ADDITIONAL PROVISION OPTIONS FOR BILL DRAFT [17.0110.01000]

This memorandum was requested to provide information regarding additional provisions that could be incorporated into bill draft [17.0110.01000] to reflect provisions similar to those found in Minnesota's small business investment tax credit.

Provision	Description
Eligible business requirements	Minnesota's small business investment credit applies to investments in a small business certified by the Department of Employment and Economic Development (DEED). To receive certification from DEED, a small business must: • Be headquartered in Minnesota; • Have 51 percent of its employees and payroll in Minnesota; • Be engaged in a specified field involving proprietary technology or products or certain fields involving nontechnological proprietary products, processes, or services; • Have fewer than 25 employees; • Pay the majority of its employees a wage equal to at least 175 percent of the federal poverty guideline for a family of four; • Have been in operation 20 years or less if engaged in the business of developing drugs or medical devices that require approval from the United States Food and Drug Administration or 10 years or less if engaged in any other business; and • Have not received more than $4 million in private equity investment. Bill draft [17.0110.01000] provides a credit for investments in angel funds that invest in qualified business as defined in North Dakota Century Code Section 57-38.5-01. To receive certification as a qualified business, a business must: • Add value to a product process or service through the employment of knowledge or labor which results in the creation of new wealth; • Be incorporated as a for-profit corporation, passthrough entity, or joint venture or have a satellite operation incorporated as a for-profit corporation; • Be in compliance with the security laws of this state; • Hire North Dakota residents to fill the majority of its employment positions in this state; • Have its principal office in this state and have the majority of its business activity performed in this state, with the exception of sales activities, or have a significant operation in this state which has or is projected to have more than 10 employees or $150,000 in sales annually; and • Rely on innovation, research, or the development of new products and processes in its plans for growth and profitability.
Certification and reporting fees	Minnesota's small business investment credit program requires yearly certification of investors, funds, and qualified businesses. A yearly fee of $350 is charged for investor certifications, $1,000 is charged for angel fund certifications, and $150 is charged for qualified business certifications. A yearly reporting fee of $100 is also charged for reports filed by investors, funds, and qualified businesses. Bill draft [17.0110.01000] contains various reporting requirements and requires angel funds and qualified businesses to apply for certification but does not contain fees associated with reporting or certification requirements.

Provision	Description
Reporting requirements	Minnesota's small business investment credit contains annual reporting requirements for investors, funds, and qualified businesses. Qualified investors and funds must annually report information pertaining to any investments held for less than 3 years, including the name of the business receiving the investment, the date the investment was received, and the amount of the investment. Qualified businesses must file an annual report verifying the business is headquartered in Minnesota, maintains at least 51 percent of its employees and payroll in Minnesota, pays annual wages of at least 175 percent of the federal poverty level for a family of four, and is engaged in the types of business activities allowed under statute. A qualified business must also disclose any investments received by the business which do not qualify for the credit and any publicly traded securities, liquidation events, or indirect hires. The DEED is also required to report annually to the legislature and must report information pertaining to each qualified business, a list of credit recipients, and the number and amount of credits issued, revoked, or no longer subject to the 3-year investment holding period. Bill draft [17.0110.01000] requires an angel fund to report the following information to the Tax Commissioner within 30 days of receiving an investment: • The name, address, and social security or federal employer identification number of the taxpayer or passthrough entity that made the investment; • The dollar amount remitted by the taxpayer or passthrough entity to the angel fund; and • The date payment was received by the angel fund for investment. An angel fund is also required to file a report with the Tax Commissioner within 30 days after the end of a calendar year showing the name and principal place of business of each qualified business in which the angel fund has invested, the date the investment was received by the qualified business, and the amount of each investment. The angel fund must also file a report with the Tax Commissioner within 3 years after receiving an investment that qualified for an angel fund credit which shows the investment was invested in a qualified business.
Credit clawbacks	Minnesota's small business investment credit may be clawed back if a qualified business fails to maintain threshold wage requirements or at least 51 percent of its employees and payroll in Minnesota for at least 5 years beginning the year after the qualified business received an investment qualifying for a credit. The credit must be repaid by the qualified business rather than the investor who received the credit. The amount of the credit that must be repaid declines with each additional year the qualified business conforms with the specified wage, employment, and payroll thresholds. If the qualified business fails to maintain the threshold requirements in the first year following the receipt of investment funds, the qualified business must repay the entire credit amount associated with the investment. If the qualified business fails to maintain the threshold requirements in the second year following the receipt of investment funds, the qualified business must repay 80 percent of the credit amount associated with the investment. The amount of the credit that must be repaid by a qualified business decreases by 20 percent for each year the qualified business maintains the threshold requirements. Minnesota's small business investment credit may be clawed back from a fund or an investor if the fund or investor fails to maintain the investment in the qualified business for at least 3 years. Bill draft [17.0110.01000] does not contain specific clawback provisions. However, the Tax Commissioner has authority to require a taxpayer to file an amended return if the taxpayer fails to maintain an investment qualifying for the credit at risk in an angel fund for the required 3-year period.