

CHAPTER 57-38.5

SEED CAPITAL INVESTMENT TAX CREDIT

57-38.5-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of commerce division of economic development and finance.
2. "New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.
3. "Passthrough entity" means a corporation that for the applicable tax 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 tax year is not taxed as a corporation under chapter 57-38.
4. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth but does not include an agricultural commodity processing facility as defined under section 57-38.6-01.
5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
 - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;
 - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
 - d. 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 North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
 - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.
6. "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum investments in qualified businesses.

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 5 of section 57-38.5-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification

must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.

3. A certification letter must be issued by the director to the qualified business. The certification letter must include:
 - a. The certification effective date.
 - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.
4. The maximum aggregate amount of qualified investments a qualified business may receive for all tax years is limited to five hundred thousand dollars under this chapter. The tax credit allowed on qualified investments in a qualified business must be allowed to taxpayers in the chronological order of the taxpayer's qualified investments as determined from the forms filed under section 57-38.5-07. The limitation on investments under this subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. 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 chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

57-38.5-04. Taxable year for seed capital investment tax credit. The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business.

57-38.5-04.1. Credit for investments made before 2005. Expired under 2005 S.L., ch. 151, § 25.

57-38.5-05. Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter is limited to three million five hundred thousand dollars for each calendar year. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

57-38.5-06. Seed capital investment tax credit - Procedure - Rules. To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

57-38.5-07. Investment reporting forms. Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.
2. The dollar amount paid for the investment by the taxpayer.

3. The date on which full consideration was received by the qualified business for the investment.

57-38.5-08. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers as provided under section 57-38-56 for purposes of this chapter. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the commissioner of commerce may adopt rules for that purpose.