Sixty-fifth Legislative Assembly of North Dakota THIRD DRAFT: Prepared by the Legislative Council staff for the Political Subdivision Taxation Committee October 2016

Introduced by

- 1 A BILL for an Act to amend and reenact sections 57-38-01.26 and 57-38.5-02 of the North
- 2 Dakota Century Code, relating to investments in qualified businesses for purposes of the angel
- 3 fund investment tax credit and publication of a list of qualified businesses; and to provide an
- 4 effective date.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

8 **57-38-01.26.** Angel fund investment tax credit.

9 A taxpayer is entitled to a credit against state income tax liability under section 1. 10 57-38-30 or 57-38-30.3 for an investment made after December 31, 2017, in an angel 11 fund that is a domestic organization created under the laws of this state- which is 12 invested by the angel fund in a "gualified business." The amount of the credit to which 13 a taxpayer is entitled is forty-five thirty-five percent of the amount remitted by the 14 taxpayer to an angel fund and invested by the angel fund in a gualified business 15 during the taxable year. For purposes of this section, "gualified business" has the 16 meaning provided in section 57-38.5-01. The aggregate annual credit for which a 17 taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The 18 aggregate lifetime credits under this section that may be obtained by an individual, 19 married couple, passthrough entity and its affiliates, or other taxpayer is five hundred 20 thousand dollars. The investment used to calculate the credit under this section may 21 not be used to calculate any other income tax deduction or credit allowed by law. 22 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least 23 three years invested by the angel fund in a gualified business. An investment made in a 24 qualified business from the assets of a retirement plan is deemed to be the retirement

1 plan participant's investment for the purpose of this section if a separate account is 2 maintained for the plan participant and the participant directly controls where the 3 account assets are invested. Investments placed in escrow do not qualify for the 4 credit. The credit must be claimed in the taxable year in which the investment in the 5 angel fund was received by the angel funda qualified business. The credit allowed 6 may not exceed the liability for tax under this chapter. If the amount of credit 7 determined under this section exceeds the liability for tax under this chapter, the 8 excess may be carried forward to each of the seven succeeding taxable years. A 9 taxpayer claiming a credit under this section may not claim any credit available to the 10 taxpayer as a result of an investment made by the angel fund in a gualified business 11 under chapter 57-38.5 or 57-38.6. A taxpayer that invests in an angel fund before 12 January 1, 2018, is subject to the credit provisions and reporting requirements in place 13 at the time the investment was remitted by the taxpayer to the angel fund. 14 3. An angel fund must: 15 a. Be a partnership, limited partnership, corporation, limited liability company, limited 16 liability partnership, limited liability limited partnership, trust, or estate organized 17 on a for-profit basis which is headquartered in this state. 18 b. Be organized for the purpose of investing in a portfolio of at least three primary-19 sector companies that are early-stage and mid-stage private, nonpublicly traded 20 enterprises with strong growth potential. For purposes of this section, an-21 early-stage entity means an entity with annual revenues of up to two million-22 dollars and a mid-stage entity means an entity with annual revenues over two-23 million dollars not to exceed ten million dollarsgualified businesses. Investments 24 in real estate or real estate holding companies are not eligible investments by 25 certified angel funds. Any angel fund certified before January 1, 2013, which has 26 invested in real estate or a real estate holding company is not eligible for 27 recertification. 28 Consist of at least six accredited investors as defined by securities and exchange C. 29 commission regulation D, rule 501. 30 d. Not have more than twenty-five percent of its capitalized investment assets 31 owned by an individual investor.

1	e.	Have at least five hundred thousand dollars in commitments from accredited
2		investors and that capital must be subject to call to be invested over an
3		unspecified number of years to build a portfolio of investments in enterprises that
4		include at least three qualified businesses.
5	f.	Be member-managed or a manager-managed limited liability company and the
6		investor members or a designated board that includes investor members must
7		make decisions as a group on which enterprises are worthy of investments.
8	g.	Be certified as an angel fund that meets the requirements of this section by the
9		department of commerce. The director may revoke an angel fund's certification if
10		any angel fund representative knowingly makes or causes to be made, any
11		material false statement or representation in any application, report, or other
12		document required to be filed under this section, or omits any material statement
13		or fact in any application, report, or other document required to be filed under this
14		section, which is necessary to make the statement made, in light of the
15		circumstances under which the statement is made, not misleading.
16	h.	Be in compliance with the securities laws of this statestate and federal securities
17		laws. Failure to remain in compliance with state and federal securities laws is
18		grounds for revocation of an angel fund's certification and loss of the tax credit.
19	i.	Within thirty days after the date on which an investment in an angel fund is made-
20		invested by the angel fund in a qualified business, the angel fund shall file with
21		the tax commissioner and provide to the investor completed forms prescribed by
22		the tax commissioner which show as to each investment made by the investor in
23		the angel fund the following:
24		(1) The name, address, and social security number or federal employer
25		identification number of the taxpayer or passthrough entity that made the
26		investment;
27		(2) The dollar amount remitted to the angel fund by the taxpayer or passthrough
28		entity; and
29		(3) The date the payment was received by the angel fund for the investmentall
30		or a portion of the investment remitted by the taxpayer or passthrough entity
31		to the angel fund was invested by the angel fund in a qualified business;

1			(4)	The name and principal place of business of the qualified business that
2				received the investment from the angel fund; and
3			<u>(5)</u>	The amount of the investment received by the qualified business.
4		j.	With	in thirty days after the end of a calendar year, the angel fund shall file with
5			the ta	ax commissioner a report showing the name and principal place of business
6			of ea	ach enterprise in which the angel fund has an investment.
7	4.	The	tax co	ommissioner may, upon request of the legislative management, shall
8		discl	lose to	o the legislative management the reported information described under
9		para	igraph	ns 2 and 3through 5 of subdivision i of subsection 3 and the reported
10		infor	matio	n described under subdivision j of subsection 3.
11	5.	Ange	el fun	d investors may be actively involved in the enterprises in which the angel
12		fund	linves	sts but the angel fund may not invest in any enterprise if any one angel fund
13		inve	stor o	wns directly or indirectly more than forty-nine percent of the ownership
14		inter	rests i	n the enterprise. The angel fund may not invest in an enterprise if any one
15		partr	ner, sl	hareholder, or member of a passthrough entity that directly or indirectly owns
16		more	e thar	n forty-nine percent of the ownership interests in the enterprise.
17	6.	Inve	stors	in one angel fund may not receive more than five million dollars in aggregate
18		cred	lits un	der this section during the life of the angel fund but this provision may not be
19		inter	prete	d to limit additional investments in that angel fund.
20	7.	a.	A pa	ssthrough entity entitled to the credit under this section must be considered
21			to be	e the taxpayer for purposes of this section, and the amount of the credit
22			allow	ved must be determined at the passthrough entity level and must be passed
23			<u>throu</u>	ugh to the partners, shareholders, or members in proportion to their
24			resp	ective interests in the passthrough entity.
25		b.	For t	he first two taxable years beginning after December 31, 2010, if a
26			pass	through entity does not elect to sell, transfer, or assign the credit as provided
27			unde	er this subsection and subsection 8, the amount of the total credit determined
28			at the	e entity level must be passed through to the partners, shareholders, or
29			mem	bers in proportion to their respective interests in the passthrough entity.
30		C.	For t	he first two taxable years beginning after December 31, 2010, if a
31			pass	through entity elects to sell, transfer, or assign a credit as provided under-

		this subsection and subsection 8, the passthrough entity shall make an
		irrevocable election to sell, transfer, or assign the credit on the return filed by the
		entity for the taxable year in which the credit was earned. A passthrough entity
		that makes a valid election to sell, transfer, or assign a credit shall sell one-
		hundred percent of the credit earned, may sell the credit to only one purchaser,
		and shall comply with the requirements of this subsection and subsection 8.
8.	For	the first two taxable years beginning after December 31, 2010, a taxpayer may
	elee	ct to sell, transfer, or assign all of the earned or excess tax credit earned under this
	sec	tion for investment in an angel fund established after July 31, 2011, subject to the
	folle	owing:
	a.	A taxpayer's total credit sale, transfer, or assignment under this section may not
		exceed one hundred thousand dollars over any combination of taxable years.
		The cumulative credits transferred by all investors in an angel fund may not
		exceed fifty percent of the aggregate credits under this section during the life of
		the angel fund under subsection 6.
	b.	If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
		tax credit transferor and the tax credit purchaser jointly shall file with the tax-
		commissioner a copy of the purchase agreement and a statement containing the
		names, addresses, and taxpayer identification numbers of the parties to the
		transfer, the amount of the credit being transferred, the gross proceeds received
		by the transferor, and the taxable year or years for which the credit may be-
		claimed. The taxpayer and the purchaser also shall file a document allowing the
		tax commissioner to disclose tax information to either party for the purpose of
		verifying the correctness of the transferred tax credit. The purchase agreement,
		supporting statement, and waiver must be filed within thirty days after the date-
		the purchase agreement is fully executed.
	C.	The purchaser of the tax credit shall claim the credit beginning with the taxable
		year in which the credit purchase agreement was fully executed by the parties. A
		purchaser of a tax credit under this section has only such rights to claim and use
		the credit under the terms that would have applied to the tax credit transferor.
		This subsection does not limit the ability of the tax credit purchaser to reduce the
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1			tax liability of the purchaser, regardless of the actual tax liability of the tax credit-
2			transferor.
3		d.	A sale, assignment, or transfer of a tax credit under this section is irrevocable and
4			the purchaser of the tax credit may not sell, assign, or otherwise transfer the
5			credit.
6		e.	If the amount of the credit available under this section is changed as a result of
7			an amended return filed by the transferor, or as the result of an audit conducted
8			by the internal revenue service or the tax commissioner, the transferor shall
9			report to the purchaser the adjusted credit amount within thirty days of the
10			amended return or within thirty days of the final determination made by the
11			internal revenue service or the tax commissioner. The tax credit purchaser shall
12			file amended returns reporting the additional tax due or claiming a refund as
13			provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
14			these returns and assess or issue refunds, even though other time periods
15			prescribed in these sections may have expired for the purchaser.
16		f .	Gross proceeds received by the tax credit transferor must be assigned to North-
17			Dakota. The amount assigned under this subsection cannot be reduced by the
18			taxpayer's income apportioned to North Dakota or any North Dakota net
19			operating loss of the taxpayer.
20		g.	The tax commissioner has four years after the date of the credit assignment to
21			audit the returns of the credit transferor and the purchaser to verify the
22			correctness of the amount of the transferred credit and if necessary assess the
23			credit purchaser if additional tax is found due. This subdivision does not limit or
24			restrict any other time period prescribed in this chapter for the assessment of tax.
25		h.	The tax commissioner may adopt rules to establish necessary administrative
26			provisions for the credit under this section, including provisions to permit-
27			verification of the validity and timeliness of the transferred tax credit.
28	<u>9.</u>	<u>The</u>	tax commissioner may disallow any credit otherwise allowed under this section if
29		<u>any</u>	representation by a business in the application for certification as a qualified
30		<u>busi</u>	ness proves to be false or if the taxpayer fails to satisfy any conditions under this
31		<u>sect</u>	ion or any conditions consistent with this section otherwise determined by the tax

1		commissioner. The commissioner has four years after the due date of the return or		
2		after the return was filed, whichever period expires later, to audit the credit and assess		
3		additional tax that may be found due to failure to comply with this section. The amount		
4		of any credit disallowed by the tax commissioner which reduced the taxpayer's income		
5	tax liability for any or all applicable tax years, plus penalty and interest as provided			
6	under section 57-38-45, must be paid by the taxpayer.			
7	SECTION 2. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is			
8	amended and reenacted as follows:			
9	57-3	57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum		
10	investm	ents in qualified businesses.		
11	1.	The director shall certify whether a business that has requested to become a qualified		
12		business meets the requirements of subsection 5 of section 57-38.5-01. The director		
13		shall make publicly available a list of all businesses certified or recertified as a		
14		qualified business and shall update the list on a monthly basis. The director shall		
15		establish the necessary forms and procedures for certifying qualified businesses.		
16	2.	A qualified business may apply to the director for a recertification. Only one		
17		recertification is available to a qualified business. The application for recertification		
18		must be filed with the director within ninety days before the original certification expiry		
19		date. The recertification issued by the director must comply with the provisions of		
20		subsection 3.		
21	3.	A certification letter must be issued by the director to the qualified business. The		
22		certification letter must include:		
23		a. The certification effective date.		
24		b. The certification expiry date. The expiry date may not be more than four years		
25		from the certification effective date.		
26	4.	The maximum aggregate amount of qualified investments a qualified business may		
27		receive for all tax years is limited to five hundred thousand dollars under this chapter.		
28		The tax credit allowed on qualified investments in a qualified business must be		
29		allowed to taxpayers in the chronological order of the taxpayer's qualified investments		
30		as determined from the forms filed under section 57-38.5-07. The limitation on		

1		investments under this subsection may not be interpreted to limit additional investment		
2		by a taxpayer for which that taxpayer is not applying for a credit.		
3	<u>5.</u>	By February first in each of the five years following a year in which a qualified		
4		business receives a qualified investment, the qualified business shall file with the		
5		director completed forms prescribed by the director which show the qualified business		
6		meets the requirements under section 57-38.5-01.		
7	SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years after December 31,			
8	2017.			