

Qualified seed capital business investment reporting form

- ▶ This form is for reporting investments made in tax years beginning on or after January 1, 2007—see instructions.
- ▶ This form must be completed by the qualified business.

Investment information

Date of investment ▶ Amount of investment ▶

Type of investor: Individual Partnership "C" Corporation "S" corporation Estate or trust

Name of investor _____ Social security number or FEIN _____

Spouse's name, if joint investment _____ Spouse's social security number _____

Address _____ City _____ State _____ ZIP _____

Qualified business

Name of qualified business _____ FEIN _____

Signature of authorized representative _____ Date _____

Printed name of authorized representative _____

General instructions

This form must be used by a qualified business to report the receipt of a qualified investment from an eligible taxpayer for purposes of the seed capital investment tax credit under N.D.C.C. ch. 57-38.5.

Important: Unless otherwise provided by a change in law, these instructions only apply to investments made by eligible taxpayers in tax years beginning on or after January 1, 2007. For this purpose, the tax year of the eligible taxpayer (investor) is used, not that of the qualified business.

For purposes of investments reported on this form, the following definitions apply:

Qualified investment—A "qualified investment" means one that meets all of the following conditions:

- It is made by an eligible taxpayer—see "Eligible taxpayer" below.
- It is in the form of a cash payment.
- It is made within the certification period specified in the certification confirmation letter issued to the qualified business by the North Dakota Commerce Department.
- It is at risk in the qualified business. An investment is at risk when it is available to the qualified business for its use. Monies placed in escrow are not at risk.

The investment must remain at risk for at least three years from the date of investment to maintain its qualified status.

An individual who is a participant in a retirement plan is deemed to have made a qualified investment in the case of a direct transfer (by the trustee) of monies from the retirement plan to a qualified business if (1) a separate retirement plan account is maintained for the individual, (2) the monies come out of the individual's account, and (3) the individual controls where the account's assets are invested.

Eligible taxpayer—An "eligible taxpayer" means an individual, estate, trust, partnership, corporation ("C" or "S"), or limited liability company. An eligible taxpayer does not include any of the following:

- Government entity.
- Tax-exempt organization.
- Real estate investment trust.
- Taxpayer owning more than 50 percent of the qualified business.
- Taxpayer receiving more than 50 percent of annual gross income from the qualified business.
- Spouse, parent, sibling, or child (or a spouse of a sibling or child) of an ineligible taxpayer.

Note: Any person may invest in the qualified business, but only eligible taxpayers are allowed the tax credit.

If an eligible taxpayer is a passthrough entity—partnership, S corporation, or limited liability company treated like a partnership or "S" corporation—the tax credit is calculated at the passthrough entity level and passed through to its owners.

Date of investment—The "date of investment" means the date on which a qualified investment is received and is available for use by the qualified business. The taxpayer's tax year in which the date of investment falls is the first tax year in which the tax credit is to be used.

Qualified business investment limit—Only the first \$500,000 of qualified investments received by a qualified business over its lifetime are eligible for the tax credit. This limitation does not preclude additional investment in the qualified business for which no tax credits are allowed. For purposes of this limit, tax credits are allowed to eligible taxpayers in the chronological order of their investments, based on the date of investment reported on this investment reporting form.

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Program tax credit limit—The total tax credits allowed for all qualified investments made in all qualified businesses is limited to \$3.5 million per calendar year. For purposes of this limit, tax credits are allowed to eligible taxpayers in the chronological order of their investments, based on the date of investment reported on this investment reporting form.

Specific instructions for the qualified business

Use this form only if you have been certified by the North Dakota Commerce Department's Division of Economic Development and Finance as a qualified business for purposes of the seed capital investment tax credit program under N.D.C.C. ch. 57-38.5. This will be evidenced by your receipt of a letter from the Commerce Department confirming the certification and setting out the certification period.

You must complete and file this form for each qualified investment you receive. Only complete and file for qualified investments.

Complete all applicable items on the form. Unless the investment is made jointly by married individuals, provide the investment information for only one eligible taxpayer on each form. For a joint investment by married individuals, provide the name and social security number of both spouses.

For type of investor, if the eligible taxpayer is a limited liability company (LLC), check the entity type that the LLC is filing as for federal income tax purposes.

In the case of a qualified investment consisting of a direct transfer (by a trustee) of monies from a retirement plan account, check "Individual" and enter the name, address, social security number of the individual (participant).

Filing instructions. Give a copy of the completed form to the investor. Keep a copy for your files. File a copy of this form with each of the following agencies:

- Office of State Tax Commissioner
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599

- Economic Development & Finance
P.O. Box 2057
Bismarck, ND 58502-2057

Specific instructions for the eligible taxpayer (investor)

This form is evidence of your investment in a qualified business for purposes of the seed capital investment tax credit. Keep it for your records.

Important: Unless otherwise provided by a change in law, these instructions only apply to investments you make in your tax years beginning on or after January 1, 2007.

Eligibility for credit. To maintain the qualified status of your investment, it must remain at risk in the qualified business for a minimum of three years after the date of investment.

Amount of tax credit. The allowable tax credit is 45 percent of the total qualified investments you make during the tax year. The tax credit must be claimed first in the tax year in which the date of investment falls. No more than \$112,500 of your allowable tax credit may be used in any tax year.

Unused tax credit carryover. If you are unable to use all of your allowable tax credit in a tax year because it exceeds the lesser of your tax liability or \$112,500, you may carry over and use the unused tax credit on subsequent tax years' returns for up to 4 tax years.

Passthrough entity. If you are a passthrough entity—partnership, S corporation, or limited liability company treated like a partnership or S corporation—calculate the total credit without regard to the credit limitations and pass it through to your owners based on their respective ownership interests. See the instructions to Form 58 (partnership) or Form 60 (S corporation) for more information on reporting the total credit and the amount passed through to each owner. The following items do not apply at the passthrough entity level, but apply to each owner (that is not another passthrough entity):

- Annual \$112,500 usage limitation.
- Unused credit carryover.

Angel fund. If you are an angel fund (defined under N.D.C.C. § 57-38-01.26), you are treated like a passthrough entity for purposes of this tax credit, and the tax credit must be passed through to your fund members. However, if your fund members also qualified for the angel fund investment tax credit for investing in your fund, they may not claim both tax credits; each affected fund member may choose which of the two tax credits to claim.

Recapture of tax credit. If the qualified business loses its certification because it made misrepresentations in its certification application, or if either you or the qualified business fails to satisfy any condition set by law or the Office of State Tax Commissioner, the tax credit will be disallowed. If the tax credit is disallowed, you must file an amended state return for each tax year in which the tax credit was claimed and pay any tax, penalty, and interest due. If you are a passthrough entity, you must file amended state returns to remove the disallowed tax credit and issue amended North Dakota Schedule K-1s to your owners; in turn, your owners must file amended state returns and pay any tax, penalty, and interest due.

Contact Information

If you have questions, contact us at:

- (701) 328-1247
TDD/TTY—call 1-800-366-6888,
and ask for (701) 328-1247
- E-mail: individualtax@nd.gov
- Office of State Tax Commissioner
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599