

1 Department of Energy and Economic Development

2

3 Adopted Rules Governing Tax Credit Certification

4

5 Rules as Adopted

6 4351.0100 DEFINITIONS.

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

9 Subp. 2. Business entity. For purposes of certification
10 as a qualified small business, "business entity" means a
11 business conducted for profit as a corporation, partnership, or
12 proprietorship, except an entity engaged primarily in providing
13 licensed professional services and except an entity primarily
14 engaged in farming as defined in Minnesota Statutes, section
15 290.09, subdivision 29, paragraph (a).

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

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

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

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

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

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

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

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

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

18 (4) other relevant factors.

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

23 A separately incorporated franchise is not a subsidiary or
24 affiliate.

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

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

36 Subp. 7. In operation. For purposes of certification as a

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1 qualified small business, "in operation" means performing the
2 services or other business activities for which the entity was
3 organized.

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

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

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

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

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

36 A. an individual who is on the payroll of a nonprofit

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1 corporation, who performs services directly related to the
2 primary purpose of a nonprofit corporation, and who works at
3 least 2,080 hours per year; or

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

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

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

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

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

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

29 4351.0200 PURPOSE.

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

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1 4351.0300 COMPUTATION OF GROSS ANNUAL RECEIPTS.

2 For the purpose of certification as a qualified small
3 business, gross annual receipts is determined by using the
4 following computations (the forms and lines referenced relate to
5 1983 federal tax forms, or their equivalent forms and lines in
6 the future):

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

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

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

22 If form 1040 schedule D is filed, use the net short and
23 long term capital gain or loss excluding any gain made on the
24 sale of your home. (IRS form 1040 schedule D, line 6 less line
25 2 plus line 17 less line 10.)

26 If form 1040 schedule E is filed, use any rental income and
27 any other business income (IRS form 1040 schedule E, lines 3,
28 27, 31, and 33.)

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

35 4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

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1 Subpart 1. Application. For a nonprofit corporation to be
2 certified as a small business assistance office under Minnesota
3 Statutes, section 290.069, subdivision 1, paragraph (a), it must
4 submit to the commissioner an application form provided by the
5 commissioner along with a copy of the articles of incorporation;
6 a copy of the designation by the Internal Revenue Service that
7 the corporation is exempt from taxation under section 501(c)(3)
8 of the Internal Revenue Code of 1954, as amended through
9 December 15 31, 1983; the most recent audited financial
10 statement; and a recent payroll abstract or the equivalent.

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

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

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

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

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

33 Subp. 2. Period of certification. The initial
34 certification is for the calendar year beginning January 1,
35 1984. Application for certification for calendar year 1984 must
36 be received by the commissioner not later than November 15, 1984.

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

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

17 4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

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

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

35 A. that the business entity is organized for profit
36 as a corporation, partnership, or proprietorship (note that a

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1 qualified small business for purposes of equity investment
2 credit must be organized as a corporation);

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

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

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

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

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

21 G. that the above named business entity:

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

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

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

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1 H. that the business entity is not engaged in a trade
2 or business, the primary purpose of which is described in
3 section 103(b)(6)(0) of the Internal Revenue Code of 1954, as
4 amended through December 15 31, 1983.

5 Subp. 2. Period of certification. The initial
6 certification is for the calendar year beginning January 1,
7 1984. Application for certification for calendar year 1984 must
8 be received by the commissioner not later than November 15, 1984.

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

15 Subp. 4. Decision to certify. Within 30 days of the
16 receipt of the application and information required in subpart
17 1, the commissioner shall determine whether to certify a
18 business entity organized for profit as a qualified small
19 business. The commissioner shall certify the business entity if
20 it has satisfied the conditions of Minnesota Statutes, section
21 290.069, subdivision 1, paragraph (f), clauses (1) to (5). If
22 the commissioner denies certification, he or she shall provide
23 the applicant with a written reason for the denial.

24 4351.0600 FALSE INFORMATION.

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

30 4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS
31 ASSISTANCE OFFICE.

32 APPLICATION FOR CERTIFICATION OF
33 SMALL BUSINESS ASSISTANCE OFFICE
34 Pursuant to Minnesota Statutes,
35 section 290.069, subdivision 1

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1
2 Department of Energy and Economic Development

3 Date of application: _____

4 Name of business: _____

5 Address of business: _____

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

8 1. that the above named corporation is a nonprofit
9 corporation under Minnesota Statutes, chapter 317 and is an
10 exempt organization under section 501(c)(3) of the Internal
11 Revenue Code, as amended through December 31, 1983;

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

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

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

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

31 Notary Seal

32 Signature: _____

33 Date: _____

35 4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED
36 SMALL BUSINESS.

37 APPLICATION FOR CERTIFICATION

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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: _____

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

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1 trade or business producing or likely to derive more than 20
2 percent of its gross receipts from passive income; or

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

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

13 8. that the above named business entity is not engaged in
14 a trade or business, the primary purpose of which is described
15 in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as
16 amended through December ~~15~~ 31, 1983.

17 Notary Seal

18 Signature: _____

19 Date: _____

20

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