

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact sections 57-38-01.26 and 57-38.5-02, subsections 2  
2 and 3 of section 57-38.5-03, and section 57-38.5-05 of the North Dakota Century Code, relating  
3 to the angel fund investment tax credit and the seed capital investment tax credit; and to  
4 provide an effective date.

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

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

8 **57-38-01.26. Angel fund investment tax credit.**

- 9 1. A taxpayer is entitled to a credit against state income tax liability under section  
10 57-38-30 or 57-38-30.3 for an investment made prior to January 1, 2018, in an angel  
11 fund that is a domestic organization created under the laws of this state. The amount  
12 of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted  
13 by the taxpayer to an angel fund during the taxable year. The aggregate annual credit  
14 for which a taxpayer may obtain a tax credit is not more than forty-five thousand  
15 dollars. The aggregate lifetime credits under this section that may be obtained by an  
16 individual, married couple, passthrough entity and its affiliates, or other taxpayer is five  
17 hundred thousand dollars. The investment used to calculate the credit under this  
18 section may not be used to calculate any other income tax deduction or credit allowed  
19 by law.
- 20 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least  
21 three years. An investment made in a qualified business from the assets of a  
22 retirement plan is deemed to be the retirement plan participant's investment for the  
23 purpose of this section if a separate account is maintained for the plan participant and  
24 the participant directly controls where the account assets are invested. Investments

1 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable  
2 year in which the investment in the angel fund was received by the angel fund. The  
3 credit allowed may not exceed the liability for tax under this chapter. If the amount of  
4 credit determined under this section exceeds the liability for tax under this chapter, the  
5 excess may be carried forward to each of the seven succeeding taxable years. A  
6 taxpayer claiming a credit under this section may not claim any credit available to the  
7 taxpayer as a result of an investment made by the angel fund in a qualified business  
8 under chapter 57-38.5 or 57-38.6.

9 3. An angel fund must:

- 10 a. Be a partnership, limited partnership, corporation, limited liability company, limited  
11 liability partnership, limited liability limited partnership, trust, or estate organized  
12 on a for-profit basis which is headquartered in this state.
- 13 b. Be organized for the purpose of investing in a portfolio of at least three primary  
14 sector companies that are early-stage and mid-stage private, nonpublicly traded  
15 enterprises with strong growth potential. For purposes of this section, an  
16 early-stage entity means an entity with annual revenues of up to two million  
17 dollars and a mid-stage entity means an entity with annual revenues over two  
18 million dollars not to exceed ten million dollars. Investments in real estate or real  
19 estate holding companies are not eligible investments by certified angel funds.  
20 Any angel fund certified before January 1, 2013, which has invested in real estate  
21 or a real estate holding company is not eligible for recertification.
- 22 c. Consist of at least six accredited investors as defined by securities and exchange  
23 commission regulation D, rule 501.
- 24 d. Not have more than twenty-five percent of its capitalized investment assets  
25 owned by an individual investor.
- 26 e. Have at least five hundred thousand dollars in commitments from accredited  
27 investors and that capital must be subject to call to be invested over an  
28 unspecified number of years to build a portfolio of investments in enterprises.
- 29 f. Be member-managed or a manager-managed limited liability company and the  
30 investor members or a designated board that includes investor members must  
31 make decisions as a group on which enterprises are worthy of investments.

- 1           g. Be certified as an angel fund that meets the requirements of this section by the  
2           department of commerce.
- 3           h. Be in compliance with the securities laws of this state.
- 4           i. Within thirty days after the date on which an investment in an angel fund is made,  
5           the angel fund shall file with the tax commissioner and provide to the investor  
6           completed forms prescribed by the tax commissioner which show as to each  
7           investment in the angel fund the following:
- 8           (1) The name, address, and social security number or federal employer  
9           identification number of the taxpayer or passthrough entity that made the  
10          investment;
- 11          (2) The dollar amount remitted by the taxpayer or passthrough entity; and
- 12          (3) The date the payment was received by the angel fund for the investment.
- 13          j. Within thirty days after the end of a calendar year, the angel fund shall file with  
14          the tax commissioner a report showing the name and principal place of business  
15          of each enterprise in which the angel fund has an investment and the amount of  
16          the investment.
- 17          4. The tax commissioner may disclose to the legislative management the reported  
18          information described under paragraphs 2 and 3 of subdivision i of subsection 3 and  
19          the reported information described under subdivision j of subsection 3.
- 20          5. Angel fund investors may be actively involved in the enterprises in which the angel  
21          fund invests but the angel fund may not invest in any enterprise if any one angel fund  
22          investor owns directly or indirectly more than forty-nine percent of the ownership  
23          interests in the enterprise. The angel fund may not invest in an enterprise if any one  
24          partner, shareholder, or member of a passthrough entity that directly or indirectly owns  
25          more than forty-nine percent of the ownership interests in the enterprise.
- 26          6. Investors in one angel fund may not receive more than five million dollars in aggregate  
27          credits under this section during the life of the angel fund but this provision may not be  
28          interpreted to limit additional investments in that angel fund.
- 29          7. a. A passthrough entity entitled to the credit under this section must be considered  
30          to be the taxpayer for purposes of this section, and the amount of the credit  
31          allowed must be determined at the passthrough entity level.

- 1           b. ~~For the first two taxable years beginning after December 31, 2010, if a~~  
2           ~~passthrough entity does not elect to sell, transfer, or assign the credit as provided~~  
3           ~~under this subsection and subsection 8, the amount of the total credit determined~~  
4           ~~at the entity level must be passed through to the partners, shareholders, or~~  
5           ~~members in proportion to their respective interests in the passthrough entity.~~
- 6           e. ~~For the first two taxable years beginning after December 31, 2010, if a~~  
7           ~~passthrough entity elects to sell, transfer, or assign a credit as provided under~~  
8           ~~this subsection and subsection 8, the passthrough entity shall make an~~  
9           ~~irrevocable election to sell, transfer, or assign the credit on the return filed by the~~  
10          ~~entity for the taxable year in which the credit was earned. A passthrough entity~~  
11          ~~that makes a valid election to sell, transfer, or assign a credit shall sell one~~  
12          ~~hundred percent of the credit earned, may sell the credit to only one purchaser,~~  
13          ~~and shall comply with the requirements of this subsection and subsection 8.~~
- 14          8. ~~For the first two taxable years beginning after December 31, 2010, a taxpayer may~~  
15          ~~elect to sell, transfer, or assign all of the earned or excess tax credit earned under this~~  
16          ~~section for investment in an angel fund established after July 31, 2011, subject to the~~  
17          ~~following:~~
- 18               a. ~~A taxpayer's total credit sale, transfer, or assignment under this section may not~~  
19               ~~exceed one hundred thousand dollars over any combination of taxable years.~~  
20               ~~The cumulative credits transferred by all investors in an angel fund may not~~  
21               ~~exceed fifty percent of the aggregate credits under this section during the life of~~  
22               ~~the angel fund under subsection 6.~~
- 23               b. ~~If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the~~  
24               ~~tax credit transferor and the tax credit purchaser jointly shall file with the tax~~  
25               ~~commissioner a copy of the purchase agreement and a statement containing the~~  
26               ~~names, addresses, and taxpayer identification numbers of the parties to the~~  
27               ~~transfer, the amount of the credit being transferred, the gross proceeds received~~  
28               ~~by the transferor, and the taxable year or years for which the credit may be~~  
29               ~~claimed. The taxpayer and the purchaser also shall file a document allowing the~~  
30               ~~tax commissioner to disclose tax information to either party for the purpose of~~  
31               ~~verifying the correctness of the transferred tax credit. The purchase agreement,~~

- 1 supporting statement, and waiver must be filed within thirty days after the date  
2 the purchase agreement is fully executed.
- 3 e. ~~The purchaser of the tax credit shall claim the credit beginning with the taxable~~  
4 ~~year in which the credit purchase agreement was fully executed by the parties. A~~  
5 ~~purchaser of a tax credit under this section has only such rights to claim and use~~  
6 ~~the credit under the terms that would have applied to the tax credit transferor.~~  
7 ~~This subsection does not limit the ability of the tax credit purchaser to reduce the~~  
8 ~~tax liability of the purchaser, regardless of the actual tax liability of the tax credit~~  
9 ~~transferor.~~
- 10 d. ~~A sale, assignment, or transfer of a tax credit under this section is irrevocable and~~  
11 ~~the purchaser of the tax credit may not sell, assign, or otherwise transfer the~~  
12 ~~credit.~~
- 13 e. ~~If the amount of the credit available under this section is changed as a result of~~  
14 ~~an amended return filed by the transferor, or as the result of an audit conducted~~  
15 ~~by the internal revenue service or the tax commissioner, the transferor shall~~  
16 ~~report to the purchaser the adjusted credit amount within thirty days of the~~  
17 ~~amended return or within thirty days of the final determination made by the~~  
18 ~~internal revenue service or the tax commissioner. The tax credit purchaser shall~~  
19 ~~file amended returns reporting the additional tax due or claiming a refund as~~  
20 ~~provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit~~  
21 ~~these returns and assess or issue refunds, even though other time periods~~  
22 ~~prescribed in these sections may have expired for the purchaser.~~
- 23 f. ~~Gross proceeds received by the tax credit transferor must be assigned to North~~  
24 ~~Dakota. The amount assigned under this subsection cannot be reduced by the~~  
25 ~~taxpayer's income apportioned to North Dakota or any North Dakota net~~  
26 ~~operating loss of the taxpayer.~~
- 27 g. ~~The tax commissioner has four years after the date of the credit assignment to~~  
28 ~~audit the returns of the credit transferor and the purchaser to verify the~~  
29 ~~correctness of the amount of the transferred credit and if necessary assess the~~  
30 ~~credit purchaser if additional tax is found due. This subdivision does not limit or~~  
31 ~~restrict any other time period prescribed in this chapter for the assessment of tax.~~

- 1           h. The tax commissioner may adopt rules to establish necessary administrative  
2           provisions for the credit under this section, ~~including provisions to permit~~  
3           ~~verification of the validity and timeliness of the transferred tax credit.~~

4           **SECTION 2. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum**  
7 **investments in qualified businesses.**

- 8           1. The director shall certify whether a business that has requested to become a qualified  
9           business meets the requirements of subsection 5 of section 57-38.5-01. The director  
10          shall establish the necessary forms and procedures for certifying qualified businesses.
- 11          2. A qualified business may apply to the director for a recertification. Only one  
12          recertification is available to a qualified business. The application for recertification  
13          must be filed with the director within ninety days before the original certification expiry  
14          date. The recertification issued by the director must comply with the provisions of  
15          subsection 3.
- 16          3. A certification letter must be issued by the director to the qualified business. The  
17          certification letter must include:
- 18               a. The certification effective date.
- 19               b. The certification expiry date. The expiry date may not be more than four years  
20               from the certification effective date.
- 21          4. The maximum aggregate amount of qualified investments a qualified business may  
22          receive for all tax years is limited to ~~five hundred thousand~~ four million dollars under  
23          this chapter. The tax credit allowed on qualified investments in a qualified business  
24          must be allowed to taxpayers in the chronological order of the taxpayer's qualified  
25          investments as determined from the forms filed under section 57-38.5-07. The  
26          limitation on investments under this subsection may not be interpreted to limit  
27          additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 28          5. By February first in each of the five years following a year in which a qualified  
29          business receives a qualified investment, the qualified business shall file with the tax  
30          commissioner completed forms prescribed by the tax commissioner which show the  
31          qualified business meets the requirements under section 57-38.5-01.

1       **SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 57-38.5-03 of the North Dakota  
2 Century Code are amended and reenacted as follows:

3       2. The maximum annual credit a taxpayer may claim under this section is not more than  
4       ~~one~~two hundred ~~twelve~~twenty-five thousand ~~five~~ hundred dollars. This subsection may  
5       not be interpreted to limit additional investment by a taxpayer for which that taxpayer is  
6       not applying for a credit.

7       3. Any amount of credit under subsection 1 not allowed because of the limitation in  
8       subsection 2 may be carried forward for up to ~~four~~seven taxable years after the  
9       taxable year in which the investment was made.

10       **SECTION 4. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **57-38.5-05. Seed capital investment tax credit limits.**

13       The aggregate amount of seed capital investment tax credit allowed for investments under  
14 this chapter is limited to ~~three~~fifteen million ~~five~~ hundred thousand dollars for each calendar  
15 year. If investments in qualified businesses reported to the commissioner under section  
16 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit  
17 must be allowed to taxpayers in the chronological order of their investments in qualified  
18 businesses as determined from the forms filed under section 57-38.5-07.

19       **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
20 December 31, 2017.