



Larkin Hoffman Daly & Lindgren Ltd.

1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

May 19, 2010

Mr. Jeffrey M. Nelson
Senior Loan Officer
Office of JOBZ and Business Finance
Department of Employment and
Economic Development
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351

CAUTION
**This letter was delivered to the
Department of Economic Development
at its public “listening session” on May 19th.
Based on comments and questions at that meeting
and subsequently, my view of
several of these issues has changed.
View this as an “issues discussion” paper,
not a definitive analysis of the law.**

Dear Jeff:

Thanks to you and the other persons at DEED with whom we met for the opportunity to discuss issues related to the recently-enacted Angel Tax Credit. I understand that your preparation of forms and other work related to this credit has been moving very rapidly and that you have been receiving comments and proposed language from multiple viewpoints.

I believe our discussions were helpful and thought it would be appropriate to prepare this letter including the text of the statute annotated to reflect the discussions we have had and the issues we have (generally) resolved. I hope that I have accurately understood and described your positions. I understand that our discussions have not and will not be binding but will speak to your views of the requirements and the manner in which you expect to review applications.

I am bringing this letter to the public meeting today to share. I recognize that there are a lot of people with valid comments and I hope this letter might be helpful in identifying issues that exist.

Please let me know if I can be of any assistance. Again, thank you for your efforts.

Very truly yours,

Michael W. Schley, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: (952) 896-3393
Direct Fax: (952) 842-1721
Email: mschley@larkinhoffman.com
1306050.2

See “CAUTION” on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 2

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

Subd. 8. **SMALL BUSINESS INVESTMENT TAX CREDIT.** Data related to small business investment tax credit certifications and certification of qualified small businesses, qualified investors, and qualified funds, are classified in section 116J.8737.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. [116J.8737] **SMALL BUSINESS INVESTMENT TAX CREDIT.**

Subdivision 1. **Definitions.**

- (a) For the purposes of this section, the following terms have the meanings given.
- (b) "Qualified small business" means a business that has been certified by the commissioner under subdivision 2.
- (c) "Qualified investor" means an investor who has been certified by the commissioner under subdivision 3.
- (d) "Qualified fund" means a pooled angel investment network fund that has been certified by the commissioner under subdivision 4.
- (e) "Qualified investment" means a cash investment in a qualified small business of a minimum of:
- (1) \$10,000 in a calendar year by a qualified investor; or

[I point out that the statute includes references to “calendar year,” “taxable year” and “fiscal year.”

- References to “calendar year” appear to all clearly relate to the credit itself (*e.g.* the amount available for allocation in any calendar year).
- References to “fiscal year” speak only to appropriations from the State Treasury. Because the appropriations are made on a calendar year basis, the terms “calendar year” and “fiscal year” should be seen as identical.
- The term “taxable year” is used inconsistently. I believe the appropriate understanding of this term is as follows:
 - when referring to credits available for allocation under the program or similar matters, the term should be interpreted to relate to the applicable fiscal/calendar year;

See “CAUTION” on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 3

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

- when related to status as a qualified investor, qualified investment or qualified fund, it should be interpreted as relating to the calendar year, and
- the term “taxable year appears only in the determination whether an entity is a “pass-through entity.” As a result, it should be interpreted as referring to the taxable year of the entity making the investment. For example, a corporation that is an “S” corporation” at the time of its investment in April should be seen as a Qualified Investor even if its qualification as an S corporation terminates later in the calendar year.]

(2) \$30,000 in a calendar year by a qualified fund.

A qualified investment must be made in exchange for common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or an equivalent ownership interest as determined by the commissioner.

(f) "Family" means a family member within the meaning of the Internal Revenue Code, section 267(c)(4).

(g) "Pass-through entity" means a corporation that for the applicable taxable year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable taxable year is not taxed as a corporation under chapter 290.

Subd. 2. Certification of qualified small businesses [confirming that certification as a “qualified small business” for the applicable calendar year does not mean that the business will be allocated any credits. Allocation of credits is subject to additional requirements later in the statute].

(a) Businesses may apply to the commissioner for certification as a qualified small business for a calendar year.

The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$150.

Application fees are deposited in the small business investment tax credit administration account in the special revenue fund.

The application for certification for 2010 must be made available on the department's Web site by August 1, 2010.

Applications for subsequent years' certification must be made available on the department's Web site by November 1 of the preceding year.

[Please confirm that this timetable is consistent with the statute.]

- **Calendar 2010**
 - **Forms related to certification as a "Qualified Business" for 2010 will be available by August 1, 2010**
 - **Applications for certification for 2010 may be submitted beginning August 1, 2010**
 - **Certification is valid only for remainder of 2010**
 - **Must reapply for certification for 2011 after January 1, 2011**
- **Calendar 2011**
 - **Forms related to certification as a "Qualified Business" for 2011 will be available November 1, 2010**
 - **Applications for certification for 2011 can be submitted beginning January 1, 2011**
 - **Certification for 2011 is valid only for investments January 1, 2011 through December 31, 2011**
 - **Must reapply for 2012 beginning January 1, 2012]**

[I would urge you to consider changing your intention slightly so that applications for certification for 2011 can be submitted at an earlier date (such as November 1, 2010) in order to give you an opportunity to review applications early. You may want to add language to your application form that although forms may be delivered to you prior to January 1 of each year, any pre-submitted forms will be considered received only as of January 1. You would want to add this language to the application to avoid "starting the clock" for the 30-day response.]

(b) Within 30 days of receiving an application for certification under this subdivision, the commissioner must either certify the business as satisfying the conditions required of a qualified small business, request additional information from the business, or reject the application for certification. [Confirming that if the issuer has been certified as a qualified small business, and it is later determined that the application for certification was either fraudulent or the issuer otherwise did not, in fact, qualify as a "qualified small business," the investor will not be at risk as to post-transaction "pull-back" of the credit. (Presumably the credit would be subject to "pull-back" if the investor's application was fraudulent or otherwise false or if the investor participated in the issuer's improper application.)]

If the commissioner requests additional information from the business, the commissioner must either certify the business or reject the application within 30 days of receiving the additional information.

See "CAUTION" on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 5

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

If the commissioner neither certifies the business nor rejects the application within 30 days of receiving the original application or within 30 days of receiving the additional information requested, whichever is later, then the application is deemed rejected, and the commissioner must refund the \$150 application fee.

A business that applies for certification and is rejected may reapply.

(c) To receive certification, a business must satisfy all of the following conditions:

(1) the business has its headquarters in Minnesota [**Confirming that there is no limitation on location or residence of investors.**];

(2) at least 51 percent of the business's employees are employed in Minnesota [**Confirming that you intend to assess the 51% "body count" on a full-time equivalent ("FTE") basis. In other words, two employees, each employed half time, will be counted as one employee in assessing the 51% of employees requirement.**], and 51 percent of the business's total payroll is paid or incurred in the state;

(3) the business is engaged in, or is committed to engage in, innovation in Minnesota in one of the following as its primary business activity: [**We discussed how determination of an issuer's "primary" business will be made. Among other things, we discussed the example of a business that is engaging in "job work" as a means of using facilities and generating revenue while the research and development or similar activities are occurring. Your intention is to generally rely upon the issuer's representation as to its "primary" business, although you may determine otherwise based upon facts and circumstances.**]

(i) using proprietary technology to add value to a product, process, or service in a qualified high-technology field;

(ii) researching or developing a proprietary product, process, or service in a qualified high-technology field [**This clause uses the term "proprietary" but does not use the term "proprietary technology" which is defined at the end of subd. 2. We discussed that you view this as a non-substantive variation of wording not a substantive difference.**]; or

(iii) researching, developing, or producing a new proprietary technology for use in the fields of agriculture, tourism, forestry, mining, manufacturing, or transportation;

[**We discussed that you do not intend to provide a mechanism for prior/advance determination of whether a business falls within one or more of these required**

business activities. You intend to make such review based upon actual applications. I note in this regard that a thoroughly drafted description of the business will clearly assist you in making that determination.]

(4) other than the activities specifically listed in clause (3), the business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, information technology consulting, wholesale or retail trade, leisure, hospitality, transportation, construction, ethanol production from corn, or professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants; **[Confirming that you interpret the phrase "activities specifically listed in clause (3)" as referring to agriculture, tourism, forestry, mining, manufacturing and transportation.]**

(5) the business has fewer than 25 employees **[Confirming that this will be tested on a FTE basis not a "body count" basis.]**;

(6) the business must pay its employees annual wages of at least 175 percent of the federal poverty guideline for the year **[Confirming that this will be determined on an employee-by-employee basis, not on an averaged basis and by reference to the wage levels most recently published by the Federal Department of Health and Human Services, generally each February.]** for a family of four, except that this requirement must be reduced proportionately for employees who work less than full-time, and does not apply to an executive, officer, or member of the board of the business, **[Confirming that you view this exception (e.g. executive, officer) very narrowly and, for example, a family member of an executive who is not, himself, an executive must be paid the required minimum wages.]** or to any employee who owns, controls, or holds power to vote more than 20 percent of the outstanding securities of the business;

(7) the business has not been in operation for more than ten years;

(8) the business has not previously received private equity investments of more than \$2,000,000; **[Confirming that you interpret "previously received" as a test to be made only at the time of certification. In other words, if a company has, pre-application, received \$1.5 million in private equity then becomes certified, its post-certification investors can invest \$2 million of equity which will qualify for the credit. Also confirming that you intend to treat convertible debt issued pre-application but not converted at the time of application as debt unless the debt contains a provision for mandatory conversion, in which case you will treat it as equity.]** and

(9) the business is not an entity disqualified under section 80A.50, paragraph (b), clause (3).

See "CAUTION" on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 7

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

(d) In applying the limit under paragraph (c), clause (5), the employees in all members of the unitary business, as defined in section 290.17, subdivision 4, must be included.

(e) In order for a qualified investment in a business to be eligible for tax credits, the business must have applied for and received certification for the calendar year in which the investment was made prior to the date on which the qualified investment was made.

(f) The commissioner must maintain a list of businesses certified under this subdivision for the calendar year and make the list accessible to the public on the department's Web site.

(g) For purposes of this subdivision, the following terms have the meanings given:

(1) "qualified high-technology field" includes aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biotechnology, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields; and

(2) "proprietary technology" means the technical innovations that are unique and legally owned or licensed by a business and includes, without limitation, those innovations that are patented, patent pending, a subject of trade secrets, or copyrighted.

Subd. 3. Certification of qualified investors.

(a) Investors may apply to the commissioner for certification as a qualified investor for a taxable year.

The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$350.

Application fees are deposited in the small business investment tax credit administration account in the special revenue fund.

The application for certification for 2010 must be made available on the department's Web site by August 1, 2010.

Applications for subsequent years' certification must be made available on the department's Web site by November 1 of the preceding year.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 8

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

(b) Within 30 days of receiving an application for certification under this subdivision, the commissioner must either certify the investor as satisfying the conditions required of a qualified investor, request additional information from the investor, or reject the application for certification.

If the commissioner requests additional information from the investor, the commissioner must either certify the investor or reject the application within 30 days of receiving the additional information.

If the commissioner neither certifies the investor nor rejects the application within 30 days of receiving the original application or within 30 days of receiving the additional information requested, whichever is later, then the application is deemed rejected, and the commissioner must refund the \$350 application fee.

An investor who applies for certification and is rejected may reapply.

(c) To receive certification, an investor must (1) be a natural person; and (2) [The underlined text was added by an amendment adopted in the last few days of the recently-completed legislative session. As amended, entities, such as corporations, cannot be qualified investors although they may be qualified funds.] certify to the commissioner that the investor will only invest in a transaction that is exempt under section 80A.46, clause (13) or (14), or in a security registered under section 80A.50, paragraph (b).

[We discussed this subsection at some length. The language is somewhat confusing because of changes made in the bill at the last minute in order to allow investments by non-accredited investors so long as those investments are made pursuant to the two identified exemptions or in a "short-form" SCOR (Small Corporate Offering) registration. You stated that you interpret the term "only invest" as referring to a limitation on eligibility for the credit, not on a limitation of the investor's other investment activities. In other words, an investor who invests in XYZ, Inc. is not disqualified from receiving the credit for that investment if he also invests in ABC, Inc. whose offering is made pursuant to a different exemption from registration (e.g. a "rights offering"). You also stated that you view the listing of exemptions as restricting eligibility of transactions conducted under other exemptions. For example, investments made in an "intra-state offering" or in a "rights offering" will not be eligible for the credit.]

(d) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified investor who makes the investment must have applied for and received certification for the calendar year prior to making the qualified investment, except in the case of an investor who is not an accredited investor, within the meaning of Regulation D of the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.501, paragraph (a), application for certification may be made within 30 days after **[The**

ability to make this certification after making the investment was intended to make it easier for small investors (*i.e.* those likely not to be accredited) to invest. As you explained your intended procedures, these investors will not be required to make the required application prior to making the investment. When the proposed transaction is submitted for allocation of credits, the issuer will, nonetheless, need to identify, by name, all investors whether or not they have then been qualified. For purposes of determining whether the application for certification as a qualified investor was timely made, the 30-day window will begin on the date the investment takes place, without regard to the date of the issuer's certification or the date credits are allocated.

Even though not explicitly set forth in the statute, you have stated that your intention is that when a request for allocation of credits is made, each investor will be required to furnish information as to all qualified investments made or then pending, in all issuers, year-to-date. Your purpose is to avoid allocating credits to an investor who will not be eligible to use those credits because of the annual dollar limitation.

Confirming that allocation of a credit to an investor whose application is permitted to be made after the date of investment will be subject to revocation if the certification of the investor's status is not filed within 30 days after the investment.] making the qualified investment.

Subd. 4. Certification of qualified funds.

(a) A pass-through entity may apply to the commissioner for certification as a qualified fund for a calendar year.

The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$1,000.

Application fees are deposited in the small business investment tax credit administration account in the special revenue fund.

The application for certification for 2010 of qualified funds must be made available on the department's Web site by August 1, 2010.

Applications for subsequent years' certification must be made available by November 1 of the preceding year.

(b) Within 30 days of receiving an application for certification under this subdivision, the commissioner must either certify the fund as satisfying the conditions required of a qualified fund, request additional information from the fund, or reject the application for certification.

If the commissioner requests additional information from the fund, the commissioner must either certify the fund or reject the application within 30 days of receiving the additional information.

If the commissioner neither certifies the fund nor rejects the application within 30 days of receiving the original application or within 30 days of receiving the additional information requested, whichever is later, then the application is deemed rejected, and the commissioner must refund the \$1,000 application fee.

A fund that applies for certification and is rejected may reapply.

(c) To receive certification, a fund must **[Confirming that although there is a minimum investment by the fund in the issuer, there is no minimum investment by the investor in the fund. The only limitation would be the SEC or "blue sky" "body count" limitations for exemptions.]**:

(1) invest or intend to invest in qualified small businesses;

(2) be organized as a pass-through entity; and

(3) have at least three separate investors, all of whom **[confirming our discussion that the phrase "all of whom" refers to all of the investors in the fund, not just at least three of the investors]** satisfy the conditions in subdivision 3, paragraph (c)

(d) Investments in the fund may consist of equity investments **[Confirming that "equity investments" refers to the list of permissible investments in subd. 1(e).]** or notes that pay interest or other fixed amounts, or any combination of both. **[Confirming our discussion that non-interest bearing notes will qualify.**

Also confirming our discussion that this clause allows leverage. For example, a qualified fund, in addition to receiving money from its equity investors, may borrow money. The lenders will not be entitled to the credits, all of which will "flow through" to the equity investors.

Also confirming that if the fund has an equity structure providing investors with differing payouts as to dividends and capital appreciation, differing tax allocations, and other differing rights (e.g. preferred stock), this requirement will be satisfied so long as the credits are allocated only to equity investors)]

(e) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified fund that makes the investment must have applied for and received certification for the calendar year prior to making the qualified investment.

Subd. 5. **Credit allowed. [Confirming that the credit is allowed beyond the taxpayer's tax liability (in other words, it is refundable).]**

(a) A qualified investor or qualified fund is eligible for a credit equal to 25 percent of the qualified investment in a qualified small business. **[Confirming that there is no credit upon investment in a fund, but only when fund makes its investment]**

Investments made by a pass-through entity qualify for a credit only if the entity is a qualified fund.

The commissioner must not allocate more than \$11,000,000 in credits to qualified investors or qualified e for taxable years beginning after December 31, 2009, and before January 1, 2011, and must not allocate more than \$12,000,000 in credits per year for taxable years beginning after December 31, 2010, and before January 1, 2015.

Any portion of a taxable year's credits that is not allocated by the commissioner does not cancel and may be carried forward to subsequent taxable years until all credits have been allocated.

(b) The commissioner may not allocate more than a total maximum amount in credits for a taxable year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund; for married couples filing joint returns the maximum is \$250,000, and for all other filers the maximum is \$125,000.

The commissioner may not allocate more than a total of \$1,000,000 in credits over all taxable years for qualified investments in any one qualified small business.

(c) The commissioner may not allocate a credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than 50 percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. **[Confirming our discussion that this means that even if an investor has been certified as a "qualified investor," no credits may be allocated to that investor as to any investment/issuer in which these limitations are exceeded. Such an investor could, however, receive an allocation of credits related to investments in unrelated companies.]**

A member of the family of an individual disqualified by this paragraph is not eligible for a credit under this section.

For a married couple filing a joint return, the limitations in this paragraph apply collectively to the investor and spouse.

See "CAUTION" on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 12

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

For purposes of determining the ownership interest of an investor under this paragraph, the rules under section 267(c) and 267(e) of the Internal Revenue Code apply.

(d) Applications for tax credits for 2010 must be made available on the department's Web site by September 1, 2010, and the department must begin accepting applications by September 1, 2010.

Applications for subsequent years must be made available by November 1 of the preceding year.

(e) Qualified investors and qualified funds must apply to the commissioner for tax credits.

Tax credits must be allocated to qualified investors or qualified funds in the order that the tax credit request applications are filed with the department.

The commissioner must approve or reject tax credit request applications within 15 days of receiving the application.

The investment specified in the application must be made within 60 days of the allocation of the credits.

If the investment is not made within 60 days, the credit allocation is canceled and available for reallocation. **[Confirming our discussion that the measurement of available credits for allocation is as of the date the allocation is made without regard to when the investment is actually made. For example: XYZ, Inc. is allocated credits for a proposed transaction on November 15, 2010. The deadline for completion of that transaction is 60 days from the date the allocation is made without regard to calendar year end. As a result, the investment may be actually made in 2011. Presumably, the investor will only be eligible to claim the credit on his tax return for the year in which the investment is actually made.]**

A qualified investor or qualified fund that fails to invest as specified in the application, within 60 days of allocation of the credits, must notify the commissioner of the failure to invest within five business days of the expiration of the 60-day investment period.

(f) All tax credit request applications filed with the department on the same day must be treated as having been filed contemporaneously.

If two or more qualified investors or qualified funds file tax credit request applications on the same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of credits under this section or the lesser amount of credits that remain unallocated on that day, then the credits must be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts claimed.

The pro rata allocation for any one qualified investor or qualified fund is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a qualified investor and the denominator of which is the total of all credit allocation claims filed on behalf of all applicants on that day, by the amount of credits that remain unallocated on that day for the taxable year.

(g) A qualified investor or qualified fund, or a qualified small business acting on their behalf, must notify the commissioner when an investment for which credits were allocated has been made, and the taxable year in which the investment was made.

A qualified fund must also provide the commissioner with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment.

After receiving notification that the investment was made, the commissioner must issue credit certificates for the taxable year in which the investment was made to the qualified investor or, for an investment made by a qualified fund, to each qualified investor who is an investor in the fund. **[As to whether the credit certificates must be filed with the investors tax return or merely made available for inspection, you referred me to the Department of Revenue.]**

The certificate must state that the credit is subject to revocation if the qualified investor or qualified fund does not hold the investment **[We discussed the effect of a recapitalization where the investor does not dispose of his investment but his investment is changed, either by consent or otherwise. For example, we discussed that a later round of financing might require the investor to agree to a change in his rights even though he receives no cash payment. You stated that a change in the investor's rights, so long as the investor continues to hold equity, would not cause a revocation of the credit but that a change whereby the investor receives a non-equity interest, such as a promissory note, would trigger revocation of the credit.]** in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following years. **[Confirming that the starting date for determination of satisfaction of the three-year requirement will be the date the investment is actually made, without regard to the date of certification and without regard to which year's appropriation applied to the allocation of the tax credit.]**

The three-year holding period does not apply if: **[I pointed out that there is no explicit exception to the three-year holding period where the investor dies.]**

- (1) the investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(2) 80 percent or more of the assets of the qualified small business is sold before the end of the three-year period;

(3) the qualified small business is sold before the end of the three-year period; or [The phrase "is sold" is unclear. Subparagraph (2) speaks to a sale of assets by the issuer. I believe some guidance is needed, whether from you or the Department of Revenue, on what is meant by this clause. If, under paragraph 2, the business of the issuer can be acquired by a sale of substantially all of its assets without triggering revocation, then a merger, stock swap or similar transaction should similarly provide an exception from the three-year holding period requirement. This guidance would be particularly appropriate because, unlike paragraph 2, the investor would continue to have capital invested. If the investor can receive cash and not be subject to repayment of the credit, certainly the permitted range of merger, stock swap and similar transactions should be broad.]

(4) the qualified small business's common stock begins trading on a public exchange before the end of the three-year period.

(h) The commissioner must notify the commissioner of revenue of credit certificates issued under this section.

Subd. 6. **Annual reports.**

(a) By February 1 of each year each qualified small business that received an investment that qualified for a credit, and each qualified investor and qualified fund that made an investment that qualified for a credit, must submit an annual report to the commissioner and pay a filing fee of \$100 as required under this subdivision.

Each qualified investor and qualified fund must submit reports for three years following each year in which it made an investment that qualified for a credit, and each qualified small business must submit reports for five years following the year in which it received an investment qualifying for a credit.

Reports must be made in the form required by the commissioner.

All filing fees collected are deposited in the small business investment tax credit administration account in the special revenue fund.

(b) A report from a qualified small business must certify that the business satisfies the following requirements:

(1) the business has its headquarters in Minnesota;

(2) at least 51 percent of the business's employees are employed in Minnesota, and 51 percent of the business's total payroll is paid or incurred in the state;

(3) that the business is engaged in, or is committed to engage in, innovation in Minnesota as defined under subdivision 2; and

(4) that the business meets the payroll requirements in subdivision 2, paragraph (c), clause (6).

(c) Reports from qualified investors must certify that the investor remains invested in the qualified small business as required by subdivision 5, paragraph (g).

(d) Reports from qualified funds must certify that the fund remains invested in the qualified small business as required by subdivision 5, paragraph (g).

(e) A qualified small business that ceases all operations and becomes insolvent must file a final annual report in the form required by the commissioner documenting its insolvency.

In following years the business is exempt from the annual reporting requirement, the report filing fee, and the fine for failure to file a report.

(f) A qualified small business, qualified investor, or qualified fund that fails to file an annual report as required under this subdivision is subject to a \$500 fine.

Subd. 7. Revocation of credits.

(a) If the commissioner determines that a qualified investor or qualified fund did not meet the three-year holding period required in subdivision 5, paragraph (g), any credit allocated and certified to the investor or fund is revoked and must be repaid by the investor.

(b) If the commissioner determines that a business did not meet the employment and payroll requirements in subdivision 2, paragraph (c), clause (2), in any of the five calendar years following the year in which an investment in the business that qualified for a tax credit under this section was made, the business must repay the following percentage of the credits allowed for qualified investments in the business: **[Confirming that an investment made any time in 2011 (e.g. February 1, 2011) will be subject to 100% repayment for any failure to meet this requirement in 2011 or 2012, and an 80% repayment for a failure in 2013, etc.]**

Year following the year in which the investment was made:	Percentage of credit required to be repaid:
First	100%
Second	80%
Third	60%
Fourth	40%
Fifth	20%
Sixth and later	0

(c) The commissioner must notify the commissioner of revenue of every credit revoked and subject to full or partial repayment under this section.

(d) For the repayment of credits allowed under this section and section 290.0692, a qualified small business, qualified investor [**Confirming that repayment of credits by a qualified investor would be required only based upon failure to meet the three-year holding period.**], or investor in a qualified fund must file an amended return [**Confirming that this requires adjustment of the investor's tax liability for the year of investment versus a tax imposed in the current year.**] with the commissioner of revenue and pay any amounts required to be repaid within 30 days after becoming subject to repayment under this section.

Subd. 8. **Data privacy.**

(a) Data contained in an application submitted to the commissioner under subdivision 2, 3, or 4 are nonpublic data, or private data on individuals, as defined in section 13.02, subdivision 9 or 12, except that the following data items are public:

(1) the name of a qualified small business upon approval of the application and certification by the commissioner under subdivision 2;

(2) the name of a qualified investor upon approval of the application and certification by the commissioner under subdivision 3;

(3) the name of a qualified fund upon approval of the application and certification by the commissioner under subdivision 4;

(4) for credit certificates issued under subdivision 5, the amount of the credit certificate issued, amount of the qualifying investment, the name of the qualifying investor or qualifying fund that received the certificate, and the name of the qualifying small business in which the qualifying investment was made;

(5) for credits revoked under subdivision 7, paragraph (a), the amount revoked and the name of the qualified investor or qualified fund; and (6) for credits revoked under subdivision 7, paragraphs (b) and (c), the amount revoked and the name of the qualified small business.

(b) The following data, including data classified as nonpublic or private, must be provided to the consultant for use in conducting the program evaluation under subdivision 10:

(1) the commissioner of employment and economic development shall provide data contained in an application for certification received from a qualified small business, qualified investor, or qualified fund, and any annual reporting information received on a qualified small business, qualified investor, or qualified fund; and

(2) the commissioner of revenue shall provide data contained in any applicable tax returns of a qualified small business, qualified investor, or qualified fund.

Subd. 9. **Report to legislature.** Beginning in 2011, the commissioner must annually report by March 15 to the chairs and ranking minority members of the legislative committees having jurisdiction over taxes and economic development in the senate and the house of representatives, in compliance with Minnesota Statutes, sections 3.195 and 3.197, on the tax credits issued under this section. The report must include:

(1) the number and amount of the credits issued;

(2) the recipients of the credits;

(3) for each qualified small business, its location, line of business, and if it received an investment resulting in certification of tax credits;

(4) the total amount of investment in each qualified small business resulting in certification of tax credits;

(5) for each qualified small business that received investments resulting in tax credits, the total amount of additional investment that did not qualify for the tax credit;

(6) the number and amount of credits revoked under subdivision 7;

(7) the number and amount of credits that are no longer subject to the three-year holding period because of the exceptions under subdivision 5, paragraph (g), clauses (1) to (4); and

(8) any other information relevant to evaluating the effect of these credits.

Subd. 10. **Program evaluation.**

(a) No later than December 31, 2012, the commissioner of revenue, after consultation with the commissioners of management and budget and employment and economic development,

See “CAUTION” on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 18

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

shall contract with a qualified outside entity or individual to evaluate the effects of the small business investment tax credit on the Minnesota economy.

The contractor must not be associated with, employed by, or have contracts with the entities involved in or associated with the venture capital, angel investment, life science, or high technology industries.

The program evaluation must be completed by January 2014, and provided to the chairs and ranking minority members of the legislative committees having jurisdiction over taxes and economic development in the senate and the house of representatives, in compliance with sections 3.195 and 3.197.

The program evaluation must include, in addition to any other matters the commissioner considers relevant to evaluating the effectiveness of the credit, analysis of:

(1) the effect of the credit on the level of equity investment in qualified small businesses in Minnesota, including investments by angel investors, venture capital firms, and other sources of equity capital for startup businesses;

(2) the effect of the credit, if any, on investment in firms other than qualified small businesses;

(3) the amount of economic activity, including the number of jobs and the wages of those jobs, generated by qualified small businesses that received investments that qualified for the credit;

(4) the incremental change in Minnesota state and local taxes paid as a result of the allowance of the credit; and

(5) the net benefit to the Minnesota economy of allowance of the credit relative to alternative uses of the resources, such as increasing the research and development credit or reducing the corporate franchise tax rate.

(b) \$100,000 is appropriated to the commissioner of revenue from the general fund for fiscal year 2013 for the purposes of this evaluation.

Any unspent amount of this appropriation carries over to fiscal year 2014.

The allocation of the credit in subdivision 5 for taxable year 2013 is reduced by \$100,000.

This appropriation may be used to hire a consultant or consultants to prepare all or part of the study.

(c) To the extent necessary to complete the program evaluation, and as provided in subdivision 8, the consultant or consultants may request from the commissioner of revenue

See “CAUTION” on first page.

Mr. Jeffrey M. Nelson
May 19, 2010
Page 19

This was a discussion letter, not a definitive analysis.
My interpretations may have changed since this letter was delivered.

tax return information of taxpayers who are qualified small businesses, qualified investors, and qualified funds.

To the extent necessary to complete the program evaluation, the consultant or consultants may request from the commissioner of employment and economic development applications for certification and annual reports made by qualified small businesses, qualified investors, and qualified funds. The consultant or consultants may not disclose or release any data received under this section except as permitted for a government entity under chapter 13, and is subject to the penalties and remedies provided in law for violation of that chapter.

Subd. 11. **Appropriations.** Amounts in the small business investment tax credit administration account in the special revenue fund are appropriated to the commissioner of employment and economic development for costs associated with certifying applications and refunding application fees as provided in subdivisions 2, 3, and 4, and for personnel and administrative expenses related to administering the small business investment tax credit in this section.

Subd. 12. **Sunset.** This section expires for taxable years beginning after December 31, 2014, except that reporting requirements under subdivision 6 and revocation of credits under subdivision 7 remain in effect through 2016 for qualified investors and qualified funds, and through 2018 for qualified small businesses, reporting requirements under subdivision 9 remain in effect through 2019, and the appropriation in subdivision 11 remains in effect through 2018.

EFFECTIVE DATE. This section is effective the day following final enactment.