

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority amends Chapter 115, “Tax Credits for Investments in Qualifying Businesses and Community-Based Seed Capital Funds,” Iowa Administrative Code.

The rules in Chapter 115 describe the tax credits for investments in qualifying businesses and community-based seed capital funds, i.e., the Angel Investor Tax Credit Program. The legislature, in 2015 Iowa Acts, chapter 138, amended the Angel Investor Tax Credit Program. The amendments to Chapter 115 increase the amount of tax credit awarded per investment, allow refundability for certain tax credits, change the cap on individual credit awards and introduce a cap on the amount of awards that can be issued to the investors of a given qualifying business, change the eligibility requirements for a business to be certified as a qualifying business, identify information that will be treated as confidential, and update application deadlines.

Notice of Intended Action for these amendments was published in the January 20, 2016, Iowa Administrative Bulletin as **ARC 2373C**. No comments were received.

Two changes have been made to the amendments since the publication of the Notice of Intended Action. First, the Authority decided to extend the deadline for qualifying businesses to submit applications for investments made in the 2015 calendar year in order to allow qualifying businesses sufficient time to prepare applications after the effective date of these amendments. Therefore, the proposed date of June 30, 2016, has been updated to August 17, 2016, in renumbered subrule 115.4(2) and paragraph 115.5(1)“a.” Second, upon reviewing the amendments, the Authority has decided to recharacterize the subset of eligibility requirements in subparagraph 115.5(1)“a”(3) to better reflect the nature of those requirements as amended by 2015 Iowa Acts, chapter 138. Subparagraph 115.5(1)“a”(3) has been amended to replace the word “training,” and to add the phrase “business experience” in its place.

The Economic Development Authority Board adopted these amendments at the Board meeting held on April 22, 2016.

These amendments do not have any fiscal impact to the state of Iowa.

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

These amendments are intended to implement Iowa Code sections 15E.41 to 15E.46.

These amendments will become effective June 29, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 261—115.1(84GA,SF517) as follows:

261—115.1(84GA,SF517 15E) Tax credits for investments in qualifying businesses and community-based seed capital funds. Tax credits for investments in qualifying businesses and community-based seed capital funds may be claimed as provided in this rule.

115.1(1) No change.

115.1(2) *Investments in qualifying businesses.*

a. and b. No change.

c. Investments made in qualifying businesses on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in qualifying businesses on or after July 2, 2015, are governed by 2016 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

115.1(3) *Investments in community-based seed capital funds.*

a. and b. No change.

c. Investments made in community-based seed capital funds on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in community-based seed capital funds on or after July 2, 2015, are not eligible for tax credits. See 2015 Iowa Acts, Senate File 510, sections 107 to 128, which include the repeal of Iowa Code section 15E.45 and other provisions related to the administration of community-based seed capital funds.

115.1(4) *Amount of tax credit that may be claimed by taxpayer.*

a. The In the case of investments made on or after July 1, 2011, and before July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 20 percent of the taxpayer's equity investment in either a qualifying business or community-based seed capital fund. In the case of investments made on or after July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 25 percent of the taxpayer's equity investment in a qualifying business.

b. The In the case of investments made on or after July 1, 2011, and before July 2, 2015, the maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be \$50,000. Each year, an investor, and all affiliates of that investor, shall not claim tax credits under this rule for more than five different investments in five different qualifying businesses. In the case of investments made on or after July 2, 2015, the maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed \$100,000 combined. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon the pro rata share of the individual's earnings from the entity. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code.

c. Investments in community-based seed capital funds.

(1) An investor in a community-based seed capital fund shall receive a tax credit pursuant to this rule only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund or in an Iowa-based seed capital fund which has at least 40 percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this rule with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

(2) Paragraph "c" only applies to investments in community-based seed capital funds made on or after July 1, 2011, and before July 2, 2015.

d. The maximum amount of tax credits that may be issued per calendar year for equity investments in any one qualifying business shall not exceed \$500,000.

115.1(5) *Claiming an investment tax credit.* A taxpayer that makes an investment in a qualifying business or community-based seed capital fund and that otherwise meets the requirements of this chapter will receive a board-approved tax credit certificate from the authority. To claim the credit, the taxpayer must attach the certificate to a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rule 701—42.22(15E,422). See also 2015 Iowa Acts, chapter 138, division XX.

115.1(6) No change.

115.1(7) *Refundability for certain tax credits.* For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division II, any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

115.1(8) *Carryforward period for certain tax credits.* For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, divisions III and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, any tax credit in excess of the taxpayer's

liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

115.1(9) Carryback of credits prohibited. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

ITEM 2. Amend rule 261—115.2(84GA,SF517), parenthetical implementation statute, as follows:

261—115.2(84GA,SF517 15E) Definitions.

ITEM 3. Adopt the following new definition of “Entrepreneurial assistance program” in rule **261—115.2(15E)**:

“*Entrepreneurial assistance program*” includes the entrepreneur investment awards program administered under Iowa Code section 15E.362, the receipt of services from a service provider engaged pursuant to Iowa Code section 15.411(1) or the program administered under Iowa Code section 15.411(2).

ITEM 4. Rescind the definition of “Near equity” in rule **261—115.2(15E)**.

ITEM 5. Amend rule **261—115.2(15E)**, definitions of “Investor” and “Qualifying business,” as follows:

“*Investor*” means a person that makes a cash investment in a community-based seed capital fund or in a qualifying business on or after January 1, 2011, and before July 2, 2015. “*Investor*” also means a person making a cash investment in a qualifying business on or after July 2, 2015. “*Investor*” does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business for investments made on or after January 1, 2011.

“*Qualifying business*” means, in the case of investments made on or after July 2, 2015, a business that meets all of the following criteria:

1. The principal business operations of the business are located in the state of Iowa;
2. The business has been in operation for six years or less, as measured from the date of the investment for which a credit is claimed;
3. ~~The business has an owner who has successfully completed one of the following:~~
 - ~~An entrepreneurial venture development curriculum, such as programs developed by a John Pappajohn Entrepreneurial Center, or a holistic training program recognized by the Iowa economic development authority which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning, and management and strategic planning;~~
 - ~~Three years of relevant business experience;~~
 - ~~A four-year college degree in business management, business administration or a related field;~~
 - ~~Other training or experience sufficient to increase the probability of success of the qualifying business;~~
3. The business is participating in an entrepreneurial assistance program. The authority may waive this requirement if a business establishes that its owners, directors, officers, and employees have an appropriate level of experience such that participation in an entrepreneurial assistance program would not materially change the prospects of the business. The authority may consult with outside service providers in consideration of such a waiver;
4. The business is not a business engaged primarily in retail sales, real estate or the provision of health care services or other services requiring a professional license;
5. The business does not have a net worth that exceeds \$5 \$10 million as of the date of the investment for which the credit is claimed; and
6. ~~Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, the business shall have secured total equity or near equity financing equal to at least \$250,000.~~
6. The business shall have secured all of the following at the time of application for tax credits:
 - At least two investors.

• Total equity financing, binding investment commitments, or some combination thereof, equal to at least \$500,000 from investors.

For purposes of paragraph “6,” “investor” includes a person that executes a binding investment commitment to a business.

ITEM 6. Amend rule 261—115.3(84GA,SF517), parenthetical implementation statute, as follows:

261—115.3(84GA,SF517 15E) Cash investments required.

ITEM 7. Amend rule 261—115.4(84GA,SF517) as follows:

261—115.4(84GA,SF517 15E) Applying for an investment tax credit.

115.4(1) No change.

~~**115.4(2)** Application forms may also be obtained by contacting a Small Business Development Center in the applicant’s geographic location. The authority will coordinate with Small Business Development Centers throughout the state to provide uniform application forms to Small Business Development Centers and to disseminate information regarding the investment tax credits. The authority will provide a summary of the investment tax credits to Small Business Development Centers by either supplying the Small Business Development Centers with a copy of these rules or delivering substantially similar information in any other format approved by the authority. The authority will make itself accessible to Small Business Development Centers for assistance with questions concerning completion of applications or any other questions pertaining to the investment tax credits available under this chapter.~~

~~**115.4(3)**~~ **115.4(2)** Applications 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 was made. For investments made on or after July 2, 2015, and before January 1, 2016, applications for the investment tax credit shall be accepted by the authority until August 17, 2016.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit.

The authority may accept applications after the deadline under extenuating circumstances.

ITEM 8. Amend rule 261—115.5(84GA,SF517) as follows:

261—115.5(84GA,SF517 15E) Verification of qualifying businesses and community-based seed capital funds.

115.5(1) Qualifying businesses.

a. Within ~~180~~ 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the ~~2014~~ 2015 calendar year, not later than ~~June 30, 2012~~ August 17, 2016), a qualifying business shall provide to the authority the following information as a prerequisite to the authority’s issuance of any investment tax credits to investors in such qualifying business:

(1) and (2) No change.

(3) A signed statement, from an owner of the business, that describes the manner in which ~~such owner~~ the business satisfies one of the ~~training~~ business experience requirements set forth in the definition of a qualifying business under rule 261—115.2(84GA,SF517 15E); and

(4) A signed statement, from an officer, director, manager, member or general partner of the qualifying business, that states the names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and the amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and ~~the earliest year in which the tax credits may be redeemed~~ the date on which the investment was made. The statement shall contain a commitment by the qualifying business to amend its 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; and.

~~(5) A certificate of existence of a business plan for the qualifying business which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan and other standard elements of a business plan.~~

b. 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 business is a qualifying business. If the authority verifies that the business is a qualifying business, the authority shall register the qualifying business on a registry of such qualifying businesses. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers who make equity investments in qualifying businesses registered with the authority. The authority shall issue written notification to the qualifying business and the applicant that such business has been registered as a qualifying business with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517 15E) for any failure of the business to continuously satisfy the requirements necessary for verification and registration as a qualifying business.

115.5(2) Community-based seed capital funds.

a. Within ~~180~~ 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, not later than June 30, 2012), a community-based seed capital fund shall provide to the authority information as a prerequisite to the authority's issuance of investment tax credits to investors in such community-based seed capital fund. A community-based seed capital fund cannot invest in the Iowa fund of funds organized by the Iowa capital investment corporation under Iowa Code section 15E.65 but may invest up to 60 percent of its committed capital in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. The following information must be provided:

(1) to (3) No change.

b. Upon the authority's receipt of the information and documentation necessary to demonstrate a community-based seed capital fund's satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a fund is a community-based seed capital fund. If the authority verifies that the fund is a community-based seed capital fund, the authority shall register the community-based seed capital fund on a registry of such community-based seed capital funds. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers that make equity investments in the community-based seed capital funds registered with the authority. The authority shall issue written notification to the community-based seed capital fund and the applicant that such fund has been registered as a community-based seed capital fund with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517 15E) for any failure of the community-based seed capital fund to continuously satisfy the requirements necessary for verification and registration as a community-based seed capital fund.

c. The authority will not verify investments made in community-based seed capital funds on or after July 2, 2015.

ITEM 9. Amend rule 261—115.6(84GA,SF517) as follows:

261—115.6(84GA,SF517 15E) Approval, issuance and distribution of investment tax credits.

115.6(1) No change.

115.6(2) Issuance by the authority. Upon approval by the board, the authority shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission pursuant to rule 261—115.9(84GA,SF517 15E). In the case of investments made on or after July 2, 2015, the authority will not issue a tax credit certificate prior to July 1, 2016.

115.6(3) No change.

115.6(4) ~~Maximum aggregate limitation~~ Tax credit amount limitations. The 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 \$2 million. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000.

If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum ~~aggregate amount~~ amounts 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.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the 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.

ITEM 10. Amend rule 261—115.7(84GA,SF517) as follows:

261—115.7(84GA,SF517 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. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422). In the case of tax credits issued for investments made on or after July 2, 2015, a taxpayer shall not claim a tax credit at the department of revenue prior to September 1, 2016.

ITEM 11. Amend rule 261—115.8(84GA,SF517), parenthetical implementation statute, as follows:

261—115.8(84GA,SF517 15E) Notification to the department of revenue.

ITEM 12. Amend rule 261—115.9(84GA,SF517) as follows:

261—115.9(84GA,SF517 15E) Rescinding tax credits.

115.9(1) *Rescission of credits for investments in qualifying businesses.*

a. ~~Within~~ In the case of investments made on or after July 1, 2011, and before January 1, 2014, within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall have secured total equity or near equity financing equal to at least \$250,000. The business shall provide to the authority information and documentation sufficient to demonstrate that the business has secured total equity or near equity financing equal to at least \$250,000 and that such financing was secured within the 24 months required by this rule and shall do so by the equity deadline. For purposes of this subrule, the "equity deadline" shall be the next June 30 following the end of the calendar year in which the qualifying business is required to have secured total equity or near equity financing equal to at least \$250,000. For example, a qualifying business in which equity investments qualifying for investment tax credits were made in 2011 shall have an equity deadline of June 30, 2014. Examples of sufficient information and documentation include, but are not limited to, the following:

(1) and (2) No change.

b. and *c.* No change.

115.9(2) No change.

ITEM 13. Amend rule 261—115.10(84GA,SF517) as follows:

261—115.10(84GA,SF517 15E) Additional information—confidentiality—annual report.

115.10(1) *Additional information.* The authority may at any time request additional information and documentation from a qualifying business or community-based seed capital fund regarding the operations, job creation and economic impact of such qualifying business or community-based seed

capital fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

115.10(2) Confidentiality.

a. Except as provided in paragraph “b,” all information or records in the possession of the authority with respect to this chapter shall be presumed by the authority to be a trade secret protected under Iowa Code chapter 550 or common law and shall be kept confidential by the authority unless otherwise ordered by a court.

b. All of the following shall be considered public information under Iowa Code chapter 22:

(1) The identity of a qualifying business.

(2) The identity of an investor and the qualifying business in which the investor made an equity investment.

(3) The number of tax credit certificates issued by the authority.

(4) The total dollar amount of tax credits issued by the authority.

115.10(3) Annual report. The authority will publish an annual report of the activities conducted pursuant to Iowa Code chapter 15E, division V, and will submit the report to the governor and the general assembly. The report will include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the authority.

[Filed 4/29/16, effective 6/29/16]

[Published 5/25/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.