

A bill for an act

relating to insurance taxes; providing a credit for investment in start-up and emerging Minnesota businesses; proposing coding for new law in Minnesota Statutes, chapters 116J; 297I.

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

Section 1. **[116J.665] MINNESOTA SMALL BUSINESS INVESTMENT COMPANY CREDIT.**

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

(b) "Affiliate" means:

(1) any person who, directly or indirectly, beneficially owns, controls, or holds power to vote 15 percent or more of the outstanding voting securities or other voting ownership interest of a Minnesota small business investment company or insurance company;

(2) any person, 15 percent or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, controlled, or held with power to vote by a Minnesota small business investment company or insurance company;

(3) any person who, directly or indirectly, controls, is controlled by, or is under common control with a Minnesota small business investment company or insurance company;

(4) a partnership or limited liability company in which a Minnesota small business investment company or insurance company is a general partner, member, or managing member; or

(5) any person who is an officer, director, employee, or agent of a Minnesota small business investment company or insurance company, or an immediate family member of such officer, director, employee, or agent.

Notwithstanding this subdivision, an investment by a certified investor in a Minnesota small business investment company pursuant to an allocation of premium tax credits under this section does not cause that Minnesota small business investment company to become an affiliate of that certified investor.

(c) "Allocation date" means the date on which credits under section 297I.23 are allocated to the investors of a Minnesota small business investment company under this section.

(d) "Designated capital" means an amount of money that:

(1) is invested by a certified investor in a Minnesota small business investment company; and

(2) fully funds the purchase price of either or both certified investor's equity interest in a Minnesota small business investment company or a qualified debt instrument issued by a Minnesota small business investment company.

(e) "Minnesota small business investment company" means a partnership, corporation, trust, or limited liability company, organized on a for-profit basis, that:

(1) has its principal office located or is headquartered in Minnesota;

(2) has as its primary business activity the investment of cash in qualified businesses; and

(3) is certified by the Department of Employment and Economic Development as meeting the criteria in this section.

(f) "Certified investor" means any insurer as defined in section 60A.02, subdivision 4, that contributes designated capital pursuant to this section.

(g) "Person" means any natural person or entity, including, but not limited to, a corporation, general or limited partnership, trust, or limited liability company.

(h) (1) "Qualified business" means a business that is independently owned and operated and meets all of the following requirements:

(i) it is headquartered in this state, its principal business operations are located in this state, and at least 60 percent of its employees are in Minnesota;

(ii) it has not more than 100 employees;

(iii) it is not predominantly engaged in:

(A) professional services provided by accountants, doctors, or lawyers;

(B) banking or lending;

(C) real estate development;

(D) insurance;

(E) oil and gas exploration;

(F) direct gambling activities; or

(G) making loans to or investments in a Minnesota small business investment company or an affiliate; and

(iv) it is not a franchise of and has not been organized by a Minnesota small business investment company or an affiliate of a Minnesota small business investment company, and has no financial relationship with a Minnesota small business investment company or any affiliate of a Minnesota small business investment company prior to a Minnesota small business investment company's first qualified investment in the business and will not have any relationship after the initial qualified investment other than as created by that investment and any subsequent investments in the business made by a Minnesota small business investment company or its affiliates.

(2) A business classified as a qualified business at the time of the first qualified investment in the business will remain classified as a qualified business and may receive continuing qualified investments from any Minnesota small business investment company. Continuing investments must be qualified investments even though the business may not meet the definition of a qualified business at the time of such continuing investments, except the business shall not be eligible to receive further qualified investments, if it has:

(i) relocated its headquarters or principal business operations outside of this state; or

(ii) not expended substantially all of its prior qualified investments to establish and support its Minnesota operations, except for advertising, promotions, and sales purposes, which may be conducted outside of Minnesota.

(i) "Qualified debt instrument" means a debt instrument issued by a Minnesota small business investment company, at par value or a premium, with an original maturity date of at least four years from the date of issuance, a repayment schedule which is not faster than a level principal amortization over four years, provided that the payments, whether of principal, interest, or a combination thereof, must not exceed, in any one year, 25 percent of Minnesota small business capital invested by the debt holder in a Minnesota small business investment company, on the debt instrument unless the qualified debt instrument or the issuer thereof is in default with respect to the terms of the investment and must be rated within the top three rating categories of a rating agency that has been designated as a nationally recognized statistical rating agency by the United States Securities and Exchange Commission.

4.1 (j) "Qualified distribution" means any distribution or payment not made to a certified
4.2 investor or affiliate of a certified investor by a Minnesota small business investment
4.3 company in connection with the following:

4.4 (1) reasonable costs and expenses of forming, syndicating, and organizing the
4.5 Minnesota small business investment company, including reasonable and necessary fees
4.6 paid for professional services, including, but not limited to, legal and accounting services
4.7 related to the formation of a Minnesota small business investment company, and the
4.8 costs of financing and insuring the obligations of a Minnesota small business investment
4.9 company;

4.10 (2) reasonable costs and expenses of managing and operating a Minnesota small
4.11 business investment company, including any management fee, which in the aggregate
4.12 must not exceed two percent of designated capital;

4.13 (3) reasonable and necessary fees in accordance with industry custom for
4.14 professional services, including, but not limited to, legal and accounting services related
4.15 to the operation of a Minnesota small business investment company, not including any
4.16 lobbying or governmental relations;

4.17 (4) any increase or projected increase in federal or state taxes, including penalties and
4.18 related interest of the equity owners of a Minnesota small business investment company
4.19 resulting from the earnings or other tax liability of a Minnesota small business investment
4.20 company to the extent that the increase is related to the ownership, management, or
4.21 operation of a Minnesota small business investment company; or

4.22 (5) payments to debt holders of a Minnesota small business investment company
4.23 may be made without restriction with respect to repayments of principal and interest on
4.24 indebtedness owed to them by a Minnesota small business investment company, including
4.25 indebtedness of the Minnesota small business investment company on which certified
4.26 investors earned tax credits. A debt holder that is also a certified investor or equity holder
4.27 of a Minnesota small business investment company may receive payments with respect to
4.28 such debt without any restriction whatsoever.

4.29 (k) "Qualified investment" means the investment of money by a Minnesota small
4.30 business investment company in a qualified business for the purchase of any debt,
4.31 debt participation, equity, or hybrid security, of any nature and description whatsoever,
4.32 including a debt instrument or security that has the characteristics of debt but which
4.33 provides for conversion into equity or equity participation instruments such as options
4.34 or warrants. Any qualified investment in the form of a debt instrument, including those
4.35 owned through debt participations, must have a final stated maturity of at least two years
4.36 from the date of issuance and a repayment schedule that is no faster than level principal

amortization over two years, however, this does not prohibit the qualified business from voluntarily prepaying a qualified investment at any time, or a Minnesota small business investment company from exercising any of its rights as a creditor, including the acceleration of the debt owned upon a default by the qualified business under the terms of the debt instrument or upon the acquisition, merger, or the sale of all or substantially all of the assets of the qualified business.

(l) "Qualified underserved area business" means a business that otherwise would meet the criteria of a qualified business, but is located in:

(1) a rural Minnesota county;

(2) the Iron Range of Minnesota; or

(3) a low-income community of Minnesota as defined in section 45D(e) of the Internal Revenue Code.

(m) "State premium tax liability" means any liability incurred by an insurance company under the provisions of chapter 297I or in the case of a repeal or a reduction by the state of the liability imposed by chapter 297I, any other tax liability imposed upon an insurance company by the state.

(n) "Qualified seed fund" means the rural angel investor network fund established by the department or the incubator program established at the University of Minnesota.

Subd. 2. **Certification.** (a) The commissioner must provide a standardized format for applying for the small business investment credit under section 297I.23.

(b) An applicant is required to:

(1) file an application with the department;

(2) pay a nonrefundable application fee of \$7,500 at the time of filing the application;

(3) submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than 35 days before the application date that states whether the applicant has an equity capitalization of \$500,000 or more in the form of unencumbered cash, marketable securities, or other liquid assets; and

(4) have at least two principals or persons, at least one of which is primarily located in Minnesota, employed to manage the funds who each have a minimum of five years of money management experience in the venture capital or small business investment industry.

(c) The department may certify partnerships, corporations, trusts, or limited liability companies, organized on a for-profit basis, which submit an application to be designated as a Minnesota small business investment company if such applicant is located, headquartered, and licensed or registered to conduct business in Minnesota, has as its

primary business activity the investment of cash in qualified businesses, and meets the other criteria set forth in this section.

(d) The department must review the organizational documents of each applicant for certification and the business history of each applicant, determine whether the applicant has satisfied the requirements of this section, and determine whether the officers and the board of directors, general partners, trustees, managers, or members are trustworthy and are thoroughly acquainted with the requirements of this section.

(e) Within 60 days after the receipt of an application, the department must issue the certification or refuse the certification and communicate in detail to the applicant the grounds for refusal, including suggestions for the removal of such grounds.

(f) The department must begin accepting applications to become a Minnesota small business investment company as defined under section 297I.23 on September 30, 2008.

Subd. 3. **Requirements.** (a) An insurance company or affiliate of an insurance company must not, directly or indirectly:

(1) beneficially own, whether through rights, options, convertible interest, or otherwise, 15 percent or more of the voting securities or other voting ownership interest of a Minnesota small business investment company;

(2) manage a Minnesota small business investment company; or

(3) control the direction of investments for a Minnesota small business investment company.

(b) A Minnesota small business investment company may obtain one or more guaranties, indemnities, bonds, insurance policies, or other payment undertakings for the benefit of its certified investors from any entity, except that in no case can more than one certified investor of a Minnesota small business investment company on an aggregate basis with all affiliates of such certified investor be entitled to provide such guaranties, indemnities, bonds, insurance policies, or other payment undertakings in favor of the certified investors of a Minnesota small business investment company and its affiliates in this state.

(c) This subdivision does not preclude a certified investor, insurance company, or other party from exercising its legal rights and remedies, including, without limitation, interim management of a Minnesota small business investment company, in the event that a Minnesota small business investment company is in default of its statutory obligations or its contractual obligations to such certified investor, insurance company, or other party, or from monitoring a Minnesota small business investment company to ensure its compliance with this section or disallowing any investments that have not been approved by the department.

7.1 (d) The department may contract with an independent third party to review,
7.2 investigate, and certify that the applications comply with the provisions of this section.

7.3 Subd. 4. **Aggregate limitations on investment credits; allocation.** (a) The
7.4 aggregate amount of designated capital for which investment credits will be allocated
7.5 to all certified investors under this section must not exceed the amount that would
7.6 entitle all certified investors of Minnesota small business investment companies to take
7.7 aggregate credits of \$80,000,000. No Minnesota small business investment company, on
7.8 an aggregate basis with its affiliates, may file credit allocation claims that exceed the
7.9 maximum amount of designated capital for which credits will be allocated as provided
7.10 in this subdivision.

7.11 (b) Credits must be allocated to certified investors in the order that the credit
7.12 allocation claims are filed with the department. All credit allocation claims filed with the
7.13 department on the same day must be treated as having been filed contemporaneously. Any
7.14 credit allocation claims filed with the department prior to the credit allocation claim filing
7.15 date will be deemed to have been filed on the initial credit allocation claim filing date. The
7.16 department will set the initial credit allocation claim filing date to be 90 days after the
7.17 department begins to accept applications.

7.18 (c) In the event that two or more Minnesota small business investment companies
7.19 file credit allocation claims with the department on behalf of their respective certified
7.20 investors on the same day, and the aggregate amount of credit allocation claims exceeds
7.21 the aggregate limit of credits under this section or the lesser amount of credits that remain
7.22 unallocated on that day, then the credits shall be allocated among the certified investors
7.23 who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata
7.24 allocation for any one certified investor is the product obtained by multiplying a fraction,
7.25 the numerator of which is the amount of the credit allocation claim filed on behalf of a
7.26 certified investor and the denominator of which is the total of all credit allocation claims
7.27 filed on behalf of all certified investors on that day, by the aggregate limit of credits under
7.28 this section or the lesser amount of credits that remain unallocated on that day.

7.29 (d) Within ten business days after the department receives a credit allocation claim
7.30 filed by a Minnesota small business investment company on behalf of one or more of its
7.31 certified investors, the department must notify the Minnesota small business investment
7.32 company of the amount of credits allocated to each of the certified investors of that
7.33 Minnesota small business investment company. In the event a Minnesota small business
7.34 investment company does not receive aggregate investments of designated capital
7.35 equaling the amount of credits allocated to its certified investors within ten business days
7.36 of the Minnesota small business investment company's receipt of notice of allocation, then

it shall notify the department on or before the next business day and that portion of the credits allocated to the certified investors of the Minnesota small business investment company in excess of the amount of designated capital invested in the Minnesota small business investment company by that date will be forfeited. The department must then reallocate those forfeited credits among the certified investors of the other Minnesota small business investment companies on a pro rata basis with respect to the credit allocation claims filed on behalf of the certified investors. The commissioner is authorized to levy a fine of not more than \$50,000 on any certified investor that does not invest the full amount of designated capital allocated by the department to the investor in accordance with the credit allocation claim filed on its behalf.

(e) The maximum amount of credit allocation claims that may be filed on behalf of any one certified investor on an aggregate basis with its affiliates in one or more Minnesota small business investment companies, must not exceed ten times the largest annual state premium tax liability incurred by the approved investor on an aggregate basis with its affiliates during the three tax years preceding the year of the allocation date for which final returns have been filed.

Subd. 5. Requirements for continuance of certification. (a) To continue to be eligible for certification, a Minnesota small business investment company must make qualified investments as follows:

(1) within two years after the allocation date, an amount equal to at least 25 percent of the designated capital allocable to a Minnesota small business investment company must be placed in qualified investments; and

(2) within three years after the allocation date, an amount equal to at least 40 percent of the designated capital allocable to a Minnesota small business investment company must be placed in qualified investments.

The aggregate cumulative amount of all qualified investments made by a Minnesota small business investment company from an allocation date must be considered in the calculation of these percentage requirements.

(b) Prior to making a proposed qualified investment in a specific business, a Minnesota small business investment company must request from the department a written determination that the proposed investment will qualify as a qualified investment in a qualified business. The department must notify a Minnesota small business investment company within 15 business days from the receipt of a request of its determination and an explanation thereof. If the department fails to notify the Minnesota small business investment company of its determination within the 15-business-day period, the proposed investment must be deemed to be a qualified investment in a qualified business. If the

department determines that the proposed investment does not meet the definition of a qualified investment or qualified business or both, the department may nevertheless consider the proposed investment a qualified investment, and if necessary, the business a qualified business, if the department determines that the proposed investment will further state economic development.

(c) All designated capital not placed in qualified investments by the Minnesota small business investment company may be held or invested in such manner as the Minnesota small business investment company, in its discretion, deems appropriate. The proceeds of all designated capital returned to a Minnesota small business investment company after being originally placed in qualified investments may be placed again in qualified investments and counts toward any requirement of this section with respect to placing designated capital in qualified investments.

(d) If, within five years after its allocation date, a Minnesota small business investment company has not placed at least 60 percent of the designated capital allocable to it in qualified investments, the Minnesota small business investment company is no longer permitted to receive management fees.

(e) If, within ten years after its allocation date, a Minnesota small business investment company has not placed at least 100 percent of the designated capital allocable to it in qualified investments, the Minnesota small business investment company is no longer permitted to receive management fees.

(f) A Minnesota small business investment company must not make a qualified investment without the specific approval of the department if after the Minnesota small business investment company's qualified investment, on an aggregate basis with its affiliates, would own more than 49 percent of the common equity or voting interests of the qualified business. Nothing in this subdivision precludes a Minnesota small business investment company from exercising any right or remedy upon a default by the qualified business pursuant to an investment contract or antidilution or preemptive rights it may have been granted in connection with an initial qualified investment that can be exercised upon an investment in the business by a party other than the Minnesota small business investment company or an affiliate of the Minnesota small business investment company.

(g) A Minnesota small business investment company must not invest where investment would cause the company's total qualified investment outstanding with respect to the qualified business receiving such investment to exceed 15 percent of the total designated capital of the Minnesota small business investment company at the time of the investment.

(h) The aggregate cumulative amount of all qualified investments made by a Minnesota small business investment company will be considered in the calculation of the percentage requirements under this section. The following must not be considered in any percentage calculations under this section:

(1) commitment fees, closing fees, or other similar fees, excluding reimbursement of out-of-pocket expenses such as legal fees and accounting fees, in excess of one percent of the Minnesota small business investment company's investment in the qualified business;
or

(2) license fees, royalties, or similar charges.

Subd. 6. Minnesota small business investment company reporting requirements.

(a) Each Minnesota small business investment company must report the following to the department:

(1) as soon as practicable after the receipt of designated capital:

(i) the name of each certified investor from which the designated capital was received, including such certified investor's insurance tax identification number;

(ii) the amount of each certified investor's investment of designated capital; and

(iii) the date on which the designated capital was received;

(2) on an annual basis, on or before January 31 of each year:

(i) the amount of the Minnesota small business investment company's designated capital at the end of the immediately preceding taxable year;

(ii) whether or not the Minnesota small business investment company has invested more than 15 percent of its total designated capital in any one business;

(iii) all qualified investments that the Minnesota small business investment company has made in the previous taxable year, including the number of employees of each qualified business in which it has made investments at the time of such investment and as of December 1 of the preceding taxable year; and

(iv) for any qualified business where the Minnesota small business investment company no longer has an investment, the Minnesota small business investment company must provide employment figures for that company as of the last day before the investment was terminated;

(3) other information that the department may reasonably request that will help the department ascertain the impact of the Minnesota small business investment companies both directly and indirectly on the economy of the state of Minnesota, including, but not limited to, the number of jobs created by qualified businesses that have received qualified investments;

(4) annual audited financial statements, which must include the opinion of an independent certified public accountant, within 90 days of the close of its fiscal year; and
(5) an "agreed upon procedures report" or equivalent regarding the operations of the Minnesota small business investment company.

(b) A Minnesota small business investment company must pay to the department an annual, nonrefundable certification fee of \$5,000 on or before April 1, or \$10,000 if later. No fee is required within six months of the date a Minnesota small business investment company is first certified by the department.

(c) Upon receiving notification and documentation by a Minnesota small business investment company that it has satisfied the requirements of this subdivision and that it has invested 50 percent of its designated capital, the department must notify a Minnesota small business investment company that it has or has not met the requirement within 60 days. If the department does not provide such notification within 60 days, the Minnesota small business investment company is then deemed to have met the requirement.

Subd. 7. Distributions. (a) A Minnesota small business investment company may make qualified distributions at any time. In order for a Minnesota small business investment company to make a distribution other than a qualified distribution to its equity holders, the aggregate cumulative amount of all qualified investments of the Minnesota small business investment company must equal or exceed 100 percent of its designated capital, and of those investments, an amount equal to or exceeding 25 percent must have been invested in qualified underserved area businesses.

(b) A business is deemed to have relocated its principal business operations outside Minnesota, unless it maintains its headquarters or the primary workplace of more than 50 percent of the employees within the state. In the event that a business in which a qualified investment is made relocates its principal business operations to another state, either during an investment or within four years of the time of any investment, whichever is greater, the cumulative amount of qualified investments made by a Minnesota small business investment company must be reduced by the amount of the qualified investment, unless:

(1) the Minnesota small business investment company invests an amount at least equal to the investment of designated capital in the relocated business in a qualified business located in Minnesota within six months of the relocation; or

(2) the business demonstrates that it has returned its principal business operations to Minnesota within three months of the relocation.

(c) A Minnesota small business investment company must pay to a qualified seed fund an amount equal to five percent of all distributions to the equity holders of a Minnesota small business investment company, other than qualified distributions and

distributions of all equity contributed to a Minnesota small business investment company by the equity holders. A Minnesota small business investment company must make all payments required under this paragraph concurrently with distributions to its equity owners. Nothing contained in this paragraph affects qualified distributions.

Subd. 8. **Decertification.** (a) The department shall conduct an annual review of each Minnesota small business investment company to determine if a Minnesota small business investment company is abiding by the requirements of certification, to advise the Minnesota small business investment company as to the eligibility status of its qualified investments, and to ensure that no investment has been made in violation of this section. The cost of the annual review must be paid by each Minnesota small business investment company according to a reasonable fee schedule adopted by the department.

(b) Any material violation of this section is grounds for decertification of a Minnesota small business investment company and the disallowance of credits under section 297I.23.

(c) Once a Minnesota small business investment company has invested an amount cumulatively equal to 100 percent of its designated capital in qualified investments and has met all other requirements under this section, the Minnesota small business investment company is no longer subject to regulation by the department or the reporting requirements under subdivision 5. Upon receiving documented certification by a Minnesota small business investment company that it has invested an amount equal to 100 percent of its designated capital, the department must notify a Minnesota small business investment company within 60 days that it has or has not met the requirements with a reason for the determination if it has not. If the department does not provide notification within 60 days, the Minnesota small business investment company shall be deemed to have met the requirements.

(d) The department must send written notice of a decertification to the commissioner of revenue and to the address of each certified investor whose tax credit has been subject to recapture or forfeiture, using the address shown on the last filing submitted to the department.

Subd. 9. **Revocation of certification.** The department may revoke the certification of a Minnesota small business investment company if any material representation to the department in connection with the application process proves to have been falsely made or if the application materially violates any requirements established by the department under this section.

Subd. 10. **Registration requirements.** All investments for which tax credits are allowable under this section must be registered or specifically exempt from registration.

Subd. 11. **Reports to governor and legislature.** The department must make an annual report to the governor and the chairs and ranking minority members of the committees having jurisdiction over taxes and economic development. The report must include:

(1) the number of Minnesota small business investment companies holding designated capital;

(2) the amount of designated capital invested in each Minnesota small business investment company;

(3) the cumulative amount that each Minnesota small business investment company has invested as of January 1, 2009, and the cumulative total each year thereafter;

(4) the cumulative amount that the investments of each Minnesota small business investment company have leveraged in terms of capital invested by other sources of capital in qualified businesses at the same time or subsequent to investments made by a Minnesota small business investment company in such businesses;

(5) the total amount of credits granted under this section for each year the credits have been awarded;

(6) the performance of each Minnesota small business investment company with regard to the requirements for continued certification;

(7) the classification of the companies in which each Minnesota small business investment company has invested according to industrial sector and size of company;

(8) the total gross number of jobs created by investments made by each Minnesota small business investment company using designated capital and the number of jobs retained;

(9) the location of the companies in which each Minnesota small business investment company has invested;

(10) the total amount invested in qualified seed funds, the number of small businesses that received financial assistance from these organizations, and the number of jobs created and retained by such businesses;

(11) those Minnesota small business investment companies that have been decertified, or have had their certification revoked, including the reasons for decertification or revocation; and

(12) other related information as necessary to evaluate the effect of this section on economic development.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. [297I.23] MINNESOTA SMALL BUSINESS INVESTMENT COMPANY CREDIT.

(a) A certified investor as defined under section 116J.665, subdivision 1, is allowed a credit against the tax imposed in this chapter equal to 80 percent of the certified investor's investment of designated capital. Beginning January 1, 2013, a certified investor may claim the credit as follows:

(1) in tax year 2013, an amount equal to 20 percent of the certified investor's investment of designated capital;

(2) in tax year 2014, an amount equal to 20 percent of the certified investor's investment of designated capital;

(3) in tax year 2015, an amount equal to 20 percent of the certified investor's investment of designated capital; and

(4) in tax year 2016, an amount equal to 20 percent of the certified investor's investment of designated capital.

(b) The credit for the taxable year must not exceed the liability for tax under this chapter. If the amount of the credit determined under this section for any taxable years exceeds the liability for tax under this chapter, the excess shall be an investment credit carryover to each of the succeeding taxable years. Credits may be used in connection with both final payments and prepayments of a certified investor's state premium tax liability.

(c) A certified investor claiming a credit under this section is not required to pay any additional retaliatory tax levied as a result of claiming the credit.

(d) A certified investor is not required to reduce the amount of tax pursuant to the state premium tax liability included by the certified investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the certified investor's tax liability based on the tax credit allowed under this section.

(e) If the taxes paid by a certified investor with respect to its state premium tax liability constitute a credit against any other tax that is imposed by this state, the certified investor's credit against the other tax shall not be reduced by virtue of the reduction in the certified investor's tax liability based on the tax credit allowed under this section.

(f) Decertification of a Minnesota small business investment company under section 116J.665, will result in the disallowance and the recapture of the credit allowed under this section. The amount to be disallowed and recaptured must be assessed as follows:

(1) decertification of a Minnesota small business investment company within two years of its allocation date and prior to meeting the requirements of section 116J.665 results in the disallowance of all of the credit allowed under this section and the tax for which the credit is immediately due;

(2) decertification of a Minnesota small business investment company, which, having met all the requirements of section 116J.665, subsequently fails to meet the requirements of that section, results in the disallowance of 50 percent of the credit allowed under this section, and any portion of the credit in excess of 30 percent that was previously taken is immediately due;

(3) decertification of a Minnesota small business investment company that has met all the requirements of section 116J.665 does not cause the disallowance of any credits allowed under this section nor the recapture of any portion of the credits that was previously taken; and

(4) if, after 12 years after its allocation date, a Minnesota small business investment company has failed to invest at least 100 percent on a cumulative basis of its designated capital in qualified investments, the percentage of distributions that a Minnesota small business investment company is required to pay to a qualified seed fund under section 116J.665 must increase prospectively to 50 percent.

(g) Revocation of certification from a Minnesota small business investment company pursuant to section 116J.665, before the later of:

(1) the third anniversary of the allocation date of the certified company; or

(2) the date on which a Minnesota small business investment company satisfies the requirements of section 116J.665, results in the disallowance of 100 percent of the credits allowed under this section and the tax for which the credit was given is immediately due.

(h) A certified investor must not transfer, agree to transfer, sell, or agree to sell the credit under this section until two years from the date on which the certified investor invested designated capital. After two years from the date of investment, a certified investor, or subsequent transferee, may only transfer credits earned under this section to an affiliate unless the state premium tax liability of the certified investor in the year immediately preceding the proposed transfer is less than 75 percent of the certified investor's state premium tax liability for the tax year in which it earned the credit. Any transfer or sale does not affect the time schedule for claiming the credit. Any tax credits recaptured under this section remain the liability of the certified investor that actually claimed the credit.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2007.