

116J.8737 SMALL BUSINESS INVESTMENT TAX CREDIT.

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

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

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

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

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

- (1) \$10,000 in a calendar year by a qualified investor; or
- (2) \$30,000 in a calendar year by a qualified fund.

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

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

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;

(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).

(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, 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.

(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.

Subd. 3. Certification of qualified investors. (a) Investors may apply to the commissioner for certification as a qualified investor for a taxable year. The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$350. 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 investor as satisfying the conditions required of a qualified investor, request additional information from the investor, or reject the application for certification. If the commissioner requests additional information from the investor, the commissioner must either certify the investor or reject the application within 30 days of receiving the additional information. If the commissioner neither certifies the investor 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 \$350 application fee. An investor who applies for certification and is rejected may reapply.

(c) To receive certification, an investor must (1) be a natural person; and (2) certify to the commissioner that the investor will only invest in a transaction that is exempt under section 80A.46, clause (13) or (14), or in a security registered under section 80A.50, paragraph (b).

(d) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified investor who makes the investment must have applied for and received certification for the calendar year prior to making the qualified investment, except in the case of an investor who is not an accredited investor, within the meaning of Regulation D of the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.501, paragraph (a), application for certification may be made within 30 days after making the qualified investment.

Subd. 4. Certification of qualified funds. (a) A pass-through entity may apply to the commissioner for certification as a qualified fund 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 \$1,000. Application fees are deposited in the small business investment tax credit administration account in the special revenue fund. The application for certification for 2010 of qualified funds must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification must be made available 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 fund as satisfying the conditions required of a qualified fund, request additional information from the fund, or reject the application for certification. If the commissioner requests additional information from the fund, the commissioner must either certify the fund or reject the application within 30 days of receiving the additional information. If the commissioner neither certifies the fund 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 \$1,000 application fee. A fund that applies for certification and is rejected may reapply.

(c) To receive certification, a fund must:

(1) invest or intend to invest in qualified small businesses;

(2) be organized as a pass-through entity; and

(3) have at least three separate investors, of whom at least three whose investment is made in the certified business and who seek a tax credit allocation satisfy the conditions in subdivision 3, paragraph (c).

(d) Investments in the fund may consist of equity investments or notes that pay interest or other fixed amounts, or any combination of both.

(e) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified fund that makes the investment must have applied for and received certification for the calendar year prior to making the qualified investment.

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. 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.

Subd. 6. Annual reports. (a) By February 1 of each year each qualified small business that received an investment that qualified for a credit, and each qualified investor and qualified fund that made an investment that qualified for a credit, must submit an annual report to the commissioner and pay a filing fee of \$100 as required under this subdivision. Each qualified investor and qualified fund must submit reports for three years following each year in which it made an investment that qualified for a credit, and each qualified small business must submit reports for five years following the year in which it received an investment qualifying for a credit. Reports must be made in the form required by the commissioner. All filing fees collected are deposited in the small business investment tax credit administration account in the special revenue fund.

(b) A report from a qualified small business must certify that the business satisfies the following requirements:

- (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) that the business is engaged in, or is committed to engage in, innovation in Minnesota as defined under subdivision 2; and
 - (4) that the business meets the payroll requirements in subdivision 2, paragraph (c), clause (6).
- (c) Reports from qualified investors must certify that the investor remains invested in the qualified small business as required by subdivision 5, paragraph (g).
- (d) Reports from qualified funds must certify that the fund remains invested in the qualified small business as required by subdivision 5, paragraph (g).
- (e) A qualified small business that ceases all operations and becomes insolvent must file a final annual report in the form required by the commissioner documenting its insolvency. In following years the business is exempt from the annual reporting requirement, the report filing fee, and the fine for failure to file a report.

(f) A qualified small business, qualified investor, or qualified fund that fails to file an annual report as required under this subdivision is subject to a \$500 fine.

Subd. 7. Revocation of credits. (a) If the commissioner determines that a qualified investor or qualified fund did not meet the three-year holding period required in subdivision 5, paragraph (g), any credit allocated and certified to the investor or fund is revoked and must be repaid by the investor.

(b) If the commissioner determines that a business did not meet the employment and payroll requirements in subdivision 2, paragraph (c), clause (2), in any of the five calendar years following the year in which an investment in the business that qualified for a tax credit under this section was made, the business must repay the following percentage of the credits allowed for qualified investments in the business:

Year following the year in which the investment was made:	Percentage of credit required to be repaid:
First	100%
Second	80%
Third	60%
Fourth	40%
Fifth	20%
Sixth and later	0

(c) The commissioner must notify the commissioner of revenue of every credit revoked and subject to full or partial repayment under this section.

(d) For the repayment of credits allowed under this section and section 290.0692, a qualified small business, qualified investor, or investor in a qualified fund must file an amended return with the commissioner of revenue and pay any amounts required to be repaid within 30 days after becoming subject to repayment under this section.

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 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;

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

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

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

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

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

Subd. 9. **Report to legislature.** Beginning in 2011, the commissioner must annually report by March 15 to the chairs and ranking minority members of the legislative committees having jurisdiction over taxes and economic development in the senate and the house of representatives, in compliance with sections 3.195 and 3.197, on the tax credits issued under this section. The report must include:

- (1) the number and amount of the credits issued;
- (2) the recipients of the credits;
- (3) for each qualified small business, its location, line of business, and if it received an investment resulting in certification of tax credits;
- (4) the total amount of investment in each qualified small business resulting in certification of tax credits;
- (5) for each qualified small business that received investments resulting in tax credits, the total amount of additional investment that did not qualify for the tax credit;
- (6) the number and amount of credits revoked under subdivision 7;
- (7) the number and amount of credits that are no longer subject to the three-year holding period because of the exceptions under subdivision 5, paragraph (g), clauses (1) to (4); and
- (8) any other information relevant to evaluating the effect of these credits.

Subd. 10. **Program evaluation.** (a) No later than December 31, 2012, the commissioner of revenue, after consultation with the commissioners of management and budget and employment and economic development, shall contract with a qualified outside entity or individual to evaluate the effects of the small business investment tax credit on the Minnesota economy. The contractor must not be associated with, employed by, or have contracts with the entities involved in or associated with the venture capital, angel investment, life science, or high technology industries. The program evaluation must be completed by January 2014, and provided to the chairs and ranking minority members of the legislative committees having jurisdiction over taxes and economic development in the senate and the house of representatives, in compliance with sections 3.195 and 3.197. The program evaluation must include, in addition to any other matters the commissioner considers relevant to evaluating the effectiveness of the credit, analysis of:

- (1) the effect of the credit on the level of equity investment in qualified small businesses in Minnesota, including investments by angel investors, venture capital firms, and other sources of equity capital for startup businesses;
- (2) the effect of the credit, if any, on investment in firms other than qualified small businesses;
- (3) the amount of economic activity, including the number of jobs and the wages of those jobs, generated by qualified small businesses that received investments that qualified for the credit;
- (4) the incremental change in Minnesota state and local taxes paid as a result of the allowance of the credit; and
- (5) the net benefit to the Minnesota economy of allowance of the credit relative to alternative uses of the resources, such as increasing the research and development credit or reducing the corporate franchise tax rate.

(b) \$100,000 is appropriated to the commissioner of revenue from the general fund for fiscal year 2013 for the purposes of this evaluation. Any unspent amount of this appropriation carries over to fiscal year 2014. The allocation of the credit in subdivision 5 for taxable year 2013 is reduced by \$100,000. This appropriation may be used to hire a consultant or consultants to prepare all or part of the study.

(c) To the extent necessary to complete the program evaluation, and as provided in subdivision 8, the consultant or consultants may request from the commissioner of revenue tax return information of taxpayers who are qualified small businesses, qualified investors, and qualified funds. To the extent necessary to complete the program evaluation, the consultant or consultants may request from the commissioner of employment and economic development applications for certification and annual reports made by qualified small businesses, qualified investors, and qualified funds.

The consultant or consultants may not disclose or release any data received under this section except as permitted for a government entity under chapter 13, and is subject to the penalties and remedies provided in law for violation of that chapter.

Subd. 11. **Appropriations.** Amounts in the small business investment tax credit administration account in the special revenue fund are appropriated to the commissioner of employment and economic development for costs associated with certifying applications and refunding application fees as provided in subdivisions 2, 3, and 4, and for personnel and administrative expenses related to administering the small business investment tax credit in this section.

Subd. 12. **Sunset.** This section expires for taxable years beginning after December 31, 2014, except that reporting requirements under subdivision 6 and revocation of credits under subdivision 7 remain in effect through 2016 for qualified investors and qualified funds, and through 2018 for qualified small businesses, reporting requirements under subdivision 9 remain in effect through 2019, and the appropriation in subdivision 11 remains in effect through 2018.

History: 2010 c 216 s 2; 2010 c 389 art 3 s 19; 2011 c 112 art 11 s 2-4