and legislature.** The department shall make an  
10.35 annual report by March 15 of each year to the governor and the chairs and ranking

11.1 minority members of the legislative committees and divisions having jurisdiction over  
11.2 taxes and economic development. The report must include:

11.3 (1) the number of Minnesota business investment companies holding designated  
11.4 capital;

11.5 (2) the amount of designated capital invested in each Minnesota business investment  
11.6 company;

11.7 (3) the cumulative amount that each Minnesota business investment company has  
11.8 invested as of January 1, 2012, and the cumulative total each year thereafter;

11.9 (4) the cumulative amount of follow-on capital that the investments of each  
11.10 Minnesota business investment company have created in terms of capital invested in  
11.11 qualified businesses at the same time or subsequent to investments made by a Minnesota  
11.12 business investment company in such businesses by sources other than Minnesota  
11.13 business investment companies;

11.14 (5) the total amount of investment tax credits applied under this section for each year;

11.15 (6) the performance of each Minnesota business investment company with regard to  
11.16 the requirements for continued certification;

11.17 (7) the classification of the companies in which each Minnesota business investment  
11.18 company has invested according to industrial sector and size of company;

11.19 (8) the gross number of jobs created by investments made by each Minnesota  
11.20 business investment company and the number of jobs retained;

11.21 (9) the location of the companies in which each Minnesota business investment  
11.22 company has invested;

11.23 (10) those Minnesota business investment companies that have been decertified,  
11.24 including the reasons for decertification; and

11.25 (11) other related information as necessary to evaluate the effect of this section on  
11.26 economic development.

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

11.28 **Sec. 2. [297L.23] MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT.**

11.29 **Subdivision 1. Credit allowed.** (a) A participating investor as defined under section  
11.30 116J.665, subdivision 1, is allowed a credit against the tax imposed in this chapter equal to  
11.31 80 percent of the participating investor's investment of designated capital in a Minnesota  
11.32 business investment company. Beginning January 1, 2015, in tax years 2015 to 2018,  
11.33 a participating investor may claim an amount equal to 20 percent of the participating  
11.34 investor's investment of designated capital.

12.1 (b) The credit for any taxable year must not exceed the liability for tax. If the  
12.2 amount of the credit determined under this section for any taxable year exceeds the  
12.3 liability for tax, the excess is an investment tax credit carryover to each of the succeeding  
12.4 taxable years and must be carried forward to each succeeding taxable year until the entire  
12.5 carryforward has been credited against the participating investor's liability for tax under  
12.6 this chapter. Credits may be used in connection with both estimated and return payments  
12.7 of a participating investor's state premium tax liability.

12.8 (c) A participating investor claiming a credit under this section is not required to pay  
12.9 any additional retaliatory tax levied by Minnesota as a result of claiming the credit.

12.10 (d) A participating investor is not required to reduce the amount of tax pursuant to  
12.11 the state premium tax liability included by the participating investor in connection with  
12.12 ratemaking for any insurance contract written in this state because of a reduction in the  
12.13 participating investor's tax liability based on the tax credit allowed under this section.

12.14 (e) Decertification of a Minnesota business investment company under section  
12.15 116J.665 may result in the disallowance and the recapture of the credit allowed under this  
12.16 section. The amount disallowed and recaptured must be assessed as follows:

12.17 (1) decertification of a Minnesota business investment company within two years  
12.18 of the allocation date of tax credits and prior to meeting the requirements of section  
12.19 116J.665, subdivision 5, paragraph (a), clause (1), shall result in the disallowance of all  
12.20 of the credits allowed under this section;

12.21 (2) decertification of a Minnesota business investment company after two years  
12.22 of the allocation date of tax credits, but prior to meeting the requirements of section  
12.23 116J.665, subdivision 5, paragraph (a), clause (1), results in the disallowance of one-half  
12.24 of all the credits allowed under this section; and

12.25 (3) decertification of Minnesota business investment company that has already met  
12.26 the requirements of section 116J.665, subdivision 5, paragraph (a), clause (1), does not  
12.27 cause the disallowance of any credits allowed under this section nor the recapture of any  
12.28 portion of the credits that was previously taken.

12.29 Subd. 2. **Transfers.** A participating investor must not transfer, agree to transfer,  
12.30 sell, or agree to sell the credit under this section until 180 days from the date on which  
12.31 the participating investor invested designated capital. After 180 days from the date of  
12.32 investment, a participating investor, or subsequent transferee, may transfer credits to  
12.33 another person who is subject to tax and must notify the department in the form prescribed  
12.34 by the commissioner within 30 days of the transfer. A person must not transfer a credit  
12.35 more than once in a 12-month period. No person is entitled to a refund for the interest  
12.36 created under this subdivision. A credit acquired by transfer is subject to the limitations

13.1 prescribed in this section. Any transfer or sale of the credits does not affect the time  
13.2 schedule for claiming the credit. Any tax credits recaptured under this section remain the  
13.3 liability of the participating investor that actually applied the credit towards its tax liability.

13.4 Subd. 3. **Repayment of tax benefits received.** (a) Decertification of a Minnesota  
13.5 business investment company or revocation of credits under section 116J.665, results in  
13.6 the disallowance to certified investors of any credits for that tax year or future tax years  
13.7 and the participating investor is required to repay any credits claimed for the previous  
13.8 year. Repayment must be made within 60 days of the decertification or the revocation  
13.9 of the certification.

13.10 (b) The provisions of chapters 270C and 297I relating to audit, assessment, refund,  
13.11 collection, and appeals are applicable to the credits claimed and repayment required under  
13.12 this section. The commissioner may impose civil penalties as provided in section 297I.85,  
13.13 and additional tax and penalties are subject to interest at the rate provided in section  
13.14 270C.40, from the date payment was due.

13.15 **EFFECTIVE DATE.** This section is effective for taxable years beginning after  
13.16 December 31, 2011.