North Dakota Seed Capital Investment Tax Credit Program:

Comparison of Similar Programs in Selected Midwest States

Prepared by: Joseph J. Becker, ND Office of State Tax Commissioner
March 29, 2010

The attached chart provides a look at the main features of seed capital investment income tax credit programs in North Dakota and its neighboring Midwest states. Included are Iowa, Kansas, Minnesota, Montana, Nebraska, and Wisconsin. Neither Montana nor Nebraska have a seed capital investment tax credit program. Following is a summary of the main features and notable differences.

Type of incentive

Similar to North Dakota, the incentive is in the form of a nonrefundable income tax credit. Two states—Iowa and Wisconsin—also allow the credit against other tax types, such as franchise taxes on banks and the insurance premium tax.

Rate of credit

Range from 20% in Iowa to 45% in North Dakota and Minnesota.

Qualified entity or business

Similar to North Dakota, to qualify for the tax credit, an investment must consist of a cash investment in an entity or business that is approved (or certified) by the state's department of commerce (Dept. of Employment & Economic Development in Minnesota). The eligibility criteria vary widely from state to state.

State	**Program Focus**
North Dakota	Primary sector business that uses innovation, research, or development of new products and processes in its plans for growth
Iowa	Either (1) start-up or early-stage business or (2) community-based seed capital fund set up to create investment pool for investment in a start-up or early-stage business *(excludes businesses engaged in certain areas—for example, retail, real estate, and professional services)*
Kansas	Creation of local seed capital pool to provide funding to a small business with a new product or service to assist with prototype development, conducting market study, or creating business plan for development or production
Minnesota	Identical to North Dakota except that business must be located in a "border city"—Breckenridge, Dilworth, E. Grand Forks, Moorhead, and Ortonville—for purposes of the Minnesota Border City Development Zone Program
Wisconsin	Creation of investment pool managed by a certified fund manager to provide funding to early-stage business conducting pre-commercialization activity for development of a proprietary product or service technology, especially one engaged in biotechnology, nanotechnology, health or information technology *(excludes businesses engaged in certain areas—for example, retail, real estate, professional services, transportation, and financial services)*

Unused credit carryover

All states allow a carryover of an unused credit, most of which were 5 years or less. Wisconsin has a 15-year carryover, and Kansas offers an indefinite carryover time period.

Credit limit per taxpayer per year

Generally, investors are allowed the credit on the entire amount of their investment. In North Dakota and Minnesota, the amount of the total credit that may be used in a year is limited to $112,500 (with the remainder allowed to be carried over). In Iowa, the amount of credit an investor is allowed for investment in a single qualified business or community-based fund in a year is limited to $50,000, with an aggregate limit of $250,000 for 5 different investments in 5 different entities.

Program credit limits

The limit on the amount of total credits allowed for all years under the program varied widely from state to state.

State	Program Limit
North Dakota	$3.5 million per calendar year
Iowa	$10 million for all years
Kansas	Not able to determine
Minnesota	Depends on amount the state appropriates each biennium for the Border City Development Zone Program, and is further dependent on how much each border city allocates to the seed capital credit program
Wisconsin	$6 million per calendar year for 2008-2010; $18.5 million per calendar year after 2010

Transfer option

Wisconsin allows a credit to be transferred to another taxpayer, subject to (1) prior approval from the fund manager and (2) the fund manager's submission of transfer documentation to the Departments of Commerce and Revenue. A credit may be transferred more than once, but only one time in a 12-month period. The Department of Commerce may charge a fee of 1% of the transferred credit amount.

> *Note: North Dakota does have a transferable credit. The research expense income tax credit is the only income tax credit that may be transferred, subject to documentation and reporting requirements. Prior to 2009, and subject to very limited conditions, North Dakota's wind energy income tax credit also was transferable for a very short time; the wind energy credit transfer feature was repealed in 2009.*

Iowa Fund of Funds Investment Tax Credit Program

Although geared toward venture capital funding and networking, the Iowa Fund of Funds Investment Tax Credit Program is included in the table because of a number of its unique features. The Fund of Funds is an entity established by the Iowa Capital Investment Board to accumulate funds for investing in selected venture capital fund entities. The notable features include:

- It is a certificate-based program, which means an investor receives a certificate representing the value of the credit allowed.
- The credit is contingent on the investor incurring a loss of return on the investment at one of the certificate's scheduled return dates.
- On a schedule return date, if the actual returns equal the schedule return, a portion of the credit value is cancelled.
- The certificate may be transferred by endorsement and surrender to the Board, which then issues a new certificate to the transferee. The credit value may be transferred to more than one transferee. There is no limit on the number of times a certificate may be transferred.
- Cancelled credits and allowed credits not used up by the end of the 7-year carryforward period are returned to the Program's available credit pool.

Seed Capital Investment Tax Credit Program (NDCC Chp. 57-38.5)— Summary of investments and credits for all years

Prepared by: Joseph J. Becker, North Dakota Office of State Tax Commissioner
March 26, 2010

Calendar year	Number of investments	Number of investors	Total amount invested [1]	Eligible amount of investment	Allowable credits
2002	22	22	$ 990,710.00	$ 790,710.00	$ 237,213.00
2003	178	163	2,328,020.39	2,328,020.39	1,047,609.18
2004 [2]	622	583	18,937,689.36	17,093,239.51	5,644,539.99
2005	270	213	12,982,262.81	5,556,715.56	2,500,522.00
2006	97	80	1,930,674.76	1,930,674.76	868,803.64
2007	116	96	1,462,287.29	1,377,522.29	619,887.28
2008	30	28	3,148,978.00	1,148,978.00	517,040.10
2009	23	21	1,858,452.00	1,756,452.00	790,403.40
Total	1,340	- [3]	$ 43,639,074.61	$ 31,982,317.51	$ 12,226,018.59

[1] The investment figures shown only reflect investments reported under the program by the qualified seed capital businesses; only investments eligible for the tax credit are required to be reported.

[2] A $2.5 million ceiling on the tax credits was in place for years prior to 2005. That ceiling was reached on May 25, 2004. The 2005 legislature enacted legislation authorizing a retroactive tax credit for those 2004 investments that did not qualify for the tax credit because of the $2.5 million ceiling. The retroactive tax credit was allowed at the rate of 30 percent for investments made in agricultural commodity processing facilities, and at the rate of 45 percent for all other investments. The figures shown in the above table for 2004 break down as follows:

Non-retroactive investments	122	138	$ 2,656,191.87	$ 2,700,395.16	$ 1,215,177.82
Retroactive investments—					
30 percent	448	410	$ 15,532,705.04	$ 13,649,451.90	$ 4,094,835.57
45 percent	52	35	748,792.45	743,392.45	334,526.60
Subtotal	500	445	$ 16,081,497.49	$ 14,392,844.35	$ 4,428,362.17
Total for 2004	622	583	$ 18,937,689.36	$ 17,093,239.51	$ 5,644,539.99

[3] Some investors made more than one investment and invested in more than one year.

North Dakota Seed Capital Investment Tax Credit Program

Comparison of Similar Programs in Selected Midwest States

Program Description	North Dakota	Iowa	Kansas	Minnesota	Wisconsin	Montana / Nebraska
		Selected Midwest States				
Name of credit	Seed Capital Investment Tax Credit	Has three capital investment tax credits: 1— Iowa Fund of Funds ITC 2— Qualifying Business or Community-Based (QBCB) Seed Capital Fund ITC 3— Venture Capital Fund ITC	Local Seed Capital Pool Investment Tax Credit	Seed Capital Investment Tax Credit	Early Stage Seed Capital Investment Tax Credit	**No seed capital or venture capital-type investment tax credit programs**
Statute	N.D.C.C. ch. 57-38.5	1— Iowa Code §§ 15E.61 through 15E.69 2— Iowa Code §§ 15E.41 through 15E.46 3— Iowa Code § 15E.51	Kan. Stat. Ann. §§ 74-8401 through 74-8404	Minn. Stat. §§ 116J.8732 and 290.06, Subd. 35	Wis. Stat. § 71.07(5b)	
Year created	1993 *Program not utilized until 2002 when credit was first allowed to individuals on Form ND-1, the former "short form."*	2002	1987	2008	2004	
Sunset date	None	None	None	None	None	
General description of tax credit	Nonrefundable income tax credit for an equity investment in a qualified North Dakota business.	**Iowa Fund of Funds ITC** Contingent nonrefundable tax credit against income, financial institution franchise, credit union, and gross premium taxes for equity investment in an Iowa Fund of Funds. **QBCB Seed Capital ITC** Nonrefundable tax credit against income, financial institution franchise, credit union, and gross premium taxes for equity investment	Nonrefundable income tax credit for an equity investment in a certified local seed capital pool.	Nonrefundable income tax credit for an equity investment in a qualified Minnesota business.	Nonrefundable tax credit against income, corporate franchise, and gross premium taxes for an initial investment in a qualified business through a certified fund manager.	

North Dakota Seed Capital Investment Tax Credit Program

Comparison of Similar Programs in Selected Midwest States

	Selected Midwest States					
Program Description	**North Dakota**	**Iowa**	**Kansas**	**Minnesota**	**Wisconsin**	**Montana / Nebraska**
		in a qualified business or community-based seed capital fund. **Venture Capital Fund ITC** Nonrefundable tax credit against income, financial institution franchise, credit union, and gross premium taxes for equity investment in a qualified venture capital fund.				
Qualified business or entity	As certified by Dept. of Commerce, a primary sector business that: • Has its principal office or satellite operation in ND; • Conducts the majority of its business (except sales activity) in ND, or has a significant operation in ND with more than 10 employees or $150,000 of annual sales; • Hires ND residents to fill the majority of its positions in ND; • Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability; and, • Is neither an agricultural commodity processing facility nor a real estate investment trust.	**Iowa Fund of Funds ITC** Private, for-profit limited partnership or LLC set up by the Iowa Capital Investment Corporation, a state-chartered entity governed by the Iowa Capital Investment Board. The limited partnership or LLC is used to accumulate capital for the purpose of investing in selected venture capital funds. Each venture capital fund, in turn, provides capital, expertise, and networking to local businesses in Iowa. **QBCB Seed Capital ITC** As certified by the Iowa Capital Investment Board, a qualified business is one that: • Has its principal business operations in IA; • Has been in operation for less than 7 years; • Has owner with education or experience needed to	As certified by the Dept. of Commerce, a local seed capital pool is a fund that: • Provides funding to a small business with a new product or service to develop a prototype, conduct a market study, or establish a business plan for development or production; • Has at least $200,000 of private cash investment; • Uses funds from sources other than the investments to support its operations; and, • Only invests in Kansas businesses.	As certified by Dept. of Employment & Economic Development, a primary sector business that: • Has its principal office or satellite operation in a MN border city; • Conducts the majority of its business (except sales activity), or has a significant operation with more than 10 employees or $150,000 of annual sales, in a MN border city; • Hires MN residents to fill the majority of its positions in MN; • Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability; and, • Is not a real estate investment trust. MN border cities (by statute)— • Breckenridge	Dept. of Commerce certifies eligible fund managers and the businesses in which they must invest the dollars received from investors. A qualified business is one that: • Is headquartered in WI; • Has over 50% percent of its employees in WI; • Engages in either (1) innovation in manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology; or processing or assembling products; or services enabled by proprietary technology; or (2) pre-commercialization activity related to proprietary technology that includes conducting research, developing a	

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		Selected Midwest States				
		operate the business; • Does not engage in retail sales, real estate, health care, or other professional services; • Has net worth under $10 million; and, • Has secured $250,000 of equity or near equity financing within 24 months of receiving investments qualifying for the credit. A community-based seed capital fund: • Is a limited partnership or LLC; • Has capital commitments from investors and investments in qualifying businesses of at least $125,000 but not more than $3 million; and • Has at least 5 investors (excluding affiliates), with no single investor (including affiliates of the investor) owning more than 25% of the fund. **Venture Capital Fund ITC** Private seed or venture capital partnership or entity fund certified by the Iowa Capital Investment Board.		• Dilworth • East Grand Forks • Moorhead • Ortonville	new product or process, or developing a service principally reliant on proprietary technology. • Does not primarily engage in real estate development, insurance, banking, lending, lobbying, political consulting, professional services, wholesale or retail trade, leisure, hospitality, transportation, or construction except power plants that derive energy from a renewable resource; • Has under 100 employees; • Has not operated in WI for more than 10 consecutive years; • Did not receive private equity cash investments over $10,000,000 prior to certification; • For tax years after 2007 and before 2011, has not received more than $4 million in eligible investments; and, • For tax years after 2010, has not received more than $8 million in eligible investments.	
Certificate-based program? This indicates whether or not the state issues a redeemable credit certificate to the investor.	No	Yes—all three ITC programs. Investors must apply to the Iowa Capital Investment Board to obtain a credit certificate.	No	No	No	

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		Except for the Iowa Fund of Funds, investors must submit their credit applications on or before March 31 of the calendar year following the calendar year in which the investment is made.				
Eligible taxpayers	• Individual • Estate • Trust • Partnership • C corporation • S corporation • LLC A taxpayer who owns a controlling interest in, or receives over 50% of gross annual income from, the qualified business is not eligible for credit. This extends to a spouse, parent, sibling, or child (or spouse of a sibling or child). An REIT also is not eligible for credit. A taxpayer claiming the angel fund ITC is not eligible for a seed capital ITC received from an angel fund that invested in a qualified business. In the case of an angel fund or a passthrough entity, the credit determined at the entity level is passed through to the entity's owners.	All three programs— • Individual • Estate • Trust • Partnership • C corporation • S corporation • LLC **QBCB Seed Capital ITC** A taxpayer who owns 70% or more of the qualified business is not eligible for this credit. **Venture Capital Fund ITC** A taxpayer is not eligible for this credit if the taxpayer: • Is a venture capital investment fund allocation manager for the Iowa Fund of Funds; or, • Receives a credit for the same investment in a community-based seed capital fund.	• Individual • Estate • Trust • Partnership • C corporation • S corporation • LLC In the case of a passthrough entity, the credit determined at the entity level is passed through to the entity's owners.	• Individual • Estate • Trust • Partnership • S corporation • LLC A taxpayer who owns a controlling interest in, or receives over 50% of gross annual income from, the qualified business is not eligible for credit. This extends to a spouse, parent, sibling, or child (or spouse of a sibling or child). In the case of a passthrough entity, the credit determined at the entity level is passed through to the entity's owners.	• Individual • Estate • Trust • Partnership • C corporation • S corporation • LLC In the case of a passthrough entity, the credit determined at the entity level is passed through to the entity's owners.	

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Program Description	**North Dakota**	**Iowa**	**Kansas**	**Minnesota**	**Wisconsin**	**Montana / Nebraska**
Amount of credit	45% of investment	**Iowa Fund of Funds ITC** Contingent on loss to investor: Difference between scheduled aggregate return and the actual aggregate return received at time of redemption of credit certificate. **QBCB Seed Capital ITC** 20% of investment **Venture Capital Fund ITC** 6% of investment	25% of investment	45% of investment	25% of investment	
First tax year in which credit may be claimed	Tax year in which investment is made.	**Iowa Fund of Funds ITC** Tax year in which the certificate's maturity date falls. **QBCB Seed Capital ITC** 3rd tax year following the tax year in which investment is made. **Venture Capital Fund ITC** 3rd tax year following the tax year in which investment is made.	Tax year in which investment is made.	Tax year in which investment is made.	Tax year in which investment is made.	
Maximum credit allowed to investor per year	Credit is allowed on total amount invested during the tax year, but no more than $112,500 may be used in any tax year.	**Iowa Fund of Funds ITC** Determined by the Iowa Capital Investment Board pursuant to the limited partnership agreement or operating agreement of the applicable Iowa Fund of Funds. **QBCB Seed Capital ITC** $50,000 for an investment in any one qualified business or fund, up to five different investments in five different	Not applicable—but see note below. Note: To meet budgetary needs, the otherwise allowable credit in each to the tax years 2009 and 2010 must be reduced by 10%.	Credit is allowed on total amount invested during the tax year, but no more than $112,500 may be used in any tax year.	Not applicable	

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Program Description	**North Dakota**	**Iowa**	**Kansas**	**Minnesota**	**Wisconsin**	**Montana / Nebraska**
		qualified businesses or funds. **Venture Capital Fund ITC** None				
Carryback / carryover of unused credit	4-year carryover	**Iowa Fund of Funds ITC** 7-year carryover **QBCB Seed Capital ITC** 5-year carryover **Venture Capital Fund ITC** 5-year carryover	Indefinite carryover	4-year carryover	15-year carryover	
Ceiling on total credits allowed under program	$3.5 million per calendar year.	**Iowa Fund of Funds ITC** $20 million per state fiscal year, up to a Program ceiling of $100 million. **QBCB Seed Capital ITC** $10 million **Venture Capital Fund ITC** $5 million	Unable to ascertain.	The amount of credits available is dependent on the allocations that a border city has available for tax reductions in border city enterprise zones, as legislatively authorized by the state. Each border city allocates a portion of the available tax reductions to the Seed Capital ITC.	The total credits allowed are limited to $3.5 million per calendar year for 2005-2007; $6 million per calendar year for 2008-2010; and, $18.5 million per calendar year after 2010. For tax years after 2010, an additional $250,000 of credits are allowed for investments in certified nanotechnology businesses.	
Transfer option?	No	**Iowa Fund of Funds ITC** Yes; credit certificate may be transferred by a holder and any subsequent holder. **QBCB Seed Capital ITC** No **Venture Capital Fund ITC** No	No	No	Yes	

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Program Description	**North Dakota**	**Iowa**	**Kansas**	**Minnesota**	**Wisconsin**	**Montana / Nebraska**
Transfer procedure	Not applicable	**Iowa Fund of Funds ITC** Holder endorses certificate to transferee and surrenders it to Iowa Capital Investment Board along with (1) statement showing name, address, and FEIN of transferee and (2) request to Board to issue replacement certificate in the name of the transferee. If more than one transferee, the amount transferred to each one must be indicated in statement. The Board must issue replacement certificate(s) within 10 days.	Not applicable	Not applicable	Taxpayer must obtain prior authorization from fund manager. Fund manager submits transfer documents to Depts. of Commerce and Revenue. Taxpayer may transfer credits only one time in a 12-month period. Dept. of Commerce may charge a fee of 1% of the transferred credit.	
Other significant provisions	Only the first $500,000 of eligible investments in a single qualified business over its lifetime is eligible for the credit.	**Iowa Fund of Funds ITC** Tax credits represented by a certificate are subject to cancellation upon the holder's receipt of actual return on investment equal to the scheduled return shown on the certificate. Cancelled credits may be reissued. Also, credits not used by the expiration of the 7-year carryforward time period may be reissued.	Public funds may be invested in a pool, provided they are matched by not less than $2 of private investment. Public funds have a senior position to, and may have a lower rate of return than, private investment. **Voluntary decertification** After the 7th year of certification, a pool may voluntarily decertify itself by written notice to the Dept. of Commerce. If the pool was in compliance with all requirements, investors may retain the credit. If the pool is noncompliant, it must repay the credits to the Dept. of Revenue.		Only the first $2 million that a single certified fund manager invests in a given qualified business over the qualified business's lifetime is eligible for the credit. Only the first $4 million invested by all certified fund managers in a given qualified business is eligible for the credit.	