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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1268

02/18/2019 Authored by Kotyza-Witthuhn, Haley, Marquart, Klevorn, Lislegard and others
The bill was read for the first time and referred to the Committee on Taxes
02/21/2019 By motion, recalled and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to taxation; income; making the small business investment credit
1.3 permanent; making technical and conforming changes; amending Minnesota
1.4 Statutes 2018, section 116J.8737, subdivision 5; repealing Minnesota Statutes
1.5 2018, sections 116J.8737, subdivision 12; 290.0692, subdivision 6.

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

1.7 Section 1. Minnesota Statutes 2018, section 116J.8737, subdivision 5, is amended to read:

1.8 Subd. 5. Credit allowed. (a)(1) A qualified investor or qualified fund is eligible for a
1.9 credit equal to 25 percent of the qualified investment in a qualified small business.
1.10 Investments made by a pass-through entity qualify for a credit only if the entity is a qualified
1.11 fund. The commissioner must not allocate more than \$15,000,000 \$20,000,000 per taxable
1.12 year in credits to qualified investors or qualified funds for taxable years beginning after
1.13 December 31, 2013, and before January 1, 2017, and must not allocate more than \$10,000,000
1.14 in credits to qualified investors or qualified funds for taxable years beginning after December
1.15 31, 2016, and before January 1, 2018; and (2) for taxable years beginning after December
1.16 31, 2014, and before January 1, 2018, For each taxable year, 50 percent must be allocated
1.17 to credits for qualifying investments in qualified greater Minnesota businesses and minority-
1.18 or women-owned qualified small businesses in Minnesota. Any portion of a taxable year's
1.19 credits that is reserved for qualifying investments in greater Minnesota businesses and
1.20 minority- or women-owned qualified small businesses in Minnesota that is not allocated
1.21 by September 30 of the taxable year is available for allocation to other credit applications
1.22 beginning on October 1. Any portion of a taxable year's credits that is not allocated by the
1.23 commissioner does not cancel and may be carried forward to subsequent taxable years until
1.24 all credits have been allocated.

2.1 (b) The commissioner may not allocate more than a total maximum amount in credits
2.2 for a taxable year to a qualified investor for the investor's cumulative qualified investments
2.3 as an individual qualified investor and as an investor in a qualified fund; for married couples
2.4 filing joint returns the maximum is \$250,000, and for all other filers the maximum is
2.5 \$125,000. The commissioner may not allocate more than a total of \$1,000,000 in credits
2.6 over all taxable years for qualified investments in any one qualified small business.

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

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

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

2.14 A member of the family of an individual disqualified by this paragraph is not eligible for a
2.15 credit under this section. For a married couple filing a joint return, the limitations in this
2.16 paragraph apply collectively to the investor and spouse. For purposes of determining the
2.17 ownership interest of an investor under this paragraph, the rules under section 267(c) and
2.18 267(e) of the Internal Revenue Code apply.

2.19 (d) Applications for tax credits for 2010 must be made available on the department's
2.20 website by September 1, 2010, and the department must begin accepting applications by
2.21 September 1, 2010. Applications for subsequent years must be made available by November
2.22 1 of the preceding year.

2.23 (e) Qualified investors and qualified funds must apply to the commissioner for tax credits.
2.24 Tax credits must be allocated to qualified investors or qualified funds in the order that the
2.25 tax credit request applications are filed with the department. The commissioner must approve
2.26 or reject tax credit request applications within 15 days of receiving the application. The
2.27 investment specified in the application must be made within 60 days of the allocation of
2.28 the credits. If the investment is not made within 60 days, the credit allocation is canceled
2.29 and available for reallocation. A qualified investor or qualified fund that fails to invest as
2.30 specified in the application, within 60 days of allocation of the credits, must notify the
2.31 commissioner of the failure to invest within five business days of the expiration of the
2.32 60-day investment period.

2.33 (f) All tax credit request applications filed with the department on the same day must
2.34 be treated as having been filed contemporaneously. If two or more qualified investors or

3.1 qualified funds file tax credit request applications on the same day, and the aggregate amount
3.2 of credit allocation claims exceeds the aggregate limit of credits under this section or the
3.3 lesser amount of credits that remain unallocated on that day, then the credits must be allocated
3.4 among the qualified investors or qualified funds who filed on that day on a pro rata basis
3.5 with respect to the amounts claimed. The pro rata allocation for any one qualified investor
3.6 or qualified fund is the product obtained by multiplying a fraction, the numerator of which
3.7 is the amount of the credit allocation claim filed on behalf of a qualified investor and the
3.8 denominator of which is the total of all credit allocation claims filed on behalf of all
3.9 applicants on that day, by the amount of credits that remain unallocated on that day for the
3.10 taxable year.

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

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

3.26 (2) 80 percent or more of the assets of the qualified small business is sold before the end
3.27 of the three-year period;

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

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

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

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

4.1 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
4.2 31, 2019.

4.3 Sec. 2. **REPEALER.**

4.4 Minnesota Statutes 2018, sections 116J.8737, subdivision 12; and 290.0692, subdivision
4.5 6, are repealed.

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

116J.8737 SMALL BUSINESS INVESTMENT TAX CREDIT.

Subd. 12. **Sunset.** This section expires for taxable years beginning after December 31, 2017, except that reporting requirements under subdivision 6 and revocation of credits under subdivision 7 remain in effect through 2019 for qualified investors and qualified funds, and through 2021 for qualified small businesses, reporting requirements under subdivision 9 remain in effect through 2022, and the appropriation in subdivision 11 remains in effect through 2021.

290.0692 SMALL BUSINESS INVESTMENT CREDIT.

Subd. 6. **Sunset.** This section expires at the same time and on the same terms as section 116J.8737, except that the expiration of this section does not affect the commissioner of revenue's authority to audit or power of examination and assessment for credits claimed under this section.