



Ohio Revised Code

Section 122.153 Tax credit certificates; recapture of tax credits.

Effective: September 30, 2021

Legislation: House Bill 110

(A) The department of development shall not be required to issue a tax credit certificate under section 122.152 of the Revised Code if either of the following applies:

(1) The credit-eligible capital contribution was made in a program one rural business growth fund that fails to:

(a) Invest fifty per cent of its eligible investment authority in growth investments within one year of the closing date; and

(b) Invest one hundred per cent of its eligible investment authority in growth investments in this state within two years of the closing date.

(2) The credit eligible contribution was made in a program two rural business growth fund that fails to:

(a) Invest twenty-five per cent of its eligible investment authority in growth investments within one year of the closing date;

(b) Invest fifty per cent of its eligible investment authority in growth investments within two years of the closing date; and

(c) Invest one hundred per cent of its eligible investment authority in growth investments within three years of the closing date, including seventy-five per cent of its eligible investment authority in rural business concerns that have their principal business operations in tier two or tier three rural areas, and twenty-five per cent of its eligible investment authority in rural business concerns that have their principal business operations in tier three rural areas. The amount by which a rural business growth fund's growth investments in rural business concerns that have their principal business operations in tier one rural areas exceeds twenty-five per cent of the fund's eligible



investment authority shall not count towards the satisfaction of the requirements prescribed by division (A)(2)(c) of this section.

(B) The agency shall recapture tax credits claimed under section 122.152 of the Revised Code if any of the following occur with respect to the rural business growth fund:

(1) The fund, after investing one hundred per cent of its eligible investment authority in growth investments in this state, fails to maintain that investment until the sixth anniversary of the closing date. For the purposes of this division, an investment is maintained even if the investment is sold or repaid so long as the fund reinvests an amount equal to the capital returned or recovered by the fund from the original investment, exclusive of any profits realized, in other growth investments in this state within one year of the receipt of such capital.

(2) The fund makes a distribution or payment after the fund complies with division (G) of section 122.151 of the Revised Code and before the fund decertifies under division (D) of this section that results in the fund having less than one hundred per cent of its eligible investment authority invested in growth investments in this state.

(3) The fund makes a growth investment in a rural business concern that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the fund, an affiliate of the fund, or an investor in the fund. Division (A)(3) of this section does not apply to investments in publicly traded securities by a rural business concern or an owner or affiliate of a rural business concern.

Before recapturing one or more tax credits under this division, the agency shall notify the fund of the reasons for the pending recapture. If the fund corrects the violations outlined in the notice to the satisfaction of the agency within thirty days of the date the notice was dispatched, the agency shall not recapture the tax credits.

(C)(1) The amount by which one or more growth investments by a program one rural business growth fund in the same rural business concern exceeds twenty per cent of the fund's eligible investment authority shall not be counted as a growth investment for the purposes of this section.

The amount by which one or more growth investments by a program two rural business growth fund



in the same business concern exceeds five million dollars shall not be counted as a growth investment for the purposes of this section. A growth investment returned or repaid by a rural business concern to a program one or program two rural business growth fund and then reinvested by the fund in the same rural business concern does not count as an investment in the same rural business concern for the purposes of the limitations prescribed by division (C)(1) of this section.

(2) The aggregate amount of growth investments by all rural business growth funds in the same rural business concern, including amounts reinvested in a rural business concern following a returned or repayment of a growth investment, shall not exceed fifteen million dollars.

(3) A growth investment in an affiliate of a rural business concern shall be treated as a growth investment in that rural business concern for the purposes of division (C) of this section.

(D) If the agency recaptures a tax credit under this section, the agency shall notify the superintendent of insurance of the recapture. The superintendent shall make an assessment under Chapter 5725. or 5729. of the Revised Code for the amount of the credit claimed by each certificate owner associated with the fund before the recapture was finalized. The time limitations on assessments under those chapters do not apply to an assessment under this division, but the superintendent shall make the assessment within one year after the date the agency notifies the superintendent of the recapture. Following the recapture of a tax credit under this section, no tax credit certificate associated with the fund may be utilized. Notwithstanding division (B) of section 122.152 of the Revised Code, if a tax credit is recaptured under this section the agency shall not issue future tax credit certificates to taxpayers that made credit-eligible capital contributions to the fund.

(E)(1) On or after the sixth anniversary of the closing date, a fund that has not committed any of the acts described in division (B) of this section may apply to the agency to decertify as a rural business growth fund. The agency shall respond to the application within sixty days after receiving the application. In evaluating the application, the fact that no tax credit has been recaptured with respect to the fund shall be sufficient evidence to prove that the fund is eligible for decertification. The agency shall not unreasonably deny an application submitted under this division.

(2) The agency shall send notice of its determination with respect to an application submitted under division (E)(1) of this section to the fund. If the application is denied, the notice shall include the



reason or reasons for the determination.

(3) The agency shall not recapture a tax credit due to any actions of a fund that occur after the date the fund's application for decertification is approved. Division (E)(3) of this section does not prohibit the agency from recapturing a tax credit due to the actions of a fund that occur before the date the fund's application for decertification is approved, even if those actions are discovered after that date.