

September 2010

Introduced by

1 A BILL for an Act to amend and reenact section 57-38-01.26 of the North Dakota Century Code,
2 relating to the angel fund investment tax credit; to provide a report to the legislative
3 management; to provide an effective date; and to provide an expiration date.

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

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

7 **57-38-01.26. Angel fund investment tax credit.**

- 8 1. A taxpayer is entitled to a credit against state income tax liability under section
9 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is
10 incorporated in this state. The amount of the credit to which a taxpayer is entitled
11 is forty-five percent of the amount invested by the taxpayer in an angel fund during
12 the taxable year. The aggregate annual credit for which a taxpayer may obtain a
13 tax credit is not more than forty-five thousand dollars.
- 14 2. To be eligible for the credit, the investment must be at risk in the angel fund for at
15 least three years. Investments placed in escrow do not qualify for the credit. The
16 credit must be claimed in the taxable year in which the investment in the angel fund
17 was received by the angel fund. The credit allowed may not exceed the liability for
18 tax under this chapter. If the amount of credit determined under this section
19 exceeds the liability for tax under this chapter, the excess may be carried forward
20 to each of the four succeeding taxable years. A taxpayer claiming a credit under
21 this section may not claim any credit available to the taxpayer as a result of an
22 investment made by the angel fund in a qualified business under chapter 57-38.5
23 or 57-38.6.
- 24 3. An angel fund must:

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- 1 a. Be a partnership, limited partnership, corporation, limited liability company,
2 limited liability partnership, trust, or estate organized on a for-profit basis
3 which is headquartered in this state.
- 4 b. Be organized for the purpose of investing in a portfolio of at least three
5 early-stage and mid-stage private, nonpublicly traded enterprises with strong
6 growth potential. For purposes of this section, an early-stage entity means an
7 entity with annual revenues of up to two million dollars and a mid-stage entity
8 means an entity with annual revenues over two million dollars not to exceed
9 ten million dollars.
- 10 c. Consist of at least six accredited investors as defined by securities and
11 exchange commission regulation D, rule 501.
- 12 d. Not have more than twenty-five percent of its capitalized investment assets
13 owned by an individual investor.
- 14 e. Have at least five hundred thousand dollars in commitments from accredited
15 investors and that capital must be subject to call to be invested over an
16 unspecified number of years to build a portfolio of investments in enterprises.
- 17 f. Be member-managed or a manager-managed limited liability company and
18 the investor members or a designated board that includes investor members
19 must make decisions as a group on which enterprises are worthy of
20 investments.
- 21 g. Be certified as an angel fund that meets the requirements of this section by
22 the department of commerce.
- 23 h. Be in compliance with the securities laws of this state.
- 24 i. Within thirty days after the date on which an investment in an angel fund is
25 made, the angel fund shall file with the tax commissioner and provide to the
26 investor completed forms prescribed by the tax commissioner which show as
27 to each investment in the angel fund the following:
 - 28 (1) The name, address, and social security number or federal employer
29 identification number of the taxpayer or passthrough entity that made
30 the investment;

- 1 (2) The dollar amount paid for the investment by the taxpayer or
2 passthrough entity; and
- 3 (3) The date on which full consideration was received by the angel fund for
4 the investment.
- 5 4. Angel fund investors may be actively involved in the enterprises in which the angel
6 fund invests but the angel fund may not invest in any enterprise if any one angel
7 fund investor owns directly or indirectly more than forty-nine percent of the
8 ownership interests in the enterprise. The angel fund may not invest in an
9 enterprise if any one partner, shareholder, or member of a passthrough entity that
10 directly or indirectly owns more than forty-nine percent of the ownership interests in
11 the enterprise.
- 12 5. Investors in one angel fund may not receive more than five million dollars in
13 aggregate credits under this section during the life of the angel fund but this
14 provision may not be interpreted to limit additional investments in that angel fund.
- 15 6. a. A partnership, subchapter S corporation, limited partnership, limited liability
16 company, or any other passthrough entity entitled to the credit under this
17 section must be considered to be the taxpayer for purposes of this section,
18 and the amount of the credit allowed must be determined at the passthrough
19 entity level.
- 20 b. If a passthrough entity does not elect to sell, transfer, or assign the credit as
21 provided under this subsection and subsection 7, the amount of the total
22 credit determined at the entity level must be passed through to the partners,
23 shareholders, or members in proportion to their respective interests in the
24 passthrough entity.
- 25 c. If a passthrough entity elects to sell, transfer, or assign a credit as provided
26 under this subsection and subsection 7, the passthrough entity shall make an
27 irrevocable election to sell, transfer, or assign the credit on the return filed by
28 the entity for the taxable year in which the credit was earned. A passthrough
29 entity that makes a valid election to sell, transfer, or assign a credit shall sell
30 one hundred percent of the credit earned, may sell the credit to only one

1 purchaser, and shall comply with the requirements of this subsection and
2 subsection 7.

3 7. A taxpayer may elect to sell, transfer, or assign all of the earned or excess tax
4 credit earned under this section subject to the following:

5 a. A taxpayer's total credit sale, transfer, or assignment under this section may
6 not exceed one hundred thousand dollars over any combination of taxable
7 years.

8 b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection,
9 the tax credit transferor and the tax credit purchaser jointly shall file with the
10 tax commissioner a copy of the purchase agreement and a statement
11 containing the names, addresses, and taxpayer identification numbers of the
12 parties to the transfer, the amount of the credit being transferred, the gross
13 proceeds received by the transferor, and the taxable year or years for which
14 the credit may be claimed. The taxpayer and the purchaser also shall file a
15 document allowing the tax commissioner to disclose tax information to either
16 party for the purpose of verifying the correctness of the transferred tax credit.
17 The purchase agreement, supporting statement, and waiver must be filed
18 within thirty days after the date the purchase agreement is fully executed.

19 c. The purchaser of the tax credit shall claim the credit beginning with the
20 taxable year in which the credit purchase agreement was fully executed by
21 the parties. A purchaser of a tax credit under this section has only such rights
22 to claim and use the credit under the terms that would have applied to the tax
23 credit transferor. This subsection does not limit the ability of the tax credit
24 purchaser to reduce the tax liability of the purchaser, regardless of the actual
25 tax liability of the tax credit transferor.

26 d. A sale, assignment, or transfer of a tax credit under this section is irrevocable
27 and the purchaser of the tax credit may not sell, assign, or otherwise transfer
28 the credit.

29 e. If the amount of the credit available under this section is changed as a result
30 of an amended return filed by the transferor, or as the result of an audit
31 conducted by the internal revenue service or the tax commissioner, the

1 transferor shall report to the purchaser the adjusted credit amount within thirty
2 days of the amended return or within thirty days of the final determination
3 made by the internal revenue service or the tax commissioner. The tax credit
4 purchaser shall file amended returns reporting the additional tax due or
5 claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax
6 commissioner may audit these returns and assess or issue refunds, even
7 though other time periods prescribed in these sections may have expired for
8 the purchaser.

9 f. Gross proceeds received by the tax credit transferor must be assigned to
10 North Dakota. The amount assigned under this subsection cannot be
11 reduced by the taxpayer's income apportioned to North Dakota or any North
12 Dakota net operating loss of the taxpayer.

13 g. The tax commissioner has four years after the date of the credit assignment to
14 audit the returns of the credit transferor and the purchaser to verify the
15 correctness of the amount of the transferred credit and if necessary assess
16 the credit purchaser if additional tax is found due. This subdivision does not
17 limit or restrict any other time period prescribed in this chapter for the
18 assessment of tax.

19 h. The tax commissioner may adopt rules to permit verification of the validity and
20 timeliness of the transferred tax credit.

21 **SECTION 2. REPORT TO THE LEGISLATIVE MANAGEMENT.** During the 2011-12
22 and 2013-14 interims, the tax commissioner shall report to the legislative management on the
23 status of the transferability of tax credits under the angel fund tax credit.

24 **SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is
25 effective for the first four taxable years beginning after December 31, 2010, and is thereafter
26 ineffective.