

HOUSE BILL NO. 1045

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact ~~sections~~section 57-38-01.26 ~~and~~, subsection 7 of
2 section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections 57-38.5-02, ~~subsections 2-~~
3 ~~and 3 of section~~ 57-38.5-03, ~~and section~~57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North
4 Dakota Century Code, relating to the angel fund investment tax credit and the seed capital
5 investment tax credit; ~~and~~to repeal section 57-38-01.26 and chapter 57-38.5 of the North
6 Dakota Century Code, relating to the angel fund investment tax credit and the seed capital
7 investment tax credit; to provide an effective date; to provide an expiration date; and to declare
8 an emergency.

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

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

12 **57-38-01.26. Angel fund investment tax credit.**

13 1. A taxpayer is entitled to a credit against state income tax liability under section
14 57-38-30 or 57-38-30.3 for an investment made ~~prior to January 1, 2018~~April 1, 2017,
15 in an angel fund that is a domestic organization created under the laws of this state.
16 The amount of the credit to which a taxpayer is entitled is forty-five percent of the
17 amount remitted by the taxpayer to an angel fund during the taxable year. The
18 aggregate annual credit for which a taxpayer may obtain a tax credit is not more than
19 forty-five thousand dollars. The aggregate lifetime credits under this section that may
20 be obtained by an individual, married couple, passthrough entity and its affiliates, or
21 other taxpayer is five hundred thousand dollars. The investment used to calculate the
22 credit under this section may not be used to calculate any other income tax deduction
23 or credit allowed by law.

- 1 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least
2 three years. An investment made in a qualified business from the assets of a
3 retirement plan is deemed to be the retirement plan participant's investment for the
4 purpose of this section if a separate account is maintained for the plan participant and
5 the participant directly controls where the account assets are invested. Investments
6 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable
7 year in which the investment in the angel fund was received by the angel fund. The
8 credit allowed may not exceed the liability for tax under this chapter. If the amount of
9 credit determined under this section exceeds the liability for tax under this chapter, the
10 excess may be carried forward to each of the seven succeeding taxable years. A
11 taxpayer claiming a credit under this section may not claim any credit available to the
12 taxpayer as a result of an investment made by the angel fund in a qualified business
13 under chapter 57-38.5 or 57-38.6.
- 14 3. An angel fund must:
- 15 a. Be a partnership, limited partnership, corporation, limited liability company, limited
16 liability partnership, limited liability limited partnership, trust, or estate organized
17 on a for-profit basis which is headquartered in this state.
- 18 b. Be organized for the purpose of investing in a portfolio of at least three primary
19 sector companies that are early-stage and mid-stage private, nonpublicly traded
20 enterprises with strong growth potential. For purposes of this section, an
21 early-stage entity means an entity with annual revenues of up to two million
22 dollars and a mid-stage entity means an entity with annual revenues over two
23 million dollars not to exceed ten million dollars. Investments in real estate or real
24 estate holding companies are not eligible investments by certified angel funds.
25 Any angel fund certified before January 1, 2013, which has invested in real estate
26 or a real estate holding company is not eligible for recertification.
- 27 c. Consist of at least six accredited investors as defined by securities and exchange
28 commission regulation D, rule 501.
- 29 d. Not have more than twenty-five percent of its capitalized investment assets
30 owned by an individual investor.

- 1 e. Have at least five hundred thousand dollars in commitments from accredited
2 investors and that capital must be subject to call to be invested over an
3 unspecified number of years to build a portfolio of investments in enterprises.
- 4 f. Be member-managed or a manager-managed limited liability company and the
5 investor members or a designated board that includes investor members must
6 make decisions as a group on which enterprises are worthy of investments.
- 7 g. Be certified as an angel fund that meets the requirements of this section by the
8 department of commerce.
- 9 h. Be in compliance with the securities laws of this state.
- 10 i. Within thirty days after the date on which an investment in an angel fund is made,
11 the angel fund shall file with the tax commissioner and provide to the investor
12 completed forms prescribed by the tax commissioner which show as to each
13 investment in the angel fund the following:
- 14 (1) The name, address, and social security number or federal employer
15 identification number of the taxpayer or passthrough entity that made the
16 investment;
- 17 (2) The dollar amount remitted by the taxpayer or passthrough entity; and
18 (3) The date the payment was received by the angel fund for the investment.
- 19 j. Within thirty days after the end of a calendar year, the angel fund shall file with
20 the tax commissioner a report showing the name and principal place of business
21 of each enterprise in which the angel fund has an investment and the amount of
22 the investment.
- 23 4. The tax commissioner may disclose to the legislative management the reported
24 information described under paragraphs 2 and 3 of subdivision i of subsection 3 and
25 the reported information described under subdivision j of subsection 3.
- 26 5. Angel fund investors may be actively involved in the enterprises in which the angel
27 fund invests but the angel fund may not invest in any enterprise if any one angel fund
28 investor owns directly or indirectly more than forty-nine percent of the ownership
29 interests in the enterprise. The angel fund may not invest in an enterprise if any one
30 partner, shareholder, or member of a passthrough entity that directly or indirectly owns
31 more than forty-nine percent of the ownership interests in the enterprise.

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

1 names, addresses, and taxpayer identification numbers of the parties to the
2 transfer, the amount of the credit being transferred, the gross proceeds received
3 by the transferor, and the taxable year or years for which the credit may be
4 claimed. The taxpayer and the purchaser also shall file a document allowing the
5 tax commissioner to disclose tax information to either party for the purpose of
6 verifying the correctness of the transferred tax credit. The purchase agreement,
7 supporting statement, and waiver must be filed within thirty days after the date
8 the purchase agreement is fully executed.

- 9 e. The purchaser of the tax credit shall claim the credit beginning with the taxable
10 year in which the credit purchase agreement was fully executed by the parties. A
11 purchaser of a tax credit under this section has only such rights to claim and use
12 the credit under the terms that would have applied to the tax credit transferor.
13 This subsection does not limit the ability of the tax credit purchaser to reduce the
14 tax liability of the purchaser, regardless of the actual tax liability of the tax credit
15 transferor.
- 16 d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and
17 the purchaser of the tax credit may not sell, assign, or otherwise transfer the
18 credit.
- 19 e. If the amount of the credit available under this section is changed as a result of
20 an amended return filed by the transferor, or as the result of an audit conducted
21 by the internal revenue service or the tax commissioner, the transferor shall
22 report to the purchaser the adjusted credit amount within thirty days of the
23 amended return or within thirty days of the final determination made by the
24 internal revenue service or the tax commissioner. The tax credit purchaser shall
25 file amended returns reporting the additional tax due or claiming a refund as
26 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
27 these returns and assess or issue refunds, even though other time periods
28 prescribed in these sections may have expired for the purchaser.
- 29 f. Gross proceeds received by the tax credit transferor must be assigned to North
30 Dakota. The amount assigned under this subsection cannot be reduced by the

- 1 taxpayer's income apportioned to North Dakota or any North Dakota net
2 operating loss of the taxpayer.
- 3 g. ~~The tax commissioner has four years after the date of the credit assignment to~~
4 ~~audit the returns of the credit transferor and the purchaser to verify the~~
5 ~~correctness of the amount of the transferred credit and if necessary assess the~~
6 ~~credit purchaser if additional tax is found due. This subdivision does not limit or~~
7 ~~restrict any other time period prescribed in this chapter for the assessment of tax.~~
- 8 h.a. An angel fund certified before April 1, 2017, shall pay a one-time surcharge of
9 forty-five percent on the angel fund's net uninvested capital. For purposes of this
10 subdivision, "net uninvested capital" means fifty percent of the angel fund's
11 uninvested capital on April 1, 2017. Uninvested capital is calculated by
12 subtracting the cumulative dollars invested by the angel fund as reported under
13 subdivision b from the cumulative dollars invested by its investors in the fund
14 from January 1, 2013, through March 31, 2017, as reported under subdivision i of
15 subsection 3.
- 16 b. For each enterprise identified in the report required under subdivision j of
17 subsection 3, the angel fund shall file a report with the tax commissioner showing
18 the total dollars invested by the angel fund from January 1, 2013, through
19 March 31, 2017. An angel fund may not amend the report filed under this section.
20 The report must be filed on or before July 1, 2017.
- 21 c. The net uninvested capital surcharge must be paid on or before December 31,
22 2017.
- 23 d. The provisions of this chapter relating to administration, collection, and
24 enforcement apply to the net uninvested capital surcharge.
- 25 9. The tax commissioner may adopt rules to establish necessary administrative
26 provisions for the credit under this section, ~~including provisions to permit verification of~~
27 ~~the validity and timeliness of the transferred tax credit.~~

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

- 30 7. A taxpayer filing a return under this section is entitled to the following tax credits:
31 a. Family care tax credit under section 57-38-01.20.

- 1 b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
- 2 c. Agricultural business investment tax credit under section 57-38.6-03.
- 3 d. ~~Seed~~Angel investor seed capital investment tax credit under section 57-38.5-03
- 4 (effective for the first three taxable years beginning after December 31, 2016).
- 5 e. Planned gift tax credit under section 57-38-01.21.
- 6 f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
- 7 57-38-01.23.
- 8 g. Internship employment tax credit under section 57-38-01.24.
- 9 h. Workforce recruitment credit under section 57-38-01.25.
- 10 i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first
- 11 three taxable years beginning after December 31, 2016).
- 12 j. Microbusiness tax credit under section 57-38-01.27.
- 13 k. Marriage penalty credit under section 57-38-01.28.
- 14 l. ~~Homestead income tax credit under section 57-38-01.29.~~
- 15 ~~m. Commercial property income tax credit under section 57-38-01.30.~~
- 16 ~~n. Research and experimental expenditures under section 57-38-30.5.~~
- 17 ~~e.m.~~ Geothermal energy device installation credit under section 57-38-01.8.
- 18 ~~p.n.~~ Long-term care partnership plan premiums income tax credit under section
- 19 57-38-29.3.
- 20 ~~q.o.~~ Employer tax credit for salary and related retirement plan contributions of
- 21 mobilized employees under section 57-38-01.31.
- 22 ~~r.p.~~ Automating manufacturing processes tax credit under section 57-38-01.33
- 23 (effective for the first five taxable years beginning after December 31, 2012).
- 24 ~~s.q.~~ Income tax credit for passthrough entity contributions to private education
- 25 institutions under section 57-38-01.7.

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

- 28 5. "Qualified business" means a business other than a real estate investment trust which
- 29 is a primary sector business that:
- 30 a. Is incorporated or its satellite operation is incorporated as a for-profit corporation,
- 31 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 ~~or~~ 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.

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

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

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 5 of section 57-38.5-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.
3. A certification letter must be issued by the director to the qualified business. The certification letter must include:
 - a. The certification effective date.
 - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.
4. The maximum aggregate amount of qualified investments a qualified business may receive for all tax years is limited to five hundred thousand ~~four million~~ dollars under this chapter. The tax credit allowed on qualified investments in a qualified business must be allowed to taxpayers in the chronological order of the taxpayer's qualified

1 investments as determined from the forms filed under section 57-38.5-07. The
2 limitation on investments under this subsection may not be interpreted to limit
3 additional investment by a taxpayer for which that taxpayer is not applying for a credit.
4 5. By February first in each of the five years following a year in which a qualified
5 business receives a qualified investment, the qualified business shall file with the tax
6 commissioner completed forms prescribed by the tax commissioner which show the
7 qualified business meets the requirements under section 57-38.5-01.

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

10 ~~2. The maximum annual credit a taxpayer may claim under this section is not more than~~
11 ~~onetwo hundred twelvetwenty-five thousand five hundred dollars. This subsection may~~
12 ~~not be interpreted to limit additional investment by a taxpayer for which that taxpayer is~~
13 ~~not applying for a credit.~~

14 ~~3. Any amount of credit under subsection 1 not allowed because of the limitation in~~
15 ~~subsection 2 may be carried forward for up to fourseven taxable years after the~~
16 ~~taxable year in which the investment was made.~~

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

19 **57-38.5-03. SeedAngel investor seed capital investment tax credit.**

20 If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to
21 a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- 22 1. The amount of the credit to which a taxpayer is entitled is ~~forty-five~~twenty-five percent
23 of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 24 2. The maximum annual credit a taxpayer may claim under this section is not more than
25 one hundred twelve thousand five hundred dollars. This subsection may not be
26 interpreted to limit additional investment by a taxpayer for which that taxpayer is not
27 applying for a credit.
- 28 3. Any amount of credit under subsection 1 not allowed because of the limitation in
29 subsection 2 may be carried forward for up to ~~four~~five taxable years after the taxable
30 year in which the investment was made.

- 1 4. A passthrough entity that invests in a qualified business must be considered to be the
2 taxpayer for purposes of the investment limitations in this section and the amount of
3 the credit allowed with respect to a passthrough entity's investment in a qualified
4 business must be determined at the passthrough entity level. The amount of the total
5 credit determined at the passthrough entity level must be allowed to the partners,
6 shareholders, or members in proportion to their respective interests in the passthrough
7 entity.
- 8 5. An investment made in a qualified business from the assets of a retirement plan is
9 deemed to be the retirement plan participant's investment for the purpose of this
10 chapter if a separate account is maintained for the plan participant and the participant
11 directly controls where the account assets are invested.
- 12 6. The investment must be made on or after the certification effective date and must be
13 at risk in the business to be eligible for the tax credit under this section. An investment
14 for which a credit is received under this section must remain in the business for at
15 least three years. Investments placed in escrow do not qualify for the credit.
- 16 7. The entire amount of an investment for which a credit is claimed under this section
17 must be expended by the qualified business for plant, equipment, research and
18 development, marketing and sales activity, or working capital for the qualified
19 business.
- 20 8. A taxpayer who owns a controlling interest in the qualified business or who receives
21 more than fifty percent of the taxpayer's gross annual income from the qualified
22 business is not entitled to a credit under this section. A member of the immediate
23 family of a taxpayer disqualified by this subsection is not entitled to the credit under
24 this section. For purposes of this subsection, "immediate family" means the taxpayer's
25 spouse, parent, sibling, or child or the spouse of any such person.
- 26 9. The tax commissioner may disallow any credit otherwise allowed under this section if
27 any representation by a business in the application for certification as a qualified
28 business proves to be false or if the taxpayer or qualified business fails to satisfy any
29 conditions under this section or any conditions consistent with this section otherwise
30 determined by the tax commissioner. The commissioner has four years after the due
31 date of the return or after the return was filed, whichever period expires later, to audit

1 the credit and assess additional tax that may be found due to failure to comply with the
2 provisions of this chapter. The amount of any credit disallowed by the tax
3 commissioner that reduced the taxpayer's income tax liability for any or all applicable
4 tax years, plus penalty and interest as provided under section 57-38-45, must be paid
5 by the taxpayer.

- 6 10. An angel fund that invests in a qualified business must be considered to be the
7 taxpayer for purposes of the investment limitations in this section. The amount of the
8 credit allowed with respect to an angel fund's investment in a qualified business must
9 be determined at the angel fund level. The amount of the total credit determined at the
10 angel fund level must be allowed to the investors in the angel fund in proportion to the
11 investor's respective interests in the fund. An angel fund that is subject to the tax
12 imposed under chapter 57-38 or which was certified under section 57-38-01.26 before
13 April 1, 2017, unless the angel fund pays the surcharge under subsection 8 of section
14 57-38-01.26, is not eligible for the investment tax credit under this chapter.

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

17 **57-38.5-04. Taxable year for angel investor seed capital investment tax credit.**

18 The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax
19 liability for the taxable year in which the investment in the qualified business was received by
20 the qualified business.

21 **SECTION 7. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-38.5-05. ~~Seed~~Angel investor seed capital investment tax credit limits.**

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

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

1 **57-38.5-06. ~~Seed~~Angel investor seed capital investment tax credit - Procedure -**
2 **Rules.**

3 To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on
4 the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner
5 and file with the return a copy of the form issued by the qualified business as to the taxpayer's
6 investment in the qualified business under section 57-38.5-07.

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

9 **SECTION 10. EFFECTIVE DATE.** ~~This~~Section 9 of this Act is effective for taxable years
10 beginning after December 31, 2019, and sections 2 through 8 of this Act ~~is~~are effective for
11 taxable years beginning after December 31, ~~2017~~2016.

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