Seed Capital Investment Tax Credit Program

Program provisions

This document reflects changes made through the 2021 North Dakota Legislative Session, and generally applies to tax years, and to businesses certified or recertified, beginning on or after January 1, 2007. It is subject to changes in the law.

For provisions applicable to tax years beginning before January 1, 2007, contact the North Dakota Office of State Tax Commissioner.

Overview of program

Type of program	This program provides a nonrefundable income tax credit for making an investment in a business that is certified as a qualified business by the North Dakota Commerce Department's Division of Economic Development and Finance. See "Qualified business" and "Certification" below.
Purpose	This program provides an incentive to invest cash for working capital needs into a new or existing business operating in North Dakota that generates "new wealth." Generally, new wealth means new receipts from the sale of a product or service to customers outside North Dakota or to customers in North Dakota if availability of the product or service is limited.
Legislative history	Location in Code: N.D.C.C. Chapter 57-38.5. Created: 1993 (Session Law 1993, chapter 560). Amended: 1997 (S.L. 1997, ch. 495); 2001 (S.L. 2001, chs. 488 and 528); 2003 (S.L. 2003, ch. 18); 2005 (S.L. 2005, ch. 151); 2007 (S.L. 2007, chs. 18, 525, and 526); 2009 (S.L. 2009, ch. 545); 2013 (S.L. 2013, ch. 443); and 2017 (S.L. 2017, ch. 56).

Provision	Description
Qualified business	A "qualified business" is a business that the North Dakota Commerce Department's Division of Economic Development and Finance certifies (see "Certification of business" below) as meeting all of the following conditions: • It is a for-profit corporation, passthrough entity (S corporation, partnership, etc.), limited liability company, joint venture, or a satellite operation that is a for-profit corporation. • It is a primary sector business, which is a business that uses knowledge or labor to add value to a product, process, or service to create new wealth. New wealth means revenue from sales to customers outside North Dakota, or to customers in North Dakota if availability of the product is limited. • It is in compliance with North Dakota's securities laws. • It hires North Dakota residents to fill the majority of its employment positions in North Dakota. • It has its principal office and conducts the majority of its business (except sales activity) in North Dakota, or has a significant operation in North Dakota that has (or projects to have) more than 10 employees or $150,000 of annual sales. • It relies on innovation, research, or the development of new products and processes in its plans for growth and profitability. • It is not an agricultural commodity processing facility or a real estate investment trust.

Certification of business	To participate in the program, a business must apply to the North Dakota Commerce Department's Division of Economic Development and Finance (Commerce Department) for certification as a qualified business. The Commerce Department must certify whether a business meets the statutory requirements to be a qualified business. If certified, a letter will be sent to the qualified business containing the beginning and ending dates of the certification period, which may not exceed four years. A qualified business may apply for recertification under the program, not to exceed four years. Only one four-year recertification is allowed per business. The application must be filed within 90 days before the original certification expiration date. Questions about certification as a qualified business should be directed to the Commerce Department as follows— 1600 E. Boulevard Ave., Suite 2 P.O. Box 2057 Bismarck, ND 58503 Web site: http://www.commerce.nd.gov Phone: (701) 328-5300 E-mail: commerce@nd.gov **Note:** *This certification information applies to businesses certified or recertified on or after January 1, 2007.*
Use of investment monies by qualified business	The investment monies must be expended for plant, equipment, research and development, marketing and sales activity, or working capital.
Eligible taxpayer (investor)	The following are eligible taxpayers (investors) for purposes of the tax credit: • Individual (on Form ND-1) • Estate or trust (on Form 38)—*see **Note 2*** • Partnership (on Form 58)—*see **Note 1*** • C corporation (on Form 40) • S corporation (on Form 60)—*see **Note 1*** • Limited liability company—*see **Note 3*** ***Note 1:*** *If the taxpayer is a partnership (all types), S corporation, or limited liability company treated like a partnership or S corporation, the credit is determined at the passthrough entity level and passed through to the entity's owners in proportion to their ownership interests.* ***Note 2:*** *An estate or trust may either claim the tax credit or pass it through to its beneficiaries.* ***Note 3:*** *The type of form used by a limited liability company is dependent on how it files for federal income tax purposes—that is, as a partnership, corporation, etc.* **Angel fund certified before July 1, 2017 –** If a taxpayer is an angel fund that was certified under N.D.C.C. § 57-38-01.26 before July 1, 2017, it is treated like a passthrough entity—see ***Note 1*** above. If members (owners) of an angel fund claim the angel fund tax credit for investing in the fund, they are not allowed to claim the seed capital tax credit. (Note: The members may claim the seed capital tax credit only if they forego claiming the angel fund tax credit.) See "Ineligible taxpayers" below for an angel fund certified after June 30, 2017. **Ineligible taxpayers -** An eligible taxpayer ***does not*** include the following: • Government entity • Tax-exempt organization • Angel fund certified under N.D.C.C. § 57-38-10.26 after June 30, 2017 • Real estate investment trust • Taxpayer who owns a controlling interest (over 50%) in, or receives more than 50% of the taxpayer's gross annual income from, the qualified

	business. This ineligibility extends to the taxpayer's spouse, parent, sibling, or child (or spouse of a sibling or child). Ineligible taxpayers may invest in a qualified business, but they are not allowed a tax credit for it, and the investment is not counted against the $500,000 per qualified business investment limitation. See "Lifetime limit on qualified investments per qualified business" below.

Qualified investment	A "qualified investment" is one that satisfies all of the following conditions:
	• It must be made by an eligible taxpayer—see "Eligible taxpayer" above.
	• It must be made in cash.
	• It must be made on or after the date of certification and no later than the date the certification expires.
	• It must be at risk in the qualified business for at least three years after the date of investment.
	  ○ The date of investment is the date on which the qualified business receives and is able to use the monies in its operations.
	  ○ The monies are at risk if they are available for use by the qualified business. Monies placed in escrow are not at risk and do not constitute an eligible investment. Monies placed in escrow become a qualified investment on the date the monies are released from escrow to the qualified business for use in its operations.
	
	A transfer of monies from a retirement plan to a qualified business is deemed to be an investment made by the retirement plan participant if a separate account is maintained for the participant, the participant directly controls where the account's assets are invested, and the plan's trustee makes the transfer to the qualified business.

Amount of tax credit	The tax credit is equal to 45% of the total qualified investments made during the tax year by an eligible taxpayer.
Maximum tax credit allowed per taxpayer per tax year	No more than $112,500 of the total credit based on investments made in a tax year may be used in the tax year in which the investments were made or in any tax year to which an unused credit may be carried. ***Note:*** *This annual usage limit does not apply at the passthrough entity level in the case of a partnership, S corporation, or limited liability company treated like a passthrough entity, but only applies at the owner level (provided the owner is not another passthrough entity).*
Carryover of unused tax credit by taxpayer	The credit must be claimed first in the tax year in which the investment is made. If the total credit allowed cannot be used because it exceeds the lesser of $112,500 (annual usage limit) or the taxpayer's tax liability, the unused portion of the total allowable credit may be carried over and used on subsequent tax years' returns for up to 4 tax years. ***Note:*** *This carryover provision does not apply at the passthrough entity level in the case of a partnership, S corporation, or limited liability company treated like a passthrough entity, but only applies at the owner level (provided the owner is not another passthrough entity).*
Limit on tax credits allowed per taxpayer for all tax years	There is no specified limit on the total amount of credits allowed to a single eligible taxpayer; however, the $500,000 limit on the total investments received by a qualified business for which the credit is allowed and the annual $3.5 million limit on the total credits allowed under the program to all taxpayers for qualified investments made in a calendar year may indirectly limit the amount of credits allowed to a single eligible taxpayer.

Lifetime limit on qualified investments per qualified business	For businesses certified or recertified on or after January 1, 2007, tax credits are allowed on only the first $500,000 of qualified investments received by a qualified business. This does not preclude additional investments in the qualified business in excess of the $500,000 for which no tax credits are allowed. ***Note:*** *For purposes of applying this limitation, tax credits are allowed to investors in the chronological order of their investments, as determined by the investment reporting forms that the qualified business is required to file with the Office of Tax Commissioner—see "Reporting requirements" below.* ***Note:*** *Only qualified investments from eligible taxpayers are considered for purposes of this limitation.*
Limit on tax credits allowed under Program for all qualified investments made in all qualified businesses	In each calendar year, no more than $3.5 million in tax credits are allowed on all qualified investments made in all qualified businesses. Any portion of the $3.5 million that is not used up in a calendar year expires at the end of the calendar year and is not carried over and added to the next calendar year's $3.5 million credit limit. ***Note:*** *For purposes of applying this limitation, tax credits are allowed to investors in the chronological order of their investments, as determined by the investment reporting forms that the qualified business is required to file with the Office of Tax Commissioner—see "Reporting requirements" below.* ***Note:*** *This limitation is measured on a calendar year basis. However, investors determine the year in which to claim the tax credit based on their tax year, which may be a fiscal year.* ***Note:*** *Only qualified investments from eligible taxpayers are considered for purposes of this limitation.*
Reporting requirements	For each qualified investment received, a qualified business must do the following: • Within 30 days after receiving the qualified investment, complete an investment reporting form prescribed by the North Dakota Office of State Tax Commissioner. • Give a copy of the completed investment reporting form to the investor. • Submit a copy of the form to both the North Dakota Office of State Tax Commissioner and the North Dakota Commerce Department's Division of Economic Development and Finance. ***Note:*** *The investment reporting form must not be completed nor filed for an investment that does not qualify for the tax credit. See "Qualified investment" above.*
Tax credit recapture	The tax credit is disallowed and must be paid back with applicable penalty and interest by the taxpayer if the business has misrepresented anything in the application for certification, or if either the taxpayer or business fails to satisfy any condition of the law or any conditions consistent with the law set by the Office of State Tax Commissioner. If this applies, the taxpayer must file an amended North Dakota return for each tax year affected, and, in the case of a passthrough entity, amended North Dakota Schedule K-1s must be issued to the owners.