

March 22, 2017

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1045

Page 1, line 1, replace the comma with "and"

Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"

Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"

Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"

Page 1, remove line 5

Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"

Page 1, line 6, after the first semicolon insert "to provide a penalty;"

Page 1, line 11, after the first boldfaced period insert "**(Effective for investments made before July 1, 2017)**"

Page 1, line 13, replace "April" with "July"

Page 1, line 14, overstrike "created" and insert immediately thereafter "organized before July 1, 2017."

Page 6, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investment investor 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 a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty five percent of the amount remitted by the taxpayer to 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. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.~~
2. ~~To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. 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 seven 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, limited liability limited 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 primary sector companies that are 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. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
 - 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.
 - i. 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:

- (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
 - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
 - (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
 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 any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.
 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. A 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.
 - b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
 - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
- a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
 - b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
 - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
 - d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
 - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
 - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot

~~be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.~~

- ~~g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.~~
 - ~~h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.~~
1. For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into a qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in a qualified business during the taxable year.
- a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
 - b. The credit must be claimed in the taxable year in which the investment is made in the qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
 - c. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
 - d. Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
 - e. Investments placed in escrow do not qualify for the credit.
 - f. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this section against the individual's state income tax liability under section 57-38-30.3.

2. For purposes of this section:

- a. "Early-stage entity" means an entity with annual revenues of up to two million dollars.
- b. "Investment" means a cash investment in a qualified business that is made in exchange for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
- c. "Mid-stage entity" means an entity with annual revenues over two million dollars not to exceed ten million dollars.
- d. "North Dakota qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
 - (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
 - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
 - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
 - (4) Is in compliance with state and federal securities laws.
 - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
 - (6) Is certified as a North Dakota qualified business that meets the requirements of this section by the department of commerce.
- e. "Qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
 - (1) Is created as a for-profit entity.
 - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
 - (3) Is in compliance with state and federal securities laws.
 - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
 - (5) Is certified as a qualified business that meets the requirements of this section by the department of commerce.

Except as used in this subdivision, the term "qualified business" also includes a North Dakota qualified business.

3. An angel fund must:
 - a. Be a passthrough entity organized after June 30, 2017, as a domestic for-profit entity under the laws of this state, and have its headquarters in this state.
 - b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
 - c. Consist of at least six accredited investors as defined in regulation D, rule 501 of the federal Securities Act of 1933.
 - d. Not have more than twenty-five percent of its capitalized investment assets owned by any one investor.
 - e. Have at least five hundred thousand dollars in commitments from accredited investors which are 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 subsection by the department of commerce.
 - h. Be in, and remain in, compliance with state and federal securities laws, and invest only in qualified businesses that are issuing securities in compliance with state and federal securities laws.
4. On or before December 31, 2019, and every two calendar years thereafter, a minimum of seventy-five percent of an angel fund's investments, as defined under subdivision b of subsection 2, must be invested into a North Dakota qualified business.
5. An angel fund shall hold the investment in a qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:
 - a. The investment becomes worthless;
 - b. Eighty percent or more of the assets of the qualified business are sold;
 - c. The qualified business is sold;
 - d. The common stock of the qualified business begins trading on a public exchange; or
 - e. A partner, shareholder, or member of the angel fund dies, in which case the exception to the three-year holding period only applies to the deceased individual's portion of the investment and related credit.

6. Within thirty days after the date on which an angel fund makes an investment in a qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
 - a. The name, address, and federal employer identification number of the angel fund;
 - b. The total amount of the investment from all angel investors investing in the qualified business;
 - c. The name, address, and social security or federal identification number of each angel investor investing in the qualified business;
 - d. The amount invested by each angel investor in the qualified business;
 - e. The type of security received by the angel fund in exchange for the investment;
 - f. The name, address, and federal employer identification number of the qualified business;
 - g. The type of industry in which the qualified business is engaged; and
 - h. Any other information the tax commissioner determines is necessary for administration of this section.
7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
 - a. The name and address of each qualified business in which the angel fund has made an investment;
 - b. The principal place of business for each qualified business reported under subdivision a;
 - c. The total amount invested in each qualified business; and
 - d. Any other information the tax commissioner determines is necessary for administration of this section.
9. For an angel fund certified before July 1, 2017, within thirty days after the end of each calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment and the amount of the investment.
10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal

employer identification number, address, or any other information prohibited from disclosure under this chapter.

11. Angel investors may be actively involved in the qualified businesses in which the angel fund invests but the angel fund may not invest in any qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the qualified business. The angel fund may not invest in a qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the qualified business.
12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or qualified business, or disallow the credit attributable to the noncompliance.

 - a. Notice of the revocation of the angel fund or qualified business's certification must be provided to the angel fund or qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
 - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
 - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
 - d. If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any other time period for assessment under this chapter that has not expired.
13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.
14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section."

Page 6, line 13, remove the overstrike over "Seed"

Page 6, line 13, remove "Angel investor seed"

Page 6, line 14, remove "(effective for the first three taxable years beginning after December 31, 2016)"

Page 6, line 21, replace "three taxable years" with "taxable year"

Page 7, after line 4, insert:

"r. Angel investor tax credit under section 57-38-01.26."

Page 7, remove lines 5 through 30

Page 8, remove lines 1 through 29

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 10

Page 11, line 11, replace "Section 9 of this" with "This"

Page 11, line 12, remove "2019, and sections 2 through 8 of this Act are effective for taxable"

Page 11, line 13, remove "years beginning after December 31,"

Renumber accordingly