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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2248

Introduced by

Senators Grindberg, Berry, Schneider

Representatives Glassheim, Keiser, Thoreson

A BILL for an Act to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure; to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. Angel fund investment tax credit.

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:

a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars.

c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.

e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.

g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.

h. Be in compliance with the securities laws of this state.

4. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

a. The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;

b. The dollar amount paid for the investment by the taxpayer or passthrough entity; and

c. The date on which full consideration was received by the angel fund for the investment.

5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if angel fund officers, employees, and investors collectively own more than forty-nine percent of the ownership interests in the enterprise, either through direct ownership or through ownership of interests in a passthrough entity.

~~5.~~6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.

SECTION 2. A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective for the first four taxable years beginning after December 31, 2010, and is thereafter ineffective. Section 2 of this Act is effective for angel fund investments made after June 30, 2011.