

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority amends Chapter 116, “Tax Credits for Investments in Certified Innovation Funds,” Iowa Administrative Code.

The rules in Chapter 116 describe the Economic Development Authority’s administration of the Innovation Fund Tax Credit Program. These amendments update existing rules to reflect changes to the tax credit, including additional eligibility criteria for certification of innovation funds, new requirements for the administration of the certification process and maintenance of fund certification, a description of the circumstances under which a fund’s certification may be revoked, an increase of the tax credit percentage that a taxpayer may claim, and changes to the way the tax credit may be claimed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0940C**. No public comment was received on these amendments. These amendments are identical to those published under the Notice of Intended Action.

These amendments were adopted by the Economic Development Authority Board on September 20, 2013.

The Authority finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective on October 1, 2013, as they confer a benefit on the public by allowing investors to be eligible to receive tax credits for investments made in 2013.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 15E.52 as amended by 2013 Iowa Acts, House File 615.

These amendments became effective October 1, 2013.

The following amendments are adopted.

ITEM 1. Strike “84GA,SF517” wherever it appears in rules **261—116.1(84GA,SF517)** to **261—116.8(84GA,SF517)** and insert “15E” in lieu thereof.

ITEM 2. Amend subrule 116.1(5) as follows:

116.1(5) Amount of credit. ~~The~~ For tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013, the taxpayer may claim a tax credit in an amount equal to 20 percent of the taxpayer’s equity investment in a certified innovation fund. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit in an amount equal to 25 percent of the taxpayer’s equity investment in a certified innovation fund.

ITEM 3. Amend rule **261—116.2(15E)**, definitions of “Authority” and “Board,” as follows:

“*Authority*” means the economic development authority created in 2011 Iowa Acts, House File 590 Iowa Code section 15.105.

“*Board*” means the same as defined in Iowa Code section 15.102 ~~as amended by 2011 Iowa Acts, House File 590, section 3.~~

ITEM 4. Amend rule 261—116.3(15E), catchwords, as follows:

261—116.3(15E) Verification Certification of innovation funds.

ITEM 5. Amend subrule 116.3(2) as follows:

116.3(2) Application forms setting forth the information required to ~~verify~~ certify the eligibility of an innovation fund may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000. Applications shall be submitted to the authority at the address identified above.

ITEM 6. Amend subrule 116.3(3) as follows:

116.3(3) ~~The following information must be submitted to the authority in order for an eligible innovation fund to be verified~~ authority will not issue a tax credit certificate until the board has certified that a fund meets all of the following criteria:

a. A The innovation fund has submitted a copy of the innovation fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the innovation fund.

b. A The innovation fund has submitted a signed statement, from an officer, director, manager, member or general partner of the fund, stating the following:

(1) That the innovation fund will make investments in promising early-stage companies which have a principal place of business in the state. For purposes of rule 261—116.3(15E), "having a principal place of business in the state" means (1) that the business has at least 50 percent of all of its employees in the state, (2) that the business pays at least 50 percent of the business's total payroll to employees residing in the state, or (3) that the headquarters of the business (defined as the home office for a substantial amount of executive employees) is in the state.

(2) That the innovation fund proposes to make investments in innovative businesses which have a principal place of business in the state.

(3) That the innovation fund seeks to secure private funding sources for investment in such businesses.

(4) That the innovation fund proposes to provide multiple rounds of funding and early-stage private sector funding to innovative businesses with a high growth potential, and proposes to focus such funding on innovative businesses that show a potential to produce commercially viable products or services within a reasonable period of time. In order to establish that this criterion is met, the innovation fund shall provide a detailed description of the framework the innovation fund will use to evaluate a business's growth potential and its ability to produce commercially viable products or services within a reasonable period of time. The description shall list and discuss the criteria and the attendant process that the innovation fund will use to evaluate businesses. The authority will consider requests submitted under Iowa Code section 15.118 or 22.7 to treat the evaluation framework as confidential.

(5) That the innovation fund proposes to evaluate all prospective innovative businesses using a rigorous approach and proposes to collaborate and coordinate with the authority and other state and local entities in an effort to achieve policy consistency. In order to establish that this criterion is met, an innovation fund shall provide a detailed description of the methods by which each business will be evaluated. An innovation fund shall also submit a plan describing the actions it will take in order to collaborate and coordinate with other state and local entities and the ways in which the innovation fund intends to ensure consistency with the policy goals of this chapter. Such a plan shall propose to create relationships that can be substantiated in writing, which may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, or joint press releases from or with the entities that will be involved in the collaborative and coordinating efforts or through a list and summary description of the dates and locations for meetings held between the innovation fund and the other entities which allowed for collaboration and coordination between the innovation fund and those entities in an effort to achieve policy consistency.

(6) That the innovation fund proposes to collaborate with the regents institutions of this state and to leverage relationships with such institutions in order to potentially commercialize research developed at those institutions. In order to establish that this criterion is met, an innovation fund shall provide written confirmation of such relationships which may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, or joint press releases from or with the regents institutions of this state or a list and summary description of the dates and locations for meetings held between the innovation fund and the regents institutions, the names of representatives of regents institutions with whom the innovation fund has met, and a brief summary of the discussions at those meetings.

(7) That the innovation fund proposes to obtain at least \$15 million in binding investment commitments and to invest a minimum of \$15 million in companies that have a principal place of business in the state. In order to establish that this criterion is met, an innovation fund shall include

provisions in the fund's governing documents that provide for the continued operations of the fund only if this minimum level of investment commitment is reached.

ITEM 7. Amend subrule 116.3(4) as follows:

116.3(4) Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether ~~a certification will be issued for to certify~~ the innovation fund. If the authority certifies the innovation fund, the authority shall register the fund on a registry that shall be maintained by the authority. The authority shall use the registry to authorize the issuance of further investment tax credits to taxpayers who make equity investments in the innovation funds registered with the authority. The authority shall issue written notification to the innovation fund that the fund has been registered as an innovation fund with the authority for the purpose of issuing investment tax credits. This written notification shall contain the following statement:

The Authority shall not be liable either for an innovation fund's failure to maintain compliance with the certification requirements nor for an investor's loss of tax credit certificates resulting from either a failure to maintain compliance or from a revocation.

ITEM 8. Adopt the following new subrules 116.3(5) and 116.3(6):

116.3(5) On May 24, 2013, significant changes to the innovation fund tax credit program were enacted. (See 2013 Iowa Acts, House File 615.) The legislation includes changes to the criteria required for certification and also changes to the tax credits available to investors in certified funds. An innovation fund certified before May 24, 2013, that wishes to take advantage of the changes in 2013 Iowa Acts, House File 615, must resubmit an application to the board and demonstrate that the innovation fund meets all new requirements for certification as described in subrule 116.3(3).

116.3(6) The board will not certify an innovation fund after June 30, 2018.

ITEM 9. Renumber rules **261—116.4(15E)** and **261—116.5(15E)** as **261—116.5(15E)** and **261—116.6(15E)** and renumber rule **261—116.6(15E)** as **261—116.9(15E)**.

ITEM 10. Adopt the following new rule 261—116.4(15E):

261—116.4(15E) Maintenance, reporting, and revocation of certification.

116.4(1) In order to maintain certification, an innovation fund must demonstrate compliance with the eligibility criteria set forth in subrule 116.3(3) at all times during participation in the program. A failure to comply with the eligibility criteria on an ongoing basis may result in revocation of certification. The authority will notify an innovation fund if the authority finds that the fund is not in compliance and will allow the innovation fund a period of not more than 120 days in which to address such noncompliance. If after 120 days the innovation fund remains in noncompliance, the board may revoke the fund's certification. The authority will not issue tax credit certificates to investors in an innovation fund if such equity investments are made at any point after the innovation fund has been found to be in noncompliance or if the innovation fund's certification has been revoked.

116.4(2) On or before December 31 of each year, each certified innovation fund shall collect and provide to the board, in the manner and form prescribed by the authority, the following information:

a. The amount of equity investments made in the innovation fund, both on an annual and a cumulative basis.

b. For each investment by an innovation fund in a business:

(1) The amount and date of the investment.

(2) The name and industry of the business.

(3) The location or locations from which the business operates.

(4) The number of employees of the business located in Iowa and the number of employees of the business located outside Iowa on the date of the initial investment by the innovation fund in the business.

(5) The number of employees of the business located in Iowa and the number of employees of the business located outside Iowa at the close of the fiscal year which is the subject of the report.

c. In order to establish that an innovation fund has met the criterion found in subparagraph 116.3(3) "b"(5), the innovation fund shall provide documentation and information in the manner and

form required by the authority. Such documentation and information may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, joint press releases, or a list and summary description of the dates and locations for meetings held between the innovation fund and the other entities which allowed for collaboration and coordination between the innovation fund and those entities in an effort to achieve policy consistency.

d. In order to establish that an innovation fund has met the criterion found in subparagraph 116.3(3)“b”(6), the innovation fund shall provide documentation and information in the manner and form required by the authority. Such documentation and information may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, joint press releases, or a list and summary description of the dates and locations for meetings held between the innovation fund and regents institutions, the names of representatives of regents institutions with whom the innovation fund has met, and a brief summary of the discussions at those meetings. The innovation fund shall also indicate if any business in which it has invested is commercializing research developed at one of the regents institutions.

116.4(3) Upon obtaining the required minimum threshold of \$15 million in binding investment commitments, an innovation fund shall submit a statement containing the names, addresses, equity interests issued and consideration paid for the interests of all limited partners or members who may initially qualify for the tax credits. An innovation fund shall submit an amended statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change. The authority will consider requests submitted under Iowa Code section 15.118 to treat investor names and amounts as confidential.

116.4(4) The board may revoke an innovation fund’s certification if any of the following events occur:

a. An innovation fund fails to secure the required \$15 million in initial binding investment commitments within one year of the date of certification by the board or fails at any point thereafter to secure investment from its investors of at least \$15 million. If an investor in an innovation fund fails to make a capital call by the innovation fund and that failure would cause the innovation fund to fail to secure the required minimum \$15 million in investment, then the authority will provide the innovation fund a period of not more than 120 days after receiving notice of the failed capital call to secure additional investment commitments sufficient to meet the required minimum investment.

b. An innovation fund fails to timely submit the report required in subrule 116.4(2).

c. An innovation fund fails to maintain the eligibility criteria as set forth in subrule 116.3(3).

The board may forbear revocation under this subrule for good cause shown or for demonstration of extenuating circumstances. Such forbearance shall be at the board’s discretion and for the period of time determined by the board to be in the best interest of the program and the state of Iowa.

116.4(5) If the board finds that a fund is in noncompliance or revokes an innovation fund’s certification, the board will not issue tax credit certificates to investors in the innovation fund until the innovation fund manager demonstrates to the board that the innovation fund again meets the eligibility criteria set forth in rule 261—116.3(15E). If an investor makes an equity investment prior to a notice of noncompliance and a revocation of an innovation fund’s certification, the board will issue the tax credit certificate as set forth in rule 261—116.6(15E). If an investor is issued a tax credit certificate prior to a revocation of certification, the investor shall have all the rights described in Iowa Code section 15E.52(5) as amended by 2013 Iowa Acts, House File 615.

ITEM 11. Amend renumbered rule 261—116.5(15E) as follows:

261—116.5(15E) Application for the investment tax credit certificate. Upon ~~verification~~ certification and registration by the authority of an innovation fund, a taxpayer ~~who desires to receive~~ may make equity investments in the fund and may apply for an investment tax credit certificate for an each equity investment made in an a certified innovation fund ~~must submit by submitting~~ provide providing an application to the authority for approval by the board and provide providing such other information and documentation as may be requested by the authority. Application forms for the investment tax credit certificate may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines,

Iowa 50309. Applications shall be submitted to the authority at the address identified above. Each application shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.

ITEM 12. Amend renumbered rule 261—116.6(15E) as follows:

261—116.6(15E) Approval, issuance and distribution of investment tax credits.

116.6(1) *Approval and issuance.* Upon ~~verification~~ certification and registration by the authority of an innovation fund, ~~the authority, upon and approval by the board of the taxpayer's application, shall issue~~ the board will approve the issuance of a tax credit certificate to the applicant. The board shall not issue a certificate to a taxpayer for an equity investment in an innovation fund until such fund has been certified as an innovation fund pursuant to rule 261—116.3(15E).

116.6(2) *Issuance.* Applicants shall receive tax credit certificates on a first-come, first-served basis until the maximum aggregate amount of credits authorized for issuance has been reached for any fiscal year. The board shall not issue a tax credit certificate prior to September 1, 2014.

~~116.6(2)~~ **116.6(3) *Carry-forward Waiting list.*** If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the applications will be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years board will establish a waiting list for certificates. Applications that were approved but for which certificates were not issued shall be placed on the waiting list in the order the applications were received by the board. If applications were placed on the waiting list, the authority shall:

a. ~~When carrying forward and prioritizing such applications, the authority shall (1) issue~~ Issue tax credit certificates to the taxpayers for such ~~carryover~~ waitlisted tax credits before issuing any new tax credits to later applicants, and

b. ~~(2) apply~~ Apply the aggregate amount of the waitlisted credits ~~carried over~~ against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

~~116.6(3)~~ **116.6(4) *Preparation of the certificate.*** The tax credit certificate shall be in a form approved by the authority and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the innovation fund, the year in which the ~~credit may be redeemed~~ investment was made and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise fund.

~~116.6(4)~~ **116.6(5) *Credit amount.*** A tax credit for investment in an innovation fund is equal to ~~20~~ 25 percent of the taxpayer's equity investment in the fund.

~~116.6(5)~~ **116.6(6) *Maximum aggregate limitation.*** The maximum aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$8 million per year.

ITEM 13. Renumber rules 261—116.7(15E) and 261—116.8(15E) as 261—116.10(15E) and 261—116.11(15E).

ITEM 14. Adopt the following new rule 261—116.7(15E):

261—116.7(15E) Transferability of the tax credit.

116.7(1) *Transfer.* Tax credit certificates issued pursuant to this rule may be transferred, in whole or in part, to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name,

tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue.

116.7(2) *Only one transfer allowed.* A tax credit certificate shall only be transferred once.

116.7(3) *Replacement certificate.* Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate. A replacement tax credit certificate may designate a different tax than the tax designated on the original tax credit certificate.

116.7(4) *Claiming a transferred tax credit.* A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa code chapter 422, divisions II, III, and V. For more information on claiming transferred tax credits, see department of revenue rule 701—42.22(15E,422).

ITEM 15. Adopt the following **new** rule 261—116.8(15E):

261—116.8(15E) Vested right in the tax credit. A certificate and related tax credit issued pursuant to Iowa Code section 15E.52 as amended by 2013 Iowa Acts, House File 615, shall be deemed a vested right of the original holder or any transferee thereof, and the state shall not cause either to be redeemed in such a way that amends or rescinds the certificate or that curtails, limits, or withdraws the related tax credit, except as otherwise provided in rules 261—116.6(15E) and 261—116.7(15E) or upon consent of the proper holder. A certificate issued pursuant to this rule cannot pledge the credit of the state, and any such certificate so pledged to secure the debt of the original holder or a transferee shall not constitute a contract binding the state. A taxpayer does not obtain a vested right in such a tax credit until a certificate has been issued by the authority.

ITEM 16. Amend renumbered rule 261—116.9(15E) as follows:

261—116.9(15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. A tax credit may be claimed in the first year that a certificate is issued. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).

ITEM 17. Amend **261—Chapter 116**, implementation sentence, as follows:

These rules are intended to implement ~~2011 Iowa Acts, Senate File 517~~ 2013 Iowa Code section 15E.52 and 2013 Iowa Acts, House File 615.

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