

CHAPTER 114
SEED INVESTOR TAX CREDIT PROGRAM

Chapter rescission date pursuant to Iowa Code section 17A.7: 2/25/31

261—114.1(15E) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Affiliate*” means the same as defined in Iowa Code section 15E.26. For the purposes of this definition, “controlling equity interest” means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company, or trust.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Convertible debt*” means debt that may be converted to equity at the option of the debt holder but has not yet been converted.

“*Director*” means the director of the authority.

“*Eligible investor*” means an investor making an investment that is eligible for a tax credit pursuant to this chapter and Iowa Code chapter 15E, subchapter IV.

“*Equity*” means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, or partnership interests in partnerships. Equity shall be limited to securities or interests acquired only for cash and shall not include securities or interests acquired at any time for services, contributions of property other than cash, convertible debt, or any other noncash consideration.

“*Full-time equivalent employee*” means a non-part-time position for the number of hours or days per week considered to be full-time work for the kind of service or work performed for an employer. Typically, a full-time equivalent position requires 2,080 hours of work in a calendar year, including all paid holidays, vacations, sick time, and other paid leave.

“*Investment*” means the same as defined in Iowa Code section 15E.26.

“*Investor*” means the same as defined in Iowa Code section 15E.26.

“*Person*” means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity.

“*Principal*” means any current or prospective officer, director, or owner.

“*Principal business operations*” means the location at which at least 50 percent of a qualified business’s employees are employed, the location at which employees representing at least 50 percent of a qualified business’s payroll are employed, or the home office for a substantial amount of executive employees.

“*Program*” means the seed investor tax credit program administered pursuant to this chapter and Iowa Code chapter 15E, subchapter IV.

“*Qualifying business*” means the same as defined in Iowa Code section 15E.26.

“*Rural area*” means the same as defined in Iowa Code section 15E.26.

“*Urban area*” means the same as defined in Iowa Code section 15E.26.

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261—114.2(15E) Certification of qualifying businesses.

114.2(1) *Eligibility for certification as a qualifying business.* A business shall meet all of the criteria in Iowa Code section 15E.28 to be eligible for certification as a qualifying business.

114.2(2) *Length of business operations.* For the purposes of determining whether a business has been in operation for five years or less as required by Iowa Code section 15E.28(2)“b,” the authority will consider the following factors:

- a. The date of incorporation or organization;
- b. The date on which the business began the sale of goods or services;
- c. The date on which the business first hired employees;
- d. The date of execution of business contracts; and

e. Any other information that indicates the date on which the business began materially engaging in commercial activity.

114.2(3) Application for certification. A qualifying business shall apply to the authority for certification as a qualifying business as prescribed by the authority. The application for certification will include the following information:

a. A description of the general nature of the business's operations.

b. The location of the principal business operations, any other business locations, and the number of employees at each of the business's locations.

c. The date on which the business was formed and the date on which the business commenced operations based on the factors identified in subrule 114.2(2).

d. Verification that the business has at least one full-time equivalent employee.

e. Evidence that the business's primary operations are in a qualifying industry pursuant to Iowa Code section 15E.28(2) "d." Such evidence may include but is not limited to whether the business has a North American industry classification system (NAICS) number aligned with the relevant industries as determined by the authority. Businesses with other NAICS numbers will be required to document to the authority's satisfaction that the business is primarily engaged in an applicable industry identified in Iowa Code section 15E.28(2) "d" based on factors including but not limited to sources of revenue and customer base. For the purposes of determining whether the business is primarily engaged in the provision of services that require a professional license, "services requiring a professional license" includes but is not limited to the professions listed in Iowa Code section 496C.2.

f. Documentation of the ownership, affiliates, and principals of the business sufficient to demonstrate the business is an independent organization that is not part of, or an affiliate of, a business that is not a qualifying business and to demonstrate that the business has at least two investors for the purposes of establishing its eligibility pursuant to Iowa Code section 15E.28(2) "h" (2).

g. A description of the manner in which the business satisfies the business experience requirements set forth in Iowa Code section 15E.28(2) "f."

h. A balance sheet that reflects the qualifying business's assets, liabilities, and owners' equity as of the close of the most recent month or quarter.

i. The names, addresses, shares or equity interests issued; consideration paid for the shares or equity interests; and estimated amounts of tax credits through the program of all shareholders or equity holders and the date on which the investment was made, as well as documentation of any binding investment commitments made prior to application for certification. An agreement for convertible debt may be considered a binding investment commitment for the purposes of this paragraph.

j. A signed statement from an officer, director, manager, member, or general partner of the qualifying business certifying the accuracy of the information provided.

k. Any other information the authority may reasonably require to determine the business's eligibility for certification as a qualifying business and its investors' eligibility to receive tax credits or to allow the authority to estimate demand for tax credits.

114.2(4) Authority review and notice of certification.

a. Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth in Iowa Code section 15E.28, the authority shall, within a reasonable period of time, determine whether a business shall be certified as a qualifying business and, if applicable, issue written notification to the qualifying business that such business has been certified with the authority for the purpose of issuing investment tax credits. The authority will indicate in its written notice the first date investments are eligible for a tax credit based on the date of application for certification and the date the authority expects the certification to expire based on the date the business began operations. If the authority determines a business should not be certified, the authority shall issue written notification to the business of the denial of certification and provide the reasons why the business was not certified.

b. Prior to issuance of the written notification pursuant to paragraph 114.2(4) "a," a qualifying business shall pay a nonrefundable application fee of \$200 to the authority.

c. Following written notification of certification, a certified qualifying business shall enter into an agreement with the authority reflecting the terms of certification.

114.2(5) *Revocation and expiration of certification.*

a. A certified qualifying business shall provide any information the authority may reasonably request to confirm the business's continued eligibility for certification as a qualifying business and the eligibility of its investors to receive tax credits or to allow the authority to estimate demand for tax credits.

b. If a qualifying business fails to meet or maintain any requirement set forth in this chapter and in Iowa Code chapter 15E, subchapter IV, the authority shall revoke the business's certification as a qualifying business by issuing written notice of revocation to the business. The notice will identify the last date on which the business was eligible to be certified as a qualifying business. Investments made after the identified date will not be eligible for a tax credit.

c. If a business continues to satisfy all eligibility requirements until it has been in operation for more than five years, the business's certification will expire on the date identified as the expected date of expiration pursuant to paragraph 114.2(4) "a." Investments made after the identified date will not be eligible for a tax credit.

d. The authority shall rescind any tax credit certificates issued to taxpayers for investments made after the date on which the business's certification was revoked or expired and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate.

114.2(6) *Reporting.*

a. A certified qualifying business shall report new equity interests or transfers in equity among current equity holders or as any other information on the list of investors provided to the authority as part of the application for certification may change.

b. The authority may at any time request additional information and documentation from a qualifying business regarding the operations, job creation, and economic impact of such qualifying business, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly to the extent such information is not confidential pursuant to Iowa Code section 15E.29.

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261—114.3(15E) Investment and investor requirements.

114.3(1) Only investments made after the date a qualifying business submits an application for certification shall qualify for a tax credit.

114.3(2) A taxpayer shall not claim a tax credit through the program if the taxpayer receives a tax credit for the same investment through another program administered by the authority.

114.3(3) A qualifying business must submit documentation of an investment to the authority, consistent with paragraph 114.4(1) "b," during the first available application window following the investment for the investment to qualify for a tax credit. If the first available application window following the investment concludes prior to approval of certification of the applicable qualifying business, the investor may apply in the first available application window following approval of certification.

114.3(4) Convertible debt shall only be considered an investment in the form of cash to purchase equity as of the date of conversion. Investors that utilize convertible debt must document the date and terms of conversion to equity to be eligible for a tax credit.

114.3(5) A simple agreement for future equity (SAFE) or comparable instrument may be evaluated by the authority to determine whether it constitutes an investment in the form of cash to purchase equity. An instrument that creates debt will not be considered.

114.3(6) Pursuant to the requirements and definitions in Iowa Code chapter 15E, subchapter IV, the authority will also verify the following to determine the eligibility of an investment for a tax credit:

a. The amount of the investment is at least \$10,000.

b. The investment is not made by an affiliate of the qualifying business or its principals.

c. The investment is not made by an individual or entity that owns 70 percent or more of the qualifying business.

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261—114.4(15E) Applying for an investment tax credit.

114.4(1) *Annual business application.* The annual application submitted by qualifying businesses will include:

a. A report from the business of any changes to the information provided in the application for certification pursuant to subrule 114.2(3).

b. The names, addresses, email addresses, phone numbers, shares or equity interests issued, and consideration paid for the shares or equity interests of all shareholders or equity holders, including but not limited to investors who may qualify for the tax credits and the date on which all investments were made.

c. Documentation of the ownership, affiliates, and principals of the qualifying business and of its investors sufficient to allow the authority to determine the following:

(1) Whether any investors are ineligible for a tax credit because the investor is an affiliate of the qualifying business or its principals.

(2) Whether any investors are ineligible for a tax credit because the individual or entity owns 70 percent or more of the qualifying business.

(3) Whether tax credits issued to an investor and the investor's spouse or dependent would exceed the maximum allowed pursuant to Iowa Code section 15E.27(2) "b"(1).

d. A signed statement from an officer, director, manager, member, or general partner of the qualifying business certifying the accuracy of the information provided.

e. A listing of investments that are anticipated to be eligible for tax credits during the fiscal year following submission of the application.

f. Any other information the authority may reasonably require to determine the business's continued eligibility for certification as a qualifying business and its investors' eligibility to receive tax credits or to allow the authority to estimate demand for tax credits.

114.4(2) *Application window.* The annual application required pursuant to Iowa Code section 15E.28(5) shall be submitted electronically to the authority from September 1 to December 31 each year. The authority may adjust the annual application period dates under extenuating circumstances and will provide notice of adjustments on the authority's website. The authority may cease accepting applications during any annual application period if the requested tax credits for the program and the requested tax credits for innovation fund investment tax credits available pursuant to Iowa Code section 15E.52 exceed \$12 million. Applications shall be date- and time-stamped by the authority in the order in which such applications are received.

114.4(3) *Board approval of maximum tax credits.* The board will determine the total amount of tax credits available for each fiscal year pursuant to Iowa Code section 15.119. The authority will make its initial allocation of tax credits to eligible investors based on the order in which applications are received until the maximum aggregate amount of credits authorized for issuance has been reached for any fiscal year.

114.4(4) *Investor information and deadline.* Additional information that may be requested from investors identified by a qualifying business includes proof of investment and the investor's tax identification number. An eligible investor must provide any information requested by the authority to verify the eligibility of the investor and to allow the authority to issue a tax credit certificate. Such information shall be provided within 30 days of a request from the authority unless a request for extension is approved by the authority in writing.

114.4(5) *Tax credit approval.* Authority staff will verify the continued eligibility of qualifying businesses and the eligibility of investments prior to approval of tax credits by the director. Tax credits will be approved by the director on a first-come, first-served basis until the maximum amount of tax credits approved by the board is fully utilized. Applications that exceed the maximum amount of tax credits approved by the board will be denied.

114.4(6) *Tax credit amount.* The location of the principal business operations will be utilized to determine whether a qualifying business is located in a rural area or an urban area for the purposes of establishing the amount of a tax credit pursuant to Iowa Code section 15E.27(2) "a."

114.4(7) *Tax credit limitations.* Tax credits are limited by the following:

a. The total amount of tax credits available for the program, approved by the board pursuant to Iowa Code section 15.119.

b. The maximums allowed per fiscal year for a natural person, corporation, or other entity pursuant to Iowa Code section 15E.27(2).

c. The maximum allowed per fiscal year for any one qualifying business pursuant to Iowa Code section 15E.27(2).

114.4(8) Denial of applications. Applications received by the authority that exceed the limitations described in Iowa Code sections 15.119 and 15E.27 and in subrule 114.4(7) will be denied, regardless of whether the investment was otherwise eligible to receive a tax credit award. Any application that can be partially approved without exceeding the applicable maximum amounts may be approved as to the portion less than the maximum amounts and denied as to the portion greater than the maximum amounts. For example, if an application is eligible for \$50,000 of tax credits, but there is only \$30,000 of the business maximum amount available, the application may be approved for \$30,000 and denied for \$20,000.

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261—114.5(15E) Tax credit certificates.

114.5(1) Issuance by the authority. The authority shall issue tax credit certificates to investors pursuant to Iowa Code section 15E.28 provided, however, that such tax credit certificate shall be subject to rescission pursuant to paragraph 114.2(5)“d.”

114.5(2) Vested right. A taxpayer does not obtain a vested right in a tax credit until a certificate has been issued by the authority.

114.5(3) Claiming an investment tax credit. An investor that has been issued a tax credit certificate by the authority may claim the credit in accordance with any applicable rules adopted by the department of revenue.

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