

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 1965

(SENATE AUTHORS: OSMEK)

DATE
03/09/2017

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Introduction and first reading
Referred to Taxes

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to taxation; income; modifying the small business investment credit to
1.3 include a credit for qualifying investments in pediatric medical device businesses;
1.4 amending Minnesota Statutes 2016, sections 116J.8737, subdivisions 1, 2, 5, 9;
1.5 290.0692, subdivision 2.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 116J.8737, subdivision 1, is amended to read:

1.8 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
1.9 the meanings given.

1.10 (b) "Qualified small business" means a business that has been certified by the
1.11 commissioner under subdivision 2.

1.12 (c) "Qualified investor" means an investor who has been certified by the commissioner
1.13 under subdivision 3.

1.14 (d) "Qualified fund" means a pooled angel investment network fund that has been certified
1.15 by the commissioner under subdivision 4.

1.16 (e) "Qualified investment" means a cash investment in a qualified small business of a
1.17 minimum of:

1.18 (1) \$10,000 in a calendar year by a qualified investor; or

1.19 (2) \$30,000 in a calendar year by a qualified fund.

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

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

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

2.7 (h) "Intern" means a student of an accredited institution of higher education, or a former
2.8 student who has graduated in the past six months from an accredited institution of higher
2.9 education, who is employed by a qualified small business in a nonpermanent position for
2.10 a duration of nine months or less that provides training and experience in the primary
2.11 business activity of the business.

2.12 (i) "Liquidation event" means a conversion of qualified investment for cash, cash and
2.13 other consideration, or any other form of equity or debt interest.

2.14 (j) "Qualified greater Minnesota business" means a qualified small business that is also
2.15 certified by the commissioner as a qualified greater Minnesota business under subdivision
2.16 2, paragraph (h).

2.17 (k) "Minority group member" means a United States citizen who is Asian, Pacific
2.18 Islander, Black, Hispanic, or Native American.

2.19 (l) "Minority-owned business" means a business for which one or more minority group
2.20 members:

2.21 (1) own at least 50 percent of the business, or, in the case of a publicly owned business,
2.22 own at least 51 percent of the stock; and

2.23 (2) manage the business and control the daily business operations.

2.24 (m) "Women" means persons of the female gender.

2.25 (n) "Women-owned business" means a business for which one or more women:

2.26 (1) own at least 50 percent of the business, or, in the case of a publicly owned business,
2.27 own at least 51 percent of the stock; and

2.28 (2) manage the business and control the daily business operations.

2.29 (o) "Officer" means a person elected or appointed by the board of directors to manage
2.30 the daily operations of the qualified small business;

3.1 (p) "Principal" means a person having authority to act on behalf of the qualified small
3.2 business.

3.3 (q) "Pediatric medical device" means a medical device used to treat or diagnose diseases
3.4 and conditions in individuals from birth to age 21 at the time of diagnosis or treatment.

3.5 (r) "Qualified Minnesota pediatric medical device business" means a qualified small
3.6 business that is also certified by the commissioner as a qualified Minnesota pediatric medical
3.7 device business under subdivision 2, paragraph (j).

3.8 EFFECTIVE DATE. This section is effective for tax years beginning after December
3.9 31, 2016.

3.10 Sec. 2. Minnesota Statutes 2016, section 116J.8737, subdivision 2, is amended to read:

3.11 Subd. 2. **Certification of qualified small businesses.** (a) Businesses may apply to the
3.12 commissioner for certification as a qualified small business or qualified greater Minnesota
3.13 small business for a calendar year. The application must be in the form and be made under
3.14 the procedures specified by the commissioner, accompanied by an application fee of \$150.
3.15 Application fees are deposited in the small business investment tax credit administration
3.16 account in the special revenue fund. The application for certification for 2010 must be made
3.17 available on the department's Web site by August 1, 2010. Applications for subsequent
3.18 years' certification must be made available on the department's Web site by November 1 of
3.19 the preceding year.

3.20 (b) Within 30 days of receiving an application for certification under this subdivision,
3.21 the commissioner must either certify the business as satisfying the conditions required of a
3.22 qualified small business or qualified greater Minnesota small business, request additional
3.23 information from the business, or reject the application for certification. If the commissioner
3.24 requests additional information from the business, the commissioner must either certify the
3.25 business or reject the application within 30 days of receiving the additional information. If
3.26 the commissioner neither certifies the business nor rejects the application within 30 days
3.27 of receiving the original application or within 30 days of receiving the additional information
3.28 requested, whichever is later, then the application is deemed rejected, and the commissioner
3.29 must refund the \$150 application fee. A business that applies for certification and is rejected
3.30 may reapply.

3.31 (c) To receive certification as a qualified small business, a business must satisfy all of
3.32 the following conditions:

3.33 (1) the business has its headquarters in Minnesota;

4.1 (2) at least: (i) 51 percent of the business's employees are employed in Minnesota; (ii)
4.2 51 percent of the business's total payroll is paid or incurred in the state; and (iii) 51 percent
4.3 of the total value of all contractual agreements to which the business is a party in connection
4.4 with its primary business activity is for services performed under contract in Minnesota,
4.5 unless the business obtains a waiver under paragraph (i);

4.6 (3) the business is engaged in, or is committed to engage in, innovation in Minnesota in
4.7 one of the following as its primary business activity:

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

4.10 (ii) researching or developing a proprietary product, process, or service in a qualified
4.11 high-technology field;

4.12 (iii) researching or developing a proprietary product, process, or service in the fields of
4.13 agriculture, tourism, forestry, mining, manufacturing, or transportation; or

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

4.16 (4) other than the activities specifically listed in clause (3), the business is not engaged
4.17 in real estate development, insurance, banking, lending, lobbying, political consulting,
4.18 information technology consulting, wholesale or retail trade, leisure, hospitality,
4.19 transportation, construction, ethanol production from corn, or professional services provided
4.20 by attorneys, accountants, business consultants, physicians, or health care consultants;

4.21 (5) the business has fewer than 25 employees;

4.22 (6) the business must pay its employees annual wages of at least 175 percent of the
4.23 federal poverty guideline for the year for a family of four and must pay its interns annual
4.24 wages of at least 175 percent of the federal minimum wage used for federally covered
4.25 employers, except that this requirement must be reduced proportionately for employees and
4.26 interns who work less than full-time, and does not apply to an executive, officer, or member
4.27 of the board of the business, or to any employee who owns, controls, or holds power to vote
4.28 more than 20 percent of the outstanding securities of the business;

4.29 (7) the business has (i) not been in operation for more than ten years, or (ii) not been in
4.30 operation for more than 20 years if the business is engaged in the research, development,
4.31 or production of medical devices or pharmaceuticals for which United States Food and Drug
4.32 Administration approval is required for use in the treatment or diagnosis of a disease or
4.33 condition;

5.1 (8) the business has not previously received private equity investments of more than
5.2 \$4,000,000;

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

5.5 (10) the business has not issued securities that are traded on a public exchange.

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

5.8 (e) In order for a qualified investment in a business to be eligible for tax credits:

5.9 (1) the business must have applied for and received certification for the calendar year
5.10 in which the investment was made prior to the date on which the qualified investment was
5.11 made;

5.12 (2) the business must not have issued securities that are traded on a public exchange;

5.13 (3) the business must not issue securities that are traded on a public exchange within
5.14 180 days after the date on which the qualified investment was made; and

5.15 (4) the business must not have a liquidation event within 180 days after the date on
5.16 which the qualified investment was made.

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

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

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

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

5.29 (3) "greater Minnesota" means the area of Minnesota located outside of the metropolitan
5.30 area as defined in section 473.121, subdivision 2.

6.1 (h) To receive certification as a qualified greater Minnesota business, a business must
 6.2 satisfy all of the requirements of paragraph (c) and must satisfy the following conditions:

6.3 (1) the business has its headquarters in greater Minnesota; and

6.4 (2) at least: (i) 51 percent of the business's employees are employed in greater Minnesota;
 6.5 (ii) 51 percent of the business's total payroll is paid or incurred in greater Minnesota; and
 6.6 (iii) 51 percent of the total value of all contractual agreements to which the business is a
 6.7 party in connection with its primary business activity is for services performed under contract
 6.8 in greater Minnesota, unless the business obtains a waiver under paragraph (i).

6.9 (i) The commissioner must exempt a business from the requirement under paragraph
 6.10 (c), clause (2), item (iii), if the business certifies to the commissioner that the services
 6.11 required under a contract in connection with the primary business activity cannot be
 6.12 performed in Minnesota if the business otherwise qualifies as a qualified small business, or
 6.13 in greater Minnesota if the business otherwise qualifies as a qualified greater Minnesota
 6.14 business. The business must submit the certification required under this paragraph every
 6.15 six months from the month the exemption was granted. The exemption allowed under this
 6.16 paragraph must be submitted in a form and manner prescribed by the commissioner.

6.17 (j) To receive certification as a qualified Minnesota pediatric medical device business,
 6.18 a business must satisfy all of the requirements of paragraph (c) and must satisfy the following
 6.19 conditions:

6.20 (1) ...

6.21 (2) ...

6.22 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 6.23 31, 2016.

6.24 Sec. 3. Minnesota Statutes 2016, section 116J.8737, subdivision 5, is amended to read:

6.25 Subd. 5. **Credit allowed.** (a)(1) Notwithstanding clause (3), a qualified investor or
 6.26 qualified fund is eligible for a credit equal to 25 percent of the qualified investment in a
 6.27 qualified small business. Investments made by a pass-through entity qualify for a credit
 6.28 only if the entity is a qualified fund. The commissioner must not allocate more than
 6.29 \$15,000,000 in credits to qualified investors or qualified funds for taxable years beginning
 6.30 after December 31, 2013, and before January 1, 2017, and must not allocate more than
 6.31 \$10,000,000 in credits to qualified investors or qualified funds for taxable years beginning
 6.32 after December 31, 2016, and before January 1, 2018; ~~and~~

7.1 (2) for taxable years beginning after December 31, 2014, and before January 1, 2018,
7.2 50 percent must be allocated to credits for qualifying investments in qualified greater
7.3 Minnesota businesses and minority- or women-owned qualified small businesses in
7.4 Minnesota. Any portion of a taxable year's credits that is reserved for qualifying investments
7.5 in greater Minnesota businesses and minority- or women-owned qualified small businesses
7.6 in Minnesota that is not allocated by September 30 of the taxable year is available for
7.7 allocation to other credit applications beginning on October 1;

7.8 (3) a qualified investor or qualified fund invested in a qualified Minnesota pediatric
7.9 medical device business is eligible for a credit equal to 50 percent of the qualified investment
7.10 in a qualified Minnesota pediatric medical device business. Investments made by a
7.11 pass-through entity qualify for a credit only if the entity is a qualified fund. The commissioner
7.12 must not allocate more than \$2,000,000 in credits to qualified investors or qualified funds
7.13 for taxable years beginning after December 31, 2016, and before January 1, Any portion
7.14 of a taxable year's credits authorized under this clause that are not allocated by September
7.15 30 of the taxable year is available for allocation to other credit applications beginning on
7.16 October 1; and

7.17 (4) any portion of a taxable year's credits that is not allocated by the commissioner does
7.18 not cancel and may be carried forward to subsequent taxable years until all credits have
7.19 been allocated.

7.20 (b) The commissioner may not allocate more than a total maximum amount in credits
7.21 for a taxable year to a qualified investor for the investor's cumulative qualified investments
7.22 as an individual qualified investor and as an investor in a qualified fund; for married couples
7.23 filing joint returns the maximum is \$250,000, and for all other filers the maximum is
7.24 \$125,000. The commissioner may not allocate more than a total of \$1,000,000 in credits
7.25 over all taxable years for qualified investments in any one qualified small business.

7.26 (c) The commissioner may not allocate a credit to a qualified investor either as an
7.27 individual qualified investor or as an investor in a qualified fund if, at the time the investment
7.28 is proposed:

7.29 (1) the investor is an officer or principal of the qualified small business; or

7.30 (2) the investor, either individually or in combination with one or more members of the
7.31 investor's family, owns, controls, or holds the power to vote 20 percent or more of the
7.32 outstanding securities of the qualified small business.

7.33 A member of the family of an individual disqualified by this paragraph is not eligible for a
7.34 credit under this section. For a married couple filing a joint return, the limitations in this

8.1 paragraph apply collectively to the investor and spouse. For purposes of determining the
8.2 ownership interest of an investor under this paragraph, the rules under section 267(c) and
8.3 267(e) of the Internal Revenue Code apply.

8.4 (d) Applications for tax credits for 2010 must be made available on the department's
8.5 Web site by September 1, 2010, and the department must begin accepting applications by
8.6 September 1, 2010. Applications for subsequent years must be made available by November
8.7 1 of the preceding year.

8.8 (e) Qualified investors and qualified funds must apply to the commissioner for tax credits.
8.9 Tax credits must be allocated to qualified investors or qualified funds in the order that the
8.10 tax credit request applications are filed with the department. The commissioner must approve
8.11 or reject tax credit request applications within 15 days of receiving the application. The
8.12 investment specified in the application must be made within 60 days of the allocation of
8.13 the credits. If the investment is not made within 60 days, the credit allocation is canceled
8.14 and available for reallocation. A qualified investor or qualified fund that fails to invest as
8.15 specified in the application, within 60 days of allocation of the credits, must notify the
8.16 commissioner of the failure to invest within five business days of the expiration of the
8.17 60-day investment period.

8.18 (f) All tax credit request applications filed with the department on the same day must
8.19 be treated as having been filed contemporaneously. If two or more qualified investors or
8.20 qualified funds file tax credit request applications on the same day, and the aggregate amount
8.21 of credit allocation claims exceeds the aggregate limit of credits under this section or the
8.22 lesser amount of credits that remain unallocated on that day, then the credits must be allocated
8.23 among the qualified investors or qualified funds who filed on that day on a pro rata basis
8.24 with respect to the amounts claimed. The pro rata allocation for any one qualified investor
8.25 or qualified fund is the product obtained by multiplying a fraction, the numerator of which
8.26 is the amount of the credit allocation claim filed on behalf of a qualified investor and the
8.27 denominator of which is the total of all credit allocation claims filed on behalf of all
8.28 applicants on that day, by the amount of credits that remain unallocated on that day for the
8.29 taxable year.

8.30 (g) A qualified investor or qualified fund, or a qualified small business acting on their
8.31 behalf, must notify the commissioner when an investment for which credits were allocated
8.32 has been made, and the taxable year in which the investment was made. A qualified fund
8.33 must also provide the commissioner with a statement indicating the amount invested by
8.34 each investor in the qualified fund based on each investor's share of the assets of the qualified
8.35 fund at the time of the qualified investment. After receiving notification that the investment

9.1 was made, the commissioner must issue credit certificates for the taxable year in which the
 9.2 investment was made to the qualified investor or, for an investment made by a qualified
 9.3 fund, to each qualified investor who is an investor in the fund. The certificate must state
 9.4 that the credit is subject to revocation if the qualified investor or qualified fund does not
 9.5 hold the investment in the qualified small business for at least three years, consisting of the
 9.6 calendar year in which the investment was made and the two following years. The three-year
 9.7 holding period does not apply if:

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

9.10 (2) 80 percent or more of the assets of the qualified small business is sold before the end
 9.11 of the three-year period;

9.12 (3) the qualified small business is sold before the end of the three-year period;

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

9.15 (5) the qualified investor dies before the end of the three-year period.

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

9.18 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 9.19 31, 2016.

9.20 Sec. 4. Minnesota Statutes 2016, section 116J.8737, subdivision 9, is amended to read:

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

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

9.27 (2) the recipients of the credits;

9.28 (3) for each qualified small business or, qualified greater Minnesota business, or qualified
 9.29 Minnesota pediatric medical device business, its location, line of business, and if it received
 9.30 an investment resulting in certification of tax credits;

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

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

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

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

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

10.9 Sec. 5. Minnesota Statutes 2016, section 290.0692, subdivision 2, is amended to read:

10.10 Subd. 2. **Credit allowed.** A qualified investor is allowed a credit against the tax imposed
10.11 under this chapter for qualified investments made in a qualified small business for the taxable
10.12 year. The credit equals the amount and applies to the taxable year indicated on the certificate
10.13 provided to the qualified investor under section 116J.8737, ~~but~~ subject to the following
10.14 limitations:

10.15 (1) for qualified investments in a qualified small business or qualified greater Minnesota
10.16 small business, the maximum credit in any taxable year is \$250,000 for a married couple
10.17 filing a joint return, and \$125,000 for all other claimants; and

10.18 (2) for qualified investments in a qualified Minnesota pediatric medical device business,
10.19 the maximum credit in any taxable year is \$500,000 for a married couple filing a joint return
10.20 and \$250,000 for all other claimants.

10.21 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
10.22 31, 2016.