

SEED CAPITAL INVESTMENT TAX CREDIT LIMITATIONS

The seed capital investment tax credit was created by 1993 legislation to provide tax incentives for investment in North Dakota primary sector businesses intending to generate revenues by sales of products or services to customers outside the state.

As created in 1993, an investor was eligible for a credit against state income tax liability on the long-form return (now called Form ND-2) equal to 30 percent of the amount invested in qualified businesses. In any taxable year, the investor could claim no more than 50 percent of the amount of credit for investments and the credit could not exceed 50 percent of the taxpayer's income tax liability. The credit was limited to a minimum investment of \$5,000 and a maximum investment of \$50,000 in a taxable year. The aggregate amount of seed capital investment tax credits statewide was limited to \$250,000 in any taxable year.

In 2001 the credit was made available to taxpayers filing the short-form return (now called Form ND-1). The limit of the credit to 50 percent of the taxpayer's tax liability for the year was removed. The \$250,000 limit on aggregate seed capital investment tax credit under North Dakota Century Code Section 57-38.5-05 was replaced by the following language:

The aggregate amount of seed capital investment tax credit allowed for investments under this chapter through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred thousand dollars.

In 2003 the seed capital investment tax credit for a taxpayer was increased from 30 to 45 percent of the amount invested and the maximum amount of investment for which the credit could be claimed was increased from \$50,000 to \$250,000. The limitation

that a taxpayer could claim no more than 50 percent of the credit in a single taxable year was reduced to a limitation that a taxpayer may claim no more than one-third of the credit attributable to investments in a single taxable year.

It appears that in late May 2004 aggregate seed capital investment tax credits reached \$2,500,000 and the Tax Commissioner determined that further credits are unavailable. A question has been raised of whether the aggregate credit limit of \$2,500,000 applies to investments going back to 1993 or only applies to investments after 2002.

The \$2,500,000 limit for credits was created by enactment of 2001 House Bill No. 1413. That bill as introduced would have increased the limit on credits to \$2,500,000 per taxable year. The testimony on 2001 House Bill No. 1413 indicates that before the 2001 legislative session, no taxpayer had claimed the seed capital investment tax credit. The limitation that was ultimately enacted was contained in an amendment adopted by the conference committee on 2001 House Bill No. 1413. Senator Grindberg had amendments prepared and explained them to the conference committee. The minutes for the bill contain the following statement from his explanation:

Rather than have available five million dollars in tax credits, the amendments pare back a total of \$2.5 million, \$1 million in taxable year 2002, \$1.5 million in taxable year 2003, and it would carry forward as far as 2006.

It appears the legislative history supports the Tax Commissioner's conclusion that the \$2,500,000 cap on seed capital investment tax credits applies to all credits claimed since the credit was enacted in 1993.