

CHAPTER 4351
DEPARTMENT OF ENERGY AND ECONOMIC
DEVELOPMENT
TAX CREDIT CERTIFICATION

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4351.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Business entity.** For purposes of certification as a qualified small business, "business entity" means a business conducted for profit as a corporation, partnership, or proprietorship, except an entity engaged primarily in providing licensed professional services and except an entity primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a).

Subp. 3. **Employee.** For purposes of certification as a qualified small business, "employee" means any person who is permanently on the payroll of a business entity at the time the business entity seeks certification as a qualified small business. An employee is determined on an annualized full-time equivalent basis by dividing total payroll hours (excluding overtime) worked by all employees during the year by 2,080 hours.

Subp. 4. **Subsidiary or affiliate.** For purposes of certification as a qualified small business, a business entity is a "subsidiary" of a transferor or investor if the business entity is a corporation and the transferor or investor owns more than 50 percent of the value of the outstanding stock of the entity corporation, or the entity is not a corporation and the transferor or investor owns more than 50 percent of the value of the capital interest or the profit interest in the entity.

For purposes of certification as a qualified small business, a business entity is an "affiliate" of a transferor or investor if:

A. the business entity is a corporation and the transferor or investor owns more than 20 percent of the value of the outstanding stock of the entity corporation;

B. the business entity is not a corporation and the transferor or investor owns more than 20 percent of the capital stock interest or the profit interest in the entity; or

C. other facts and circumstances indicate that the transferor or investor possesses effective control of the entity as evidenced by:

(1) contractual arrangements that provide for allocation of the entity's output to the transferor or investor or that require the purchase of inputs from the transferor or investor;

(2) a high percentage of the ownership by transferor or investor, but less than 50 percent, and fragmentation of the ownership of the other interests among various other individuals or entities;

(3) a majority of the membership of the entity's board of directors or other governing body is held by employees, directors, or owners of the transferor or investor; or

(4) other relevant factors.

A business entity is a subsidiary or affiliate of a transferor or investor if the entity and the transferor or investor are both subsidiaries or affiliates, or some combination thereof, of a common third party.

A separately incorporated franchise is not a subsidiary or affiliate.

Subp. 5. **Commercial domicile.** For purposes of certification as a qualified small business, "commercial domicile" means the state where the business entity maintains the principal office from which it manages and directs its business.

Subp. 6. **Taxable year.** For purposes of certification as a qualified small business, "taxable year" means the period for which the business entity filed its Minnesota income tax return. The period may be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which the return is made.

Subp. 7. **In operation.** For purposes of certification as a qualified small business, "in operation" means performing the services or other business activities for which the entity was organized.

Subp. 8. **Passive income.** For purposes of certification as a qualified small business, "passive income" means gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Subp. 9. **Engaged primarily in providing licensed professional services.** For purposes of certification as a qualified small business, "engaged primarily in providing licensed professional services" means the business entity has as its primary purpose the rendering of personal service by a professional or professionals pursuant to a license or certificate issued to the professional by the state of Minnesota or similar laws of another state including but not limited to the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying or landscape architecture, accountancy, or law.

Subp. 10. **Commissioner.** For purposes of certification as a qualified small business and for purposes of certification as a small business assistance office, "commissioner" means the commissioner of energy and economic development or his or her designee.

Subp. 11. **Audited financial statements.** For purposes of certification as a small business assistance office, "audited financial statements" means financial statements on which a state licensed public accountant has delivered an opinion according to generally accepted auditing standards that the financial statements soundly and fairly present the business's financial data.

Subp. 12. **Full-time professional employee or the equivalent.** For purposes of certification as a small business assistance office, "full-time professional employee or the equivalent" means:

A. an individual who is on the payroll of a nonprofit corporation, who performs services directly related to the primary purpose of a nonprofit corporation, and who works at least 2,080 hours per year; or

B. a combination of professional employees who are on the payroll of the nonprofit corporation, who perform services directly related to the purpose of the nonprofit corporation, and who individually work fewer than 2,080 hours per year but who aggregately work at least 2,080 hours per year.

Subp. 13. **Shared professional employee.** For purposes of certification as a small business assistance office, a corporation "shares" a professional employee with another organization if the following criteria are met:

A. the "shared" employee performs services directly related to the primary purpose of the corporation;

B. the corporation pays the direct compensation and fringe benefits for the "shared" employee in proportion to the services received; and

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C. the "shared" employee is employed by an organization (whether organized for profit or not and regardless of the business form in which it is organized) which trains or provides direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of businesses.

Subp. 14. **Financing.** For purposes of certification as a small business assistance office, "financing" means the making of market rate loans. Financing does not mean assisting with the securing of grants or contracts from public or private sources.

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990*

4351.0200 PURPOSE.

The purpose of this chapter is to provide notice of the procedures and criteria used by the commissioner of energy and economic development to certify a nonprofit corporation as a small business assistance office and to certify a business entity organized for profit as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraphs (a) and (f).

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990*

4351.0300 COMPUTATION OF GROSS ANNUAL RECEIPTS.

For the purpose of certification as a qualified small business, gross annual receipts is determined by using the following computations (the forms and lines referenced relate to 1983 federal tax forms, or their equivalent forms and lines in the future):

A. For businesses filing a federal corporation income tax return, use the total income increased by the cost of goods sold and/or operations (IRS form 1120, the sum total of lines 11 and 2).

B. For businesses filing a federal income tax return for a chapter S corporation, use the sum of the total income, cost of goods sold and/or operations, and the long and short term net capital gain or losses. (IRS form 1120S, use line 9 and increase it by the amount on line 2. Increase this total by the amount on IRS schedule D, form 1120S, by the amounts on lines 1, 2, and 9.)

C. For businesses filing federal sole proprietorship or partnership interest returns, use the gross receipts or sales less returns or allowances plus other income (IRS form 1040 schedule C, use the total amounts on lines 1c and 4b.)

If form 1040 schedule D is filed, use the net short and long term capital gain or loss excluding any gain made on the sale of your home. (IRS form 1040 schedule D, line 6 less line 2 plus line 17 less line 10.)

If form 1040 schedule E is filed, use any rental income and any other business income (IRS form 1040 schedule E, lines 3, 27, 31, and 33.)

D. If an IRS form 1065 is filed, use the gross receipts or sales less returns or allowances (line 1c), plus ordinary income from other partnerships (line 4, only if positive amount), plus interest and dividends (line 5), plus gross rents (line 6a), plus income from royalties (line 7), plus any other income or loss (line 10).

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990*

4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

Subpart 1. **Application.** For a nonprofit corporation to be certified as a small business assistance office under Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), it must submit to the commissioner an application form provided by the commissioner along with a copy of the articles of incorporation; a copy

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of the designation by the Internal Revenue Service that the corporation is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December 31, 1985; the most recent audited financial statement; and a recent payroll abstract or the equivalent.

The application form must contain the corporate name, principal place of business of the corporation, and an affirmation made by an officer of the corporation affirming the following:

A. that the primary purpose of the corporation is to aid in the formation of new businesses which create jobs by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

B. that the corporation provides audited financial statements to all contributors seeking the tax credit and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

C. that the corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

D. that the corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Subp. 2. **Period of certification.** The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. **Annual applications.** A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. **Decision to certify.** Within 30 days of receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a nonprofit corporation as a small business assistance office. The commissioner shall certify the corporation for a calendar year if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), clauses (1) to (4). If the commissioner denies certification, he or she shall provide the applicant with a statement of the reason for the denial.

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990; 1Sp1985 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9*

4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

Subpart 1. **Application.** For a business entity to be certified as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), it must submit to the commissioner an application form provided by the commissioner along with a copy of its three most recent individual or corporate federal income tax returns, a list of the entity's shareholders and their voting interest, a copy of the articles of incorporation and its amendments or partnership agreement if the business entity is a partnership, or a certificate of limited partnership when the business entity is a limited partnership, a recent payroll abstract or the equivalent, and any other information requested by the commissioner as reasonably needed to certify the business entity as a qualified small business.

The application must contain at a minimum the name and address of the business, the taxable year of the business, and an affirmation by an officer of the business affirming:

A. that the business entity is organized for profit as a corporation,

partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

B. that the above named business entity is not engaged primarily in providing licensed professional services;

C. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

D. that the business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than \$1,000,000 in gross annual receipts;

E. that the business entity is not a subsidiary or an affiliate of a business entity which employs more than 20 employees determined on an annualized full-time equivalent basis or which had total gross receipts for the previous year of more than \$1,000,000, computed by aggregating all of the employees and gross receipts of the business entities affiliated with the business;

F. that the business entity has its commercial domicile in Minnesota;

G. that the above named business entity:

(1) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(2) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (a) the amount of passive income received during its first taxable year was less than \$3,000; and (b) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(3) is a sole proprietorship to which the provisions of subitems (1) and (2) do not apply; and

H. that the business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 31, 1985.

Subp. 2. Period of certification. The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. Annual applications. A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. Decision to certify. Within 30 days of the receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a business entity organized for profit as a qualified small business. The commissioner shall certify the business entity if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), clauses (1) to (5). If the commissioner denies certification, he or she shall provide the applicant with a written reason for the denial.

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990; 1Sp1985 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9*

4351.0600 FALSE INFORMATION.

The commissioner shall deny or withdraw certification to a corporation or business entity that the commissioner determines has knowingly provided false, incomplete, or inaccurate information in the application or other documents required in part 4351.0400 or 4351.0500.

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Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990*

4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE.

APPLICATION FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE

Pursuant to Minnesota Statutes, section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

I _____ affirm that I am the _____ of the above named organization and affirm:

1. that the above named corporation is a nonprofit corporation under Minnesota Statutes, chapter 317 and is an exempt organization under section 501(c)(3) of the Internal Revenue Code, as amended through December 31, 1985;

2. that the above named corporation has as its primary purpose aiding in the formation of new businesses which create jobs in the state by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

3. that the above named corporation will provide audited financial statements to all contributors and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

4. that the above named corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

5. that the above named corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Notary Seal

Signature: _____

Date: _____

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990; 1Sp1985 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9*

4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS.

APPLICATION FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS

Pursuant to Minnesota Statutes, section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

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Primary purpose of business: _____

I _____ affirm that I am the _____ of the above named business entity and affirm:

1. that the above named business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

2. that the above named business entity is not engaged primarily in providing licensed professional services;

3. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

4. that the above named business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than \$1,000,000 in gross annual receipts;

5. that the above named business entity is not a subsidiary or affiliate of a business entity with more than 20 employees or with total gross receipts for the previous year of more than \$1,000,000, as computed by aggregating all the employees and all the gross receipts of the business entities affiliated with the business;

6. that the above named business entity has its commercial domicile in this state; and

7. that the above named business entity:

(a) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(b) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (i) the amount of passive income received during its first taxable year was less than \$3,000; and (ii) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(c) is a sole proprietorship to which the provisions of clauses (a) and (b) do not apply; and

8. that the above named business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 31, 1985.

Notary Seal

Signature: _____

Date: _____

Statutory Authority: *MS s 116J.035 subd 2*

History: *9 SR 990; 1Sp1985 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9*