

CHAPTER 115
TAX CREDITS FOR INVESTMENTS IN QUALIFYING BUSINESSES

261—115.1(15E) Tax credits for investments in qualifying businesses. Tax credits for investments in qualifying businesses may be claimed as provided in this rule and any applicable rules of the department of revenue.

115.1(1) Tax credits allowed only after a certain date. A taxpayer may claim a tax credit under this rule for equity investments in certain qualifying businesses. Only equity investments made on or after January 1, 2011, qualify for a tax credit under this rule. Equity investments made before that date must be claimed under 123—Chapter 2.

115.1(2) Investments in qualifying businesses.

a. A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a qualifying business if that investment was made on or after January 1, 2011.

b. The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.
- (5) The tax on moneys and credits imposed under Iowa Code section 533.329.

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) Amount of tax credit that may be claimed by taxpayer.

a. 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. 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. Applications received by the authority that exceed the maximum amount of tax credits per calendar year to a natural person and the person's spouse or dependent will be denied by the board, regardless of whether the investment was otherwise eligible to receive a tax credit award. Any application that can be partially approved without exceeding the maximum amount in this paragraph will be approved as to the portion less than the maximum amount and denied as to the portion greater than the maximum amount. For example, if an application is eligible for \$50,000 of tax credits, but there is only \$30,000 of the household maximum amount available, the application will be approved for \$30,000 and denied for \$20,000.

c. 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. Applications received by the authority that exceed the maximum amount of tax credits per calendar year in any one qualifying business will be denied by the board, regardless of whether the investment was otherwise eligible to receive a tax credit award. Any application that can be partially approved without exceeding the maximum amount in this paragraph will be approved as to the portion less than the maximum amount and denied as to the portion greater than the maximum amount. 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 will be approved for \$30,000 and denied for \$20,000.

115.1(4) Claiming an investment tax credit. A taxpayer that makes an investment in a qualifying business 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 include the certificate with a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rules 701—42.22(15E,422), 701—52.21(15E,422), and 701—58.11(15E,422). [ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

261—115.2(15E) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Affiliate*” means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.

“*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.

“*Controlling equity interest*” means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company or trust.

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

“*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).

“*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 non-cash consideration.

“*Investor*” means a person that makes 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.

“*Management control*” means holding more than 50 percent of the voting power on any board of directors or trustees, any management committee, or any other group managing a corporation, partnership, limited liability company or trust.

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

“*Qualifying business*” means a business that meets the criteria listed in subrule 115.5(2).

“*Services requiring a professional license*” includes but is not limited to the professions listed in Iowa Code section 496C.2.

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261—115.3(15E) Cash investments required. In order to qualify for a tax credit under this chapter, the taxpayer’s investment must be made in the form of cash to purchase equity in a qualifying business. Convertible debt shall only be considered an investment in the form of cash to purchase equity as of the date of conversion.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

261—115.4(15E) Applying for an investment tax credit.

115.4(1) A taxpayer that desires to receive an investment tax credit for an equity investment in a qualifying business shall submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting a qualifying business that has received a notice of certification pursuant to rule 261—115.5(15E).

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. Investors who do not submit an application by the March 31 deadline are ineligible to receive a tax credit.

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. The authority shall not consider the lack of an available application filing window pursuant to paragraph 115.6(6) "b" as an extenuating circumstance.

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261—115.5(15E) Certification of qualifying businesses.

115.5(1) *Application for certification.* Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall apply to the authority for certification as a qualifying business as prescribed by the authority. Investments made more than 120 days prior to receipt by the authority of a substantially complete application for certification shall not be eligible for a tax credit. The application for certification will include the following information:

a. A description of the general nature of the business's operations, the location of the principal business operations, the date on which the business was formed, and the date on which the business commenced operations;

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

c. A description of the manner in which the business satisfies one of the business experience requirements set forth in paragraph 115.5(2) "c";

d. The names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and the date on which the investment was made. The application shall contain a commitment by the qualifying business to amend its list of investors 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. Applications for tax credits for investments that are not reflected on the most recent listing of investors provided to the authority shall not be eligible for tax credits until an amended list is provided by the qualifying business;

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

f. Any other information as 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.

115.5(2) *Eligibility for certification as a qualifying business.* A business shall meet all of the following criteria to be eligible for certification as a qualifying business:

a. The principal business operations of the business are located in the state of Iowa;

b. 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;

c. 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;

d. 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. In determining whether a business

is primarily engaged in retail sales, factors the authority will consider include, but are not limited to, the sources of the business's revenue, whether the business manufactures a product it sells, and whether the business owns intellectual property associated with a product it sells;

e. The business does not have a net worth that exceeds \$10 million as of the date of the investment for which the credit is claimed; and

f. The business shall have secured all of the following at the time of application for tax credits:

(1) At least two investors.

(2) Total equity financing, binding equity investment commitments, or some combination thereof, equal to at least \$500,000 from investors. For the purposes of determining whether a business has secured at least \$500,000 from investors, convertible debt shall only be considered equity as of the date of conversion.

For purposes of paragraph 115.5(2)“*f.*” “investor” includes a person that executes a binding investment commitment to a business.

115.5(3) 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 subrule 115.5(2), 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 notice shall indicate that such certification is subject to revocation or expiration pursuant to subrule 115.5(4). 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.

b. The authority will only accept applications for investment tax credits from investors in qualifying businesses that have received a written notice of certification.

115.5(4) Revocation and expiration of certification.

a. A certified qualifying business must notify the authority as soon as it becomes aware of any changes in its eligibility as a qualifying business or in the eligibility of its investors to receive tax credits. A certified qualifying business shall provide any information as 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.

b. If a qualifying business fails to meet or maintain any requirement set forth in this chapter, the authority shall revoke the business's certification as a qualifying business by issuing written notification of revocation to the business. If applicable, the notification shall 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 operations for more than six years, the business's certification will expire on the date identified as the expected date of expiration pursuant to paragraph 115.5(2)“*a.*” Investments made after the identified date will not be eligible for a tax credit.

[ARC 6242C, IAB 3/9/22, effective 4/13/22]

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

115.6(1) Approval by the board. Upon certification by the authority of a qualifying business and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the taxpayer applying for the tax credit.

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(15E).

115.6(3) Preparation of certificate. The tax credit certificate shall be prepared by the authority in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the qualifying business, the year in which the credit may be

redeemed 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.

115.6(4) Tax credit amount limitations. The aggregate amount of tax credits issued per fiscal year pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119.

115.6(5) Waitlist for applications received on or before March 31, 2022.

a. If the maximum aggregate amount of tax credits is awarded in a given fiscal year, investors who are determined eligible for a tax credit but were not awarded a tax credit shall be placed on a waitlist in the order the applications are received. Applications that are placed on a waitlist shall be given priority for receiving tax credits in succeeding fiscal years. Placement on a waitlist pursuant to this paragraph shall not constitute a promise binding the state. The availability of a tax credit and issuance of a tax credit certificate pursuant to this rule in a future fiscal year is contingent upon the availability of tax credits in that particular fiscal year or years. This subrule shall apply only to applications received on or before March 31, 2022.

b. Any application that can be partially approved without exceeding the maximum aggregate amount of tax credits will be approved as to the portion less than the maximum aggregate amount and placed on a waitlist as to the portion greater than the maximum aggregate amount. For example, if an application is eligible for \$50,000 of tax credits, but there is only \$30,000 of the maximum aggregate amount available, the application will be approved for \$30,000 and placed on a waitlist for \$20,000.

115.6(6) Applications received on or after April 1, 2022.

a. Applications for tax credits received on or after April 1, 2022, will not be placed on a waitlist if the maximum aggregate amount of tax credits is awarded in a given fiscal year.

b. Beginning on or after April 1, 2022, the authority will identify an application period, or periods, on the authority's Internet site at www.iowaeda.com for each fiscal year in which an allocation of tax credits is available and has not been fully utilized by applications previously placed on a waitlist pursuant to subrule 115.6(5). Only applications submitted during the established filing window will be reviewed for eligibility by the authority. Each identified application period will remain open until the date indicated by the authority for that fiscal year.

c. Applications received on or after April 1, 2022, in excess of the maximum aggregate amount of tax credits for the fiscal year in which they are received will be denied by the board, regardless of whether the investment was otherwise eligible to receive a tax credit award.

d. Any application that can be partially approved without exceeding the maximum aggregate amount of tax credits will be approved as to the portion less than the maximum aggregate amount and denied as to the portion greater than the maximum aggregate amount. For example, if an application is eligible for \$50,000 of tax credits, but there is only \$30,000 of the maximum aggregate amount available, the application will be approved for \$30,000 and denied for \$20,000.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

261—115.7(15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must include with 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 rules 701—42.22(15E,422), 701—52.21(15E,422), and 701—58.11(15E,422).

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

261—115.8(15E) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

261—115.9(15E) Rescinding tax credits. In the event that a qualifying business fails to meet or maintain any requirement set forth in this chapter, the authority, upon action by the board, shall rescind any tax credit certificates issued to taxpayers for investments made after the date as of 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.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 1429C, IAB 4/16/14, effective 5/21/14; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

261—115.10(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 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.

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.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16; ARC 6242C, IAB 3/9/22, effective 4/13/22]

These rules are intended to implement Iowa Code chapter 15E, subchapter V.

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