

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1057**

Introduced by

Legislative Management

(Workforce Committee)

- 1 A BILL for an Act to amend and reenact section 57-38-01.26 of the North Dakota Century Code,  
2 relating to the angel fund investment tax credit; to provide for a legislative management study;  
3 to provide an effective date; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **57-38-01.26. Angel fund investment tax credit.**

- 8 1. A taxpayer is entitled to a credit against state income tax liability under section  
9 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is incorporated in  
10 this state. The amount of the credit to which a taxpayer is entitled is forty-five percent  
11 of the amount ~~invested~~remitted by the taxpayer ~~into~~ an angel fund during the taxable  
12 year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not  
13 more than forty-five thousand dollars. The investment used to calculate the credit  
14 under this section may not be used to calculate any other income tax deduction or  
15 credit allowed by law.
- 16 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least  
17 three years. Investments placed in escrow do not qualify for the credit. The credit must  
18 be claimed in the taxable year in which the investment in the angel fund was received  
19 by the angel fund. The credit allowed may not exceed the liability for tax under this  
20 chapter. If the amount of credit determined under this section exceeds the liability for  
21 tax under this chapter, the excess may be carried forward to each of the ~~four~~nineteen  
22 succeeding taxable years. A taxpayer claiming a credit under this section may not  
23 claim any credit available to the taxpayer as a result of an investment made by the  
24 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. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.
- 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.

4. 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.

5. 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.

6. a. 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.

b. 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.

## **SECTION 2. LEGISLATIVE MANAGEMENT STUDY - TRANSFERABILITY OF TAX**

**CREDITS.** During the 2011-12 interim, the legislative management shall consider studying the transferability of tax credits. The study must include an analysis of the tax policy reasons for implementing transferable credits, a review of the effectiveness of transferable credits in terms of potential annual state revenue losses and benefits, the use and effectiveness of transferable tax credits in other states, the impact on the sellers and purchasers of transferable credits, and the administration of transferable credits. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

- 1       **SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective for
- 2       the first four taxable years beginning after December 31, 2010, and is thereafter ineffective.