17.0158.06000

FISCAL NOTE
Requested by Legislative Council
04/07/2017

Amendment to: HB 1045

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Reengrossed HB 1045 (Third Engrossment), with Conference Committee Amendments, replaces the existing angel fund income tax credit program with a new angel investor income tax credit program.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Current law allows an income tax credit for making an investment into an angel fund that the North Dakota Commerce Department certifies as meeting certain qualifying criteria. The credit is 45% of the investment, not to exceed $45,000 per year. A number of other limitations on the amount of allowable credits apply to both the investor and the angel fund.

Section 1 of the bill places a sunset date of July 1, 2017, on current law, and provides that current law will continue to apply to investments made before July 1, 2017, in angel funds organized before July 1, 2017. This section also removes obsolete language pertaining to a transfer of the credit to another taxpayer, which only applied to the 2011 and 2012 tax years.

Section 2 of the bill replaces the current angel fund tax credit program with a new angel investor tax credit program. Under the new program, an angel investor places monies into a qualified angel fund that, in turn, invests the monies into a qualified business. In general, a qualified business is one that the North Dakota Commerce Department certifies as being a for-profit entity engaged in research or the development of new products and processes and is not engaged in real estate activity. (An angel fund is not precluded from investing in a nonqualified business for which no credit is allowed.) To maintain credit eligibility, a minimum of 50% of the monies that an angel fund invests in qualified businesses during a prescribed 2-calendar year period must be invested into in-state qualified businesses. An in-state qualified business is one created under North Dakota law that either performs the majority of its business activity (except sales activity) in North Dakota or has a significant operation in North Dakota that has (or projects to have) more than 10 employees in North Dakota. To participate in the program, both the angel fund and the qualified business must be certified by the North Dakota Commerce Department as meeting the program's qualification requirements.

An angel investor is allowed a credit for making an investment in exchange for an ownership interest in a qualified business. If the investment is in an in-state qualified business, the credit rate is 35%. If the investment is in an out-of-state qualified business, the credit rate is 25%. The maximum credit an angel investor is allowed in a tax year is $45,000. A lifetime limit of $500,000 in credits applies to each angel investor, and a lifetime time limit of $5 million in credits applies to each angel fund. The new program applies to a qualified angel fund organized under North Dakota law on or after July 1, 2017, and to qualified investments made in qualified businesses on or after July 1, 2017.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   The bill replaces an existing income tax credit program with a new income tax program. Compared to the existing program, the requirements under the new program are considerably more restrictive: (1) Instead of allowing the credit when an angel investor place monies in an angel fund, the credit will be allowed only when the angel fund invests the monies received into a qualified business. (2) To maintain credit eligibility, a minimum of 50% of the monies an angel fund invests in qualified businesses during a prescribed 2-calendar year period must be in in-state qualified businesses. (3) To be an eligible qualified business, a business must apply to the North Dakota Commerce Department for certification. (4) The credit rate is reduced from 45% to 35% for in-state qualified businesses or to 25% for an out-of-state qualified business. Of the restrictions, those requiring the investments to be made in qualified businesses, with a minimum of 50% of those investments made in in-state qualified businesses, will have the most impact.

   Based on past years' activity under the current angel fund tax credit program, it is reasonably expected that, if left unchanged, there will be continued use of the program. Credits claimed in previous years under the current program have ranged from $2 million to $7 million per year. The more restrictive requirements under the proposed new program will slow and/or reduce the amount of investment activity for which the credit is allowed. Even if qualifying investment activity were to remain consistent with past years' activity, the lower credit rates of 35% and 25% will reduce the number of credits allowed.

   If enacted, Reengrossed HB 1045 (Third Engrossment), with Conference Committee Amendments, is expected to have a positive fiscal impact on state general fund revenues for the 2017-19 biennium. The amount of that impact cannot be determined because it is dependent on future investment behavior.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 04/09/2017