

**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.

j. Invest only in primary sector businesses, as defined in section 57-38-30.5.

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. If a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 7, 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. If a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 7, 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 7.

- 1 7. A taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit
2 earned under this section subject to the following:
- 3 a. A taxpayer's total credit sale, transfer, or assignment under this section may not
4 exceed one hundred thousand dollars over any combination of taxable years.
- 5 b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
6 tax credit transferor and the tax credit purchaser jointly shall file with the tax
7 commissioner a copy of the purchase agreement and a statement containing the
8 names, addresses, and taxpayer identification numbers of the parties to the
9 transfer, the amount of the credit being transferred, the gross proceeds received
10 by the transferor, and the taxable year or years for which the credit may be
11 claimed. The taxpayer and the purchaser also shall file a document allowing the
12 tax commissioner to disclose tax information to either party for the purpose of
13 verifying the correctness of the transferred tax credit. The purchase agreement,
14 supporting statement, and waiver must be filed within thirty days after the date
15 the purchase agreement is fully executed.
- 16 c. The purchaser of the tax credit shall claim the credit beginning with the taxable
17 year in which the credit purchase agreement was fully executed by the parties. A
18 purchaser of a tax credit under this section has only such rights to claim and use
19 the credit under the terms that would have applied to the tax credit transferor.
20 This subsection does not limit the ability of the tax credit purchaser to reduce the
21 tax liability of the purchaser, regardless of the actual tax liability of the tax credit
22 transferor.
- 23 d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and
24 the purchaser of the tax credit may not sell, assign, or otherwise transfer the
25 credit.
- 26 e. If the amount of the credit available under this section is changed as a result of
27 an amended return filed by the transferor, or as the result of an audit conducted
28 by the internal revenue service or the tax commissioner, the transferor shall
29 report to the purchaser the adjusted credit amount within thirty days of the
30 amended return or within thirty days of the final determination made by the
31 internal revenue service or the tax commissioner. The tax credit purchaser shall

1 file amended returns reporting the additional tax due or claiming a refund as
2 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
3 these returns and assess or issue refunds, even though other time periods
4 prescribed in these sections may have expired for the purchaser.

5 f. Gross proceeds received by the tax credit transferor must be assigned to North
6 Dakota. The amount assigned under this subsection cannot be reduced by the
7 taxpayer's income apportioned to North Dakota or any North Dakota net
8 operating loss of the taxpayer.

9 g. The tax commissioner has four years after the date of the credit assignment to
10 audit the returns of the credit transferor and the purchaser to verify the
11 correctness of the amount of the transferred credit and if necessary assess the
12 credit purchaser if additional tax is found due. This subdivision does not limit or
13 restrict any other time period prescribed in this chapter for the assessment of tax.

14 h. The tax commissioner may adopt rules to permit verification of the validity and
15 timeliness of the transferred tax credit.

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

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

25 **SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective for
26 the first two taxable years beginning after December 31, 2010, and is thereafter ineffective.