

Angel Fund Investment Tax Credit Program

Program provisions

This document reflects changes made through the 2013 North Dakota Legislative Session, and generally applies to tax years beginning on or after January 1, 2013. It is subject to changes in the law.

For provisions applicable to tax years beginning before January 1, 2013, contact the North Dakota Office of State Tax Commissioner.

Overview of program

Type of program	This program provides a nonrefundable income tax credit for making an investment in an angel fund certified by the North Dakota Commerce Department's Division of Economic Development and Finance. See "North Dakota angel fund" and "Certification" below.
Purpose	This program provides an incentive to invest cash in a North Dakota angel fund that is organized for the purpose of investing in a portfolio of at least three primary sector businesses that are early- or mid-stage private, nonpublicly traded enterprises with strong growth potential.
Legislative history	Location in Code: N.D.C.C. Chapter 57-38-01.26. Created: 2007 (Session Laws 2007, chapter 18). Amended: 2009 (S.L. 2009, chs. 545 and 547), 2011 (S.L. 2011, ch. 461), and 2013 (S.L. 2013, ch. 449).

Provision	Description
North Dakota angel fund	<p>A "North Dakota angel fund" is an entity that the North Dakota Commerce Department's Division of Economic Development and Finance certifies (see "Certification of angel fund" below) as meeting all of the following conditions:</p> <ul style="list-style-type: none"> • It is a for-profit corporation, partnership (general, limited, or limited liability), limited liability company, trust, or estate that is headquartered in North Dakota. • It is organized for the purpose of investing in a portfolio of at least three primary sector businesses that are early- or mid-stage private, nonpublicly traded enterprises with strong growth potential. Investments in real estate or a real estate holding company are not eligible investments by an angel fund. An angel fund certified prior to January 1, 2013, that made an investment in real estate is not eligible for recertification (see "Certification of angel fund" below). <ul style="list-style-type: none"> ○ "Primary sector business" generally means one that through the use of knowledge or labor adds value to a product, process, or service that results in new wealth. ○ "New wealth" generally means revenues generated by sales to customers outside North Dakota or to customers in North Dakota if availability of the product, process, or service in North Dakota is limited. ○ "Early-stage enterprise" means one with annual revenues of up to \$2 million. ○ "Mid-stage enterprise" means one with annual revenues between \$2 million and \$10 million. • At least six of its investors must be accredited as defined under SEC Regulation D, Rule 501.

	<ul style="list-style-type: none"> • No one investor owns more than 25 percent of the fund’s assets. • It has at least \$500,000 in commitments from its accredited investors that is subject to call by the fund. • It is managed by its member investors. In the case of a limited liability company, it must be managed by its manager members. The investors or a designated board that includes investor members must make investment decisions as a group. • It is in compliance with North Dakota’s securities laws.
Certification of angel fund	<p>An eligible entity must apply to the North Dakota Commerce Department's Division of Economic Development and Finance for certification as a North Dakota angel fund. The Division must certify whether a business meets the statutory requirements to be a North Dakota angel fund. Upon certification, the Division will issue to the qualified business a letter specifying the period of certification.</p> <p>Questions about certification as a North Dakota angel fund should be directed to the North Dakota Commerce Department’s Division of Economic Development and Finance as follows—</p> <p style="padding-left: 40px;">1600 E. Century Ave., Suite 2 P.O. Box 2057 Bismarck, ND 58503 Web site: http://www.business.nd.gov/default.asp Phone: (701) 328-5300 E-mail: http://www.business.nd.gov/contact/</p>
Eligible taxpayer (investor)	<p>The following are eligible taxpayers (investors) for purposes of the tax credit:</p> <ul style="list-style-type: none"> • Individual (on Form ND-1) • Estate (on Form 38) • Trust (on Form 38) • Partnership (on Form 58)—see Note 1 • C corporation (on Form 40) • S corporation (on Form 60)—see Note 1 • Limited liability company—see Note 2 <p>Note 1: <i>If the taxpayer is a partnership, S corporation, or a limited liability company treated like a partnership or S corporation, the credit is determined at the passthrough entity level and passed through to the entity’s owners in proportion to their ownership interests.</i></p> <p>Note 2: <i>The type of form used by a limited liability company is dependent on how it files for federal income tax purposes—that is, as a partnership, corporation, etc.</i></p>

<p>Qualified investment</p>	<p>A “qualified investment” is one that satisfies all of the following conditions:</p> <ul style="list-style-type: none"> • It must be made by an eligible taxpayer—see “Eligible taxpayer” above. • It must be made in cash. • It must be made during the certification period specified in the certification letter issued by the North Dakota Commerce Department’s Division of Economic Development and Finance. • It must be at risk in the angel fund for at least three years after the date of investment. The monies are at risk if they are available for use by the angel fund. A commitment or pledge to make cash available to an angel fund is not a qualified investment. A qualified investment occurs on the date the investor remits the cash to the angel fund for its use, which is the “date of investment.” <p>Note: A transfer of monies from a retirement plan to an angel fund is deemed to be an investment made by the retirement plan participant if a separate account is maintained for the participant and the participant controls where the account’s assets are invested.</p>
<p>Amount of tax credit</p>	<p>The tax credit equals 45% of the total qualified investments made during the tax year by the eligible taxpayer.</p>
<p>Maximum tax credit allowed per taxpayer per tax year</p>	<p>The maximum tax credit allowed to a taxpayer in a tax year is \$45,000.</p> <p>Note: <i>This translates to a maximum investment of \$100,000 per tax year. This does not preclude a taxpayer from investing an amount over \$100,000 for which no tax credit is allowed.</i></p>
<p>Carryover of unused tax credit by taxpayer</p>	<p>The first tax year in which the credit must be claimed is the year in which the investment is made. If all of the credit cannot be used in the investment year because it exceeds the taxpayer’s tax liability (tax minus other tax credits), the unused portion of the credit may be carried over and used on subsequent tax years’ returns for up to 7 tax years.</p> <p>Note: <i>This carryover provision does not apply at the passthrough entity level in the case of a partnership, S corporation, or limited liability company treated like a passthrough entity, but applies at the owner level (provided the owner is not another passthrough entity).</i></p>
<p>Lifetime limit on tax credits allowed per taxpayer</p>	<p>For tax credits based on investments made in tax years beginning on or after January 1, 2013, a taxpayer may claim no more than \$500,000 in tax credits over the taxpayer’s lifetime.</p> <ul style="list-style-type: none"> • This limit applies to credits based on qualified investments a taxpayer makes directly to an angel fund plus any angel fund credits the taxpayer receives as an owner of a passthrough entity that makes a qualified investment in an angel fund. • Married individuals are considered one taxpayer for this purpose. Marital status is determined at the time of the investment. Credits earned prior to marriage are not affected by a change in marital status, but they do reduce the \$500,000 lifetime credit amount that applies to the married couple. If either or both individuals reached the \$500,000 lifetime credit limit before marrying, they retain those credits upon marrying, but no more credits are allowed to the married couple.
<p>Lifetime limit on tax credits allowed per angel fund</p>	<p>For tax credits based on investments made in tax years beginning on or after January 1, 2009, the total amount of tax credits allowed to investors in an angel fund is limited to \$5 million over the angel fund’s lifetime.</p>

Angel fund reporting requirements

- An angel fund must complete and file an Angel Fund Investment Reporting Form with the Tax Department within 30 days after receiving a qualified investment. The angel fund must provide a copy of the completed form to the investor. On this form, the angel fund will provide (1) the angel fund's name and federal employer identification number (FEIN), (2) the name, address, and social security number or FEIN of the investor, (3) the date of the qualified investment, and (4) the amount of the qualified investment.
- Within 30 days after the end of the calendar year, an angel fund must complete and file a report with the Tax Department containing the name and principal place of business of all enterprises in its portfolio as of December 31 in which the angel fund has invested its funds.

Note: *Except for the name, address, and federal identification number of the investor, the above information may be disclosed to Legislative Management.*

Other provisions

- A taxpayer claiming an angel fund credit may not claim a credit resulting from the angel fund's investment in a qualified business for purposes of the seed capital investment tax credit program (under N.D.C.C. ch. 57-38.5) or the agricultural commodity processing facility investment tax credit program (under N.D.C.C. ch. 57-38.6). *Note: In lieu of claiming the angel fund tax credit, a taxpayer may choose to claim the seed capital or ag commodity tax credit passed through to the taxpayer by the angel fund.*
 - A qualified investment made in an angel fund may not be used as the basis for any other income tax deduction or income tax credit allowed by law.
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