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Sixty-second
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1057**

Introduced by

Legislative Management

(Workforce Committee)

A BILL for an Act ~~to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure;~~ to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide for a ~~report to the~~ legislative management study; to provide an effective date; and to provide an expiration date.

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

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

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

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount ~~invested~~remitted by the taxpayer ~~in~~to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the ~~four~~nineteen succeeding taxable years. A taxpayer claiming a credit under this section may not

claim any credit available to the taxpayer as a result of an investment made by the 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 ~~paid for the investment~~remitted by the taxpayer or passthrough entity; and

(3) The date ~~on which full consideration~~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. ~~If a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 7, the~~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.~~

~~7. A taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section subject to the following:~~

~~a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.~~

~~b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.~~

~~c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.~~

~~d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.~~

~~e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the~~

~~amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.~~

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

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

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

~~**SECTION 2.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:~~

~~The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested.~~

**SECTION 2.** ~~**REPORT TO THE**~~ **LEGISLATIVE MANAGEMENT STUDY - TRANSFERABILITY OF TAX CREDITS.** During the 2011-12 ~~and 2013-14 interims, the tax commissioner shall report to the legislative management on the status of the transferability of tax credits under the angel fund tax credit.~~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.

**SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective for the first four taxable years beginning after December 31, 2010, and is thereafter ineffective. ~~Section 2 of this Act is effective for angel fund investments made after June 30, 2011.~~