

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

Page 1, line 1, replace "sections" with "section"

Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections"

Page 1, line 1, remove "subsections 2"

Page 1, line 2, remove "and 3 of section"

Page 1, line 2, replace "and section" with "57-38.5-04,"

Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"

Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"

Page 1, line 4, after "date" insert "; to provide an expiration date; and to declare an emergency"

Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, line 1, after "h-" insert "a. An angel fund certified before April 1, 2017, shall pay a one-time surcharge of forty-five percent on the angel fund's net uninvested capital. For purposes of this subdivision, "net uninvested capital" means fifty percent of the angel fund's uninvested capital on April 1, 2017. Uninvested capital is calculated by subtracting the cumulative dollars invested by the angel fund as reported under subdivision b from the cumulative dollars invested by its investors in the fund from January 1, 2013, through March 31, 2017, as reported under subdivision i of subsection 3.

b. For each enterprise identified in the report required under subdivision j of subsection 3, the angel fund shall file a report with the tax commissioner showing the total dollars invested by the angel fund from January 1, 2013, through March 31, 2017. An angel fund may not amend the report filed under this section. The report must be filed on or before July 1, 2017.

c. The net uninvested capital surcharge must be paid on or before December 31, 2017.

d. The provisions of this chapter relating to administration, collection, and enforcement apply to the net uninvested capital surcharge.

9."

Page 6, after line 3, insert:

**"SECTION 2. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:

- a. Family care tax credit under section 57-38-01.20.
- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
- c. Agricultural business investment tax credit under section 57-38.6-03.
- d. SeedAngel investor seed capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
- e. Planned gift tax credit under section 57-38-01.21.
- f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
- g. Internship employment tax credit under section 57-38-01.24.
- h. Workforce recruitment credit under section 57-38-01.25.
- i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
- j. Microbusiness tax credit under section 57-38-01.27.
- k. Marriage penalty credit under section 57-38-01.28.
- ~~l. Homestead income tax credit under section 57-38-01.29.~~
- ~~m. Commercial property income tax credit under section 57-38-01.30.~~
- n. Research and experimental expenditures under section 57-38-30.5.
- ~~o. m.~~ Geothermal energy device installation credit under section 57-38-01.8.
- ~~p. n.~~ Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- ~~q. o.~~ Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- ~~r. p.~~ Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- ~~s. q.~~ Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 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, passthrough entity, 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 ~~at least two employees and~~ 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."

Page 6, line 22, remove the overstrike over "~~five-hundred-thousand~~"

Page 6, line 22, remove "four million"

Page 7, replace lines 1 through 9 with:

**"SECTION 5. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. SeedAngel investor 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~~twenty-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~~five 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 partners, shareholders, or 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 or which was certified under section 57-38-01.26 before April 1, 2017, unless the angel fund pays the surcharge under subsection 8 of section 57-38-01.26, is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-04. Taxable year for angel investor 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."

Page 7, line 12, overstrike "**Seed**" and insert immediately thereafter "**Angel investor seed**"

Page 7, line 13, after "of" insert "angel investor"

Page 7, line 14, replace "fifteen" with "ten"

Page 7, after line 18, insert:

**"SECTION 8. AMENDMENT.** Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-06. ~~Seed~~Angel investor 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.

**SECTION 9. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"

Page 7, line 19, replace "is" with "are"

Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

**"SECTION 11. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly