



Ohio Revised Code

Section 122.86 Small business investment certificate; tax credit.

Effective: October 17, 2019

Legislation: House Bill 166 - 133rd General Assembly

(A) As used in this section and section 5747.81 of the Revised Code:

(1) "Small business enterprise" means a corporation, pass-through entity, or other person satisfying all of the following:

(a) At the time of a qualifying investment, the enterprise meets all of the following requirements:

(i) Has no outstanding tax or other liabilities owed to the state;

(ii) Is in good standing with the secretary of state, if the enterprise is required to be registered with the secretary;

(iii) Is current with any court-ordered payments;

(iv) Is not engaged in any illegal activity.

(b) At the time of a qualifying investment, the enterprise's assets according to generally accepted accounting principles do not exceed fifty million dollars, or its annual sales do not exceed ten million dollars. When making this determination, the assets and annual sales of all of the enterprise's related or affiliated entities shall be included in the calculation.

(c) At the time of a qualifying investment and for the two-year period immediately preceding the qualifying investment, the enterprise employs at least fifty full-time equivalent employees in this state for whom the enterprise is required to withhold income tax under section 5747.06 of the Revised Code, or more than one-half the enterprise's total number of full-time equivalent employees employed anywhere in the United States are employed in this state and are subject to that withholding requirement.



(d) The enterprise, within six months after an eligible investor's qualifying investment is made, incurs cost for one or more of the following:

(i) Tangible personal property, other than motor vehicles operated on public roads and highways, used in business and physically located in this state from the time of its acquisition by the enterprise until the end of the investor's holding period, including the installation of such tangible personal property;

(ii) Motor vehicles operated on public roads and highways if, from the time of acquisition by the enterprise until the end of the investor's holding period, the motor vehicles are purchased in this state, registered in this state under Chapter 4503. of the Revised Code, are used primarily for business purposes, and are necessary for the operation of the enterprise's business;

(iii) Real property located in this state that is used in the business from the time of its acquisition by the enterprise until the end of the holding period;

(iv) Leasehold improvements and construction costs for property located in this state that is used in the business from the time its improvement or construction was completed until the end of the holding period;

(v) Compensation for new employees of the enterprise hired after the date the qualifying investment is made for whom the enterprise is required to withhold income tax under section 5747.06 of the Revised Code.

(2) "Qualifying investment" means an investment of money made on or after July 1, 2019, to acquire capital stock or other equity interest in a small business enterprise. "Qualifying investment" does not include either of the following:

(a) Any investment of money an eligible investor derives, directly or indirectly, from a grant or loan from the federal government or the state or a political subdivision, including the third frontier program under Chapter 184. of the Revised Code;

(b) Any investment of money which is the basis of a tax credit granted under any other section of the



Revised Code.

(3) "Eligible investor" means an individual, estate, or trust subject to the tax imposed by section 5747.02 of the Revised Code, or a pass-through entity in which such an individual, estate, or trust holds a direct or indirect ownership or other equity interest. To qualify as an eligible investor, the individual, estate, trust, or pass-through entity shall not owe any outstanding tax or other liability to the state at the time of a qualifying investment.

(4) "Holding period" means the two-year period beginning on the day a qualifying investment is made.

(5) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.

(B) An eligible investor that makes a qualifying investment in a small business enterprise on or after July 1, 2019, may apply to the director of development services to obtain an allocation for a small business investment certificate from the director. Alternatively, a small business enterprise may apply on behalf of eligible investors to obtain the allocation for those investors. The application must be submitted to the director within sixty days after the date of the qualifying investment, but within the same biennium as the qualifying investment. The director, in consultation with the tax commissioner, shall prescribe the form or manner in which an applicant shall apply for the certificate, devise the form of the certificate, and prescribe any records or other information an applicant shall furnish with the application to evidence the qualifying investment. The applicant shall pay an application fee equal to the greater of one-tenth of one per cent of the amount of the intended investment or one hundred dollars.

The director of development services may reserve small business investment allocations to qualifying applicants in the order in which the director receives applications. An application is completed when the director has validated that an eligible investor has made a qualified investment and receives all required documentation needed to demonstrate the small business enterprise satisfies the requirements of division (A)(1) of this section. To qualify for an allocation, an eligible investor must satisfy both of the following, subject to the limitation on the amount of qualifying investments for which allocations may be issued under division (C) of this section:



- (1) The eligible investor makes a qualifying investment on or after July 1, 2019.
 - (2) The eligible investor pledges not to sell or otherwise dispose of the qualifying investment before the conclusion of the applicable holding period.
- (C)(1) The amount of any eligible investor's qualifying investments for which small business investment allocations may be issued for a fiscal biennium shall not exceed ten million dollars.
- (2) The director of development services shall not issue a small business investment allocation to an eligible investor representing an amount of qualifying investment in excess of the amount of the investment indicated on the investor's application.
 - (3) For any fiscal biennium beginning before July 1, 2019, the director of development services shall not issue small business investment allocations in a total amount that would cause the tax credits claimed in that biennium to exceed one hundred million dollars. For any fiscal biennium beginning on or after July 1, 2019, the director shall not issue small business investment allocations in a total amount that would cause the tax credits claimed in that biennium to exceed fifty million dollars.
 - (4) The director of development services may issue a small business investment allocation only if both of the following apply at the time of issuance:
 - (a) The small business enterprise meets all the requirements listed in divisions (A)(1)(a)(i) to (iv) of this section;
 - (b) The eligible investor does not owe any outstanding tax or other liability to the state.
 - (5) The director shall not issue a small business investment allocation on the basis of any investment for which an Ohio opportunity zone investment certificate has been issued under section 122.84 of the Revised Code.
- (D) Before the end of the applicable holding period of a qualifying investment, each enterprise in which a qualifying investment was made for which a small business investment allocation has been issued, upon the request of the director of development services, shall provide to the director records



or other evidence satisfactory to the director that the enterprise is a small business enterprise for the purposes of this section. Each enterprise shall also provide annually to the director records or evidence regarding the number of jobs created or retained in the state. The director shall compile and maintain a register of small business enterprises qualifying under this section and shall certify the register to the tax commissioner. The director shall also compile and maintain a record of the number of jobs created or retained as a result of qualifying investments made pursuant to this section.

(E) After the conclusion of the applicable holding period for a qualifying investment, a person to whom a small business investment allocation has been issued under this section shall receive a small business investment certification, which entitles the person to claim a credit as provided under section 5747.81 of the Revised Code. However, no certificate may be issued if the director finds that any requirement under this section is not met.

(F) The director of development services, in consultation with the tax commissioner, may adopt rules for the administration of this section, including rules governing the following:

- (1) Documents, records, or other information eligible investors shall provide to the director;
- (2) Any information a small business enterprise shall provide for the purposes of this section and section 5747.81 of the Revised Code;
- (3) Determination of the number of full-time equivalent employees of a small business enterprise;
- (4) Verification of a small business enterprise's investment ;
- (5) Circumstances under which small business enterprises or eligible investors may be subverting the purposes of this section and section 5747.81 of the Revised Code.

(G) Application fees paid under division (B) of this section shall be credited to the tax incentives operating fund created in section 122.174 of the Revised Code.