

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1071

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-17-84
DATE FOR REVIEW 9-26-84
DATE DUE 10-01-84

Adopted w/a hearing _____
Adopted w/o hearing X
Temporary rule _____

Approved 10-1-84 MJC Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 10-1-84 Revisor approved 9/18/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 8.13.84 Date signed by delegatee of commissioner

✓ Notice of Intent to Solicit Outside Opinion SR 10.24.83, small biz statement included. + comments

✓ Order for rulemaking
Transcripts of "small biz" hearings
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency minor non-compliance w/ Minn. St. 14.22 (1)

✓ Affidavit of Mailing Notice or rulemaking
6.18.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
7.9.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General
none received

✓ Notice of Submission to the Attorney General

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : Mark B. Dayton
Commissioner, Energy & Economic Development

ATTN: Christie Eller
Special Assistant Attorney General

FROM : Martha J. Casserly MJC
Special Assistant Attorney General

DATE: October 1, 1984

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Energy and Economic Development Governing Tax Credit Certification.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

MJC:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Energy and Economic Development

Adopted Rules Governing Tax Credit Certification

Rules as Adopted

4351.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Business entity.** For purposes of certification as a qualified small business, "business entity" means a business conducted for profit as a corporation, partnership, or proprietorship, except an entity engaged primarily in providing licensed professional services and except an entity primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a).

Subp. 3. **Employee.** For purposes of certification as a qualified small business, "employee" means any person who is permanently on the payroll of a business entity at the time the business entity seeks certification as a qualified small business. An employee is determined on an annualized full-time equivalent basis by dividing total payroll hours (excluding overtime) worked by all employees during the year by 2,080 hours.

Subp. 4. **Subsidiary or affiliate.** For purposes of certification as a qualified small business, a business entity is a "subsidiary" of a transferor or investor if the business entity is a corporation and the transferor or investor owns more than 50 percent of the value of the outstanding stock of the entity corporation, or the entity is not a corporation and the transferor or investor owns more than 50 percent of the value of the capital interest or the profit interest in the entity.

For purposes of certification as a qualified small business, a business entity is an "affiliate" of a transferor or investor if:

A. the business entity is a corporation and the transferor or investor owns more than 20 percent of the value of the outstanding stock of the entity corporation;

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B. the business entity is not a corporation and the transferor or investor owns more than 20 percent of the capital stock interest or the profit interest in the entity; or

C. other facts and circumstances indicate that the transferor or investor possesses effective control of the entity as evidenced by:

(1) contractual arrangements that provide for allocation of the entity's output to the transferor or investor or that require the purchase of inputs from the transferor or investor;

(2) a high percentage of the ownership by transferor or investor, but less than 50 percent, and fragmentation of the ownership of the other interests among various other individuals or entities;

(3) a majority of the membership of the entity's board of directors or other governing body is held by employees, directors, or owners of the transferor or investor; or

(4) other relevant factors.

A business entity is a subsidiary or affiliate of a transferor or investor if the entity and the transferor or investor are both subsidiaries or affiliates, or some combination thereof, of a common third party.

A separately incorporated franchise is not a subsidiary or affiliate.

Subp. 5. **Commercial domicile.** For purposes of certification as a qualified small business, "commercial domicile" means the state where the business entity maintains the principal office from which it manages and directs its business.

Subp. 6. **Taxable year.** For purposes of certification as a qualified small business, "taxable year" means the period for which the business entity filed its Minnesota income tax return. The period may be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which the return is made.

Subp. 7. **In operation.** For purposes of certification as a

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REVISOR OF STATUTES
OFFICE BY:

qualified small business, "in operation" means performing the services or other business activities for which the entity was organized.

Subp. 8. **Passive income.** For purposes of certification as a qualified small business, "passive income" means gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Subp. 9. **Engaged primarily in providing licensed professional services.** For purposes of certification as a qualified small business, "engaged primarily in providing licensed professional services" means the business entity has as its primary purpose the rendering of personal service by a professional or professionals pursuant to a license or certificate issued to the professional by the state of Minnesota or similar laws of another state including but not limited to the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying or landscape architecture, accountancy, or law.

what else might be included ?

Subp. 10. **Commissioner.** For purposes of certification as a qualified small business and for purposes of certification as a small business assistance office, "commissioner" means the commissioner of energy and economic development or his or her designee.

Subp. 11. **Audited financial statements.** For purposes of certification as a small business assistance office, "audited financial statements" means financial statements on which a state licensed public accountant has delivered an opinion according to generally accepted auditing standards that the financial statements soundly and fairly present the business's financial data.

Subp. 12. **Full-time professional employee or the equivalent.** For purposes of certification as a small business assistance office, "full-time professional employee or the equivalent" means:

A. an individual who is on the payroll of a nonprofit

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

corporation, who performs services directly related to the primary purpose of a nonprofit corporation, and who works at least 2,080 hours per year; or

B. a combination of professional employees who are on the payroll of the nonprofit corporation, who perform services directly related to the purpose of the nonprofit corporation, and who individually work fewer than 2,080 hours per year but who aggregately work at least 2,080 hours per year.

Subp. 13. **Shared professional employee.** For purposes of certification as a small business assistance office, a corporation "shares" a professional employee with another organization if the following criteria are met:

A. the "shared" employee performs services directly related to the primary purpose of the corporation;

B. the corporation pays the direct compensation and fringe benefits for the "shared" employee in proportion to the services received; and

C. the "shared" employee is employed by an organization (whether organized for profit or not and regardless of the business form in which it is organized) which trains or provides direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of businesses.

Subp. 14. **Financing.** For purposes of certification as a small business assistance office, "financing" means the making of market rate loans. Financing does not mean assisting with the securing of grants or contracts from public or private sources.

4351.0200 PURPOSE.

The purpose of this chapter is to provide notice of the procedures and criteria used by the commissioner of energy and economic development to certify a nonprofit corporation as a small business assistance office and to certify a business entity organized for profit as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraphs (a) and (f).

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4351.0300 COMPUTATION OF GROSS ANNUAL RECEIPTS.

For the purpose of certification as a qualified small business, gross annual receipts is determined by using the following computations (the forms and lines referenced relate to 1983 federal tax forms, or their equivalent forms and lines in the future):

A. For businesses filing a federal corporation income tax return, use the total income increased by the cost of goods sold and/or operations (IRS form 1120, the sum total of lines 11 and 2).

B. For businesses filing a federal income tax return for a chapter S corporation, use the sum of the total income, cost of goods sold and/or operations, and the long and short term net capital gain or losses. (IRS form 1120S, use line 9 and increase it by the amount on line 2. Increase this total by the amount on IRS schedule D, form 1120S, by the amounts on lines 1, 2, and 9.)

C. For businesses filing federal sole proprietorship or partnership interest returns, use the gross receipts or sales less returns or allowances plus other income (IRS form 1040 schedule C, use the total amounts on lines 1c and 4b.)

If form 1040 schedule D is filed, use the net short and long term capital gain or loss excluding any gain made on the sale of your home. (IRS form 1040 schedule D, line 6 less line 2 plus line 17 less line 10.)

If form 1040 schedule E is filed, use any rental income and any other business income (IRS form 1040 schedule E, lines 3, 27, 31, and 33.)

D. If an IRS form 1065 is filed, use the gross receipts or sales less returns or allowances (line 1c), plus ordinary income from other partnerships (line 4, only if positive amount), plus interest and dividends (line 5), plus gross rents (line 6a), plus income from royalties (line 7), plus any other income or loss (line 10).

4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

APPROVED BY THE
REVISOR OF STATUTES
OFFICE BY:

Subpart 1. **Application.** For a nonprofit corporation to be certified as a small business assistance office under Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), it must submit to the commissioner an application form provided by the commissioner along with a copy of the articles of incorporation; a copy of the designation by the Internal Revenue Service that the corporation is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December ~~15~~ 31, 1983; the most recent audited financial statement; and a recent payroll abstract or the equivalent.

The application form must contain the corporate name, principal place of business of the corporation, and an affirmation made by an officer of the corporation affirming the following:

A. that the primary purpose of the corporation is to aid in the formation of new businesses which create jobs by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

B. that the corporation provides audited financial statements to all contributors seeking the tax credit and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

C. that the corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

D. that the corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Subp. 2. **Period of certification.** The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Subp. 3. **Annual applications.** A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. **Decision to certify.** Within 30 days of receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a nonprofit corporation as a small business assistance office. The commissioner shall certify the corporation for a calendar year if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), clauses (1) to (4). If the commissioner denies certification, he or she shall provide the applicant with a statement of the reason for the denial.

4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

Subpart 1. **Application.** For a business entity to be certified as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), it must submit to the commissioner an application form provided by the commissioner along with a copy of its three most recent individual or corporate federal income tax returns, a list of the entity's shareholders and their voting interest, a copy of the articles of incorporation and its amendments or partnership agreement if the business entity is a partnership, or a certificate of limited partnership when the business entity is a limited partnership, a recent payroll abstract or the equivalent, and any other information requested by the commissioner as reasonably needed to certify the business entity as a qualified small business.

The application must contain at a minimum the name and address of the business, the taxable year of the business, and an affirmation by an officer of the business affirming:

A. that the business entity is organized for profit as a corporation, partnership, or proprietorship (note that a

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

qualified small business for purposes of equity investment credit must be organized as a corporation);

B. that the above named business entity is not engaged primarily in providing licensed professional services;

C. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

D. that the business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

E. that the business entity is not a subsidiary or an affiliate of a business entity which employs more than 20 employees determined on an annualized full-time equivalent basis or which had total gross receipts for the previous year of more than $1,000,000, computed by aggregating all of the employees and gross receipts of the business entities affiliated with the business;

F. that the business entity has its commercial domicile in Minnesota;

G. that the above named business entity:

(1) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(2) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (a) the amount of passive income received during its first taxable year was less than $3,000; and (b) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(3) is a sole proprietorship to which the provisions of subitems (1) and (2) do not apply; and

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

H. that the business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December ~~15~~ 31, 1983. FF

Subp. 2. **Period of certification.** The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. **Annual applications.** A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. **Decision to certify.** Within 30 days of the receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a business entity organized for profit as a qualified small business. The commissioner shall certify the business entity if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), clauses (1) to (5). If the commissioner denies certification, he or she shall provide the applicant with a written reason for the denial.

4351.0600 FALSE INFORMATION.

The commissioner shall deny or withdraw certification to a corporation or business entity that the commissioner determines has knowingly provided false, incomplete, or inaccurate information in the application or other documents required in part 4351.0400 or 4351.0500.

4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE.

APPLICATION FOR CERTIFICATION OF
SMALL BUSINESS ASSISTANCE OFFICE
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

I _____ affirm that I am the _____ of the above named organization and affirm:

1. that the above named corporation is a nonprofit corporation under Minnesota Statutes, chapter 317 and is an exempt organization under section 501(c)(3) of the Internal Revenue Code, as amended through December ~~15~~ 31, 1983;

2. that the above named corporation has as its primary purpose aiding in the formation of new businesses which create jobs in the state by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

3. that the above named corporation will provide audited financial statements to all contributors and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

4. that the above named corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

5. that the above named corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Notary Seal

Signature: _____

Date: _____

4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS.

APPLICATION FOR CERTIFICATION

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

AS A QUALIFIED SMALL BUSINESS
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

Primary purpose of business: _____

I _____ affirm that I am the _____ of the above named business entity and affirm:

1. that the above named business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

2. that the above named business entity is not engaged primarily in providing licensed professional services;

3. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

4. that the above named business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

5. that the above named business entity is not a subsidiary or affiliate of a business entity with more than 20 employees or with total gross receipts for the previous year of more than $1,000,000, as computed by aggregating all the employees and all the gross receipts of the business entities affiliated with the business;

6. that the above named business entity has its commercial domicile in this state; and

7. that the above named business entity:

(a) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(b) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (i) the amount of passive income received during its first taxable year was less than $3,000; and (ii) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(c) is a sole proprietorship to which the provisions of clauses (a) and (b) do not apply; and

8. that the above named business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December ~~15~~ 31, FF 1983.

Notary Seal

Signature: _____

Date: _____

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

APPROVED AS TO FORM AND LEGALITY

October 1 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJCassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT - 1 1984
Joan Anderson Growe
Secretary of State
2:50 P.M.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO : LARRY STARNS
Special Assistant Attorney General

DATE: 9-10-84

FROM : CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: Proposed DEED Rules Governing Tax Credit Certification

The following is some background information regarding the above-referenced rules.

A Notice of Intent to Solicit Outside opinion was published on October 24, 1983 at 8. S.R. 970. Two information hearings targeted to small businesses were held. Copies of transcripts of the hearings are enclosed. The Departments' responses to comments from those hearings are in the Statement of Need. Proposed rules were published on Feb. 24, 1984 at 8 S.R. 2050. Those proposed rules were withdrawn because of amendments to Minn. Stat. § 290.069 (1983 Supp.) made by the 1984 Legislature in Minn. Laws 1984, ch. 502, art. 5, §§ 5-12. In June, 1984, pursuant to Minn. Stat. § 14.05, subd. 3, a notice of withdrawal was sent to the State Register for publication. Unfortunately, when the Department submitted the rules to me for my Statement of Compliance with rulemaking procedures I discovered that the State Register never published that notice. The State Register has agreed to do so as an errata. The notice will be published on September 10, 1984. Minn. Stat. § 14.05 does not state when the notice of withdrawal must be published, thus, the belated publication of the notice of withdrawal appears to comply with all the stated requirements of that section.

The revised set of proposed rules was published on July 9, 1984 at 9 S.R. 90. After the proposed rules were sent to the State Register for publication, but prior to actual publication of the rule in the State Register, the Department learned of the instruction to the Revisor in Minn. Laws 1984, ch. ~~604, § 8.~~ Since the change was non substantive the Department determined to make the change when the rules were adopted, however, the Statement of Need was modified to reflect the change.

9/19 Christie stated this should read ch 514, Art. 1 § 8

CBE:bl

Enclosures

To: Marty.
Date: 9/19/84
Re: DEED — Tax Credit Certification

Rules as Adopted

p. 3 · 0100, subp. 9
line 15 This section contains the phrase "including but not limited to" without any criteria to indicate what else might be included in definition of profession

MINNESOTA
Department of Energy
and Economic Development

Economic Development Division
297-1291

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

August 14, 1984

Mr. Larry Starns
Special Assistant Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Dear Mr. Starns:

Enclosed please find the following documents in the matter of the Adoption of Rules of the Minnesota Department of Energy and Economic Development governing Tax Credit Certification.

1) Rules as adopted (4 copies)
2) Order Adopting Rules (2 copies)
3) Notice of Intent to Solicit outside Opinion Concerning proposed rules relating to Tax Credit Certification.
4) Order for Notice of Intent to Adopt Rules without a Public Hearing
5) Notice of Intent to Adopt Rules without a Public Hearing
6) Affadavit of Mailing
7) Mailing list certificate
8) Statement of Need and Reasonableness
9) Findings of Fact
10) Statement of Compliance with Rulemaking Procedures

We have not had a request for hearing made during the thirty-day period and did not receive any written comments during this period. The agency made one amendment to the proposed rule to change the amended date for the Internal Revenue Code of 1954 from December 13, 1983 to December 31, 1983 to reflect the statutory language in Chapter 514, Article 1, Section 8, Laws of Minnesota, 1984. These rules are not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.

Your earliest response to the documents is appreciated. Should you have any questions or concerns, please contact me at 296-0617.

Sincerely,

Charles A. Schaffer
Director
Program of Business Information
612/296-0617

CAS:dg
Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

Rules as Proposed (all new material)

4351.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them.

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Subp. 4. **Subsidiary or affiliate.** For purposes of certification as a qualified small business, a business entity is a "subsidiary" of a transferor or investor if the business entity is a corporation and the transferor or investor owns more than 50 percent of the value of the outstanding stock of the entity corporation, or the entity is not a corporation and the transferor or investor owns more than 50 percent of the value of the capital interest or the profit interest in the entity.

For purposes of certification as a qualified small business, a business entity is an "affiliate" of a transferor or investor if:

A. the business entity is a corporation and the transferor or investor owns more than 20 percent of the value of the outstanding stock of the entity corporation;

B. the business entity is not a corporation and the transferor or investor owns more than 20 percent of the capital stock interest or the profit interest in the entity; or

C. other facts and circumstances indicate that the

APPROVED BY THE REVISOR OF STATUTES OFFICE BY: MWH

transferor or investor possesses effective control of the entity as evidenced by:

(1) contractual arrangements that provide for allocation of the entity's output to the transferor or investor or that require the purchase of inputs from the transferor or investor;

(2) a high percentage of the ownership by transferor or investor, but less than 50 percent, and fragmentation of the ownership of the other interests among various other individuals or entities;

(3) a majority of the membership of the entity's board of directors or other governing body is held by employees, directors, or owners of the transferor or investor; or

(4) other relevant factors.

A business entity is a subsidiary or affiliate of a transferor or investor if the entity and the transferor or investor are both subsidiaries or affiliates, or some combination thereof, of a common third party.

A separately incorporated franchise is not a subsidiary or affiliate.

Subp. 5. **Commercial domicile.** For purposes of certification as a qualified small business, "commercial domicile" means the state where the business entity maintains the principal office from which it manages and directs its business.

Subp. 6. **Taxable year.** For purposes of certification as a qualified small business, "taxable year" means the period for which the business entity filed its Minnesota income tax return. The period may be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which the return is made.

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Subp. 8. **Passive income.** For purposes of certification as

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

a qualified small business, "passive income" means gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Subp. 9. **Engaged primarily in providing licensed professional services.** For purposes of certification as a qualified small business, "engaged primarily in providing licensed professional services" means the business entity has as its primary purpose the rendering of personal service by a professional or professionals pursuant to a license or certificate issued to the professional by the state of Minnesota or similar laws of another state including but not limited to the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying or landscape architecture, accountancy, or law.

Subp. 10. **Commissioner.** For purposes of certification as a qualified small business and for purposes of certification as a small business assistance office, "commissioner" means the commissioner of energy and economic development or his or her designee.

Subp. 11. **Audited financial statements.** For purposes of certification as a small business assistance office, "audited financial statements" means financial statements on which a state licensed public accountant has delivered an opinion according to generally accepted auditing standards that the financial statements soundly and fairly present the business's financial data.

Subp. 12. **Full-time professional employee or the equivalent.** For purposes of certification as a small business assistance office, "full-time professional employee or the equivalent" means:

A. an individual who is on the payroll of a nonprofit corporation, who performs services directly related to the primary purpose of a nonprofit corporation, and who works at least 2,080 hours per year; or

B. a combination of professional employees who are on

the payroll of the nonprofit corporation, who perform services directly related to the purpose of the nonprofit corporation, and who individually work fewer than 2,080 hours per year but who aggregately work at least 2,080 hours per year.

Subp. 13. **Shared professional employee.** For purposes of certification as a small business assistance office, a corporation "shares" a professional employee with another organization if the following criteria are met:

A. the "shared" employee performs services directly related to the primary purpose of the corporation;

B. the corporation pays the direct compensation and fringe benefits for the "shared" employee in proportion to the services received; and

C. the "shared" employee is employed by an organization (whether organized for profit or not and regardless of the business form in which it is organized) which trains or provides direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of businesses.

Subp. 14. **Financing.** For purposes of certification as a small business assistance office, "financing" means the making of market rate loans. Financing does not mean assisting with the securing of grants or contracts from public or private sources.

4351.0200 PURPOSE.

The purpose of this chapter is to provide notice of the procedures and criteria used by the commissioner of energy and economic development to certify a nonprofit corporation as a small business assistance office and to certify a business entity organized for profit as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraphs (a) and (f).

4351.0300 COMPUTATION OF GROSS ANNUAL RECEIPTS.

For the purpose of certification as a qualified small business, gross annual receipts is determined by using the

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following computations (the forms and lines referenced relate to 1983 federal tax forms, or their equivalent forms and lines in the future):

A. For businesses filing a federal corporation income tax return, use the total income increased by the cost of goods sold and/or operations (IRS form 1120, the sum total of lines 11 and 2).

B. For businesses filing a federal income tax return for a chapter S corporation, use the sum of the total income, cost of goods sold and/or operations, and the long and short term net capital gain or losses. (IRS form 1120S, use line 9 and increase it by the amount on line 2. Increase this total by the amount on IRS schedule D, form 1120S, by the amounts on lines 1, 2, and 9.)

C. For businesses filing federal sole proprietorship or partnership interest returns, use the gross receipts or sales less returns or allowances plus other income (IRS form 1040 schedule C, use the total amounts on lines 1c and 4b.)

If form 1040 schedule D is filed, use the net short and long term capital gain or loss excluding any gain made on the sale of your home. (IRS form 1040 schedule D, line 6 less line 2 plus line 17 less line 10.)

If form 1040 schedule E is filed, use any rental income and any other business income (IRS form 1040 schedule E, lines 3, 27, 31, and 33.)

D. If an IRS form 1065 is filed, use the gross receipts or sales less returns or allowances (line 1c), plus ordinary income from other partnerships (line 4, only if positive amount), plus interest and dividends (line 5), plus gross rents (line 6a), plus income from royalties (line 7), plus any other income or loss (line 10).

4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

Subpart 1. **Application.** For a nonprofit corporation to be certified as a small business assistance office under Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), it must submit to the commissioner an application form provided by the

commissioner along with a copy of the articles of incorporation; a copy of the designation by the Internal Revenue Service that the corporation is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December 15, 1983; the most recent audited financial statement; and a recent payroll abstract or the equivalent.

The application form must contain the corporate name, principal place of business of the corporation, and an affirmation made by an officer of the corporation affirming the following:

A. that the primary purpose of the corporation is to aid in the formation of new businesses which create jobs by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

B. that the corporation provides audited financial statements to all contributors seeking the tax credit and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

C. that the corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

D. that the corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Subp. 2. **Period of certification.** The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. **Annual applications.** A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later

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than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. **Decision to certify.** Within 30 days of receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a nonprofit corporation as a small business assistance office. The commissioner shall certify the corporation for a calendar year if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), clauses (1) to (4). If the commissioner denies certification, he or she shall provide the applicant with a statement of the reason for the denial.

4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

Subpart 1. **Application.** For a business entity to be certified as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), it must submit to the commissioner an application form provided by the commissioner along with a copy of its three most recent individual or corporate federal income tax returns, a list of the entity's shareholders and their voting interest, a copy of the articles of incorporation and its amendments or partnership agreement if the business entity is a partnership, or a certificate of limited partnership when the business entity is a limited partnership, a recent payroll abstract or the equivalent, and any other information requested by the commissioner as reasonably needed to certify the business entity as a qualified small business.

The application must contain at a minimum the name and address of the business, the taxable year of the business, and an affirmation by an officer of the business affirming:

A. that the business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

B. that the above named business entity is not engaged primarily in providing licensed professional services;

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C. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

D. that the business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

E. that the business entity is not a subsidiary or an affiliate of a business entity which employs more than 20 employees determined on an annualized full-time equivalent basis or which had total gross receipts for the previous year of more than $1,000,000, computed by aggregating all of the employees and gross receipts of the business entities affiliated with the business;

F. that the business entity has its commercial domicile in Minnesota;

G. that the above named business entity:

(1) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(2) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (a) the amount of passive income received during its first taxable year was less than $3,000; and (b) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(3) is a sole proprietorship to which the provisions of subitems (1) and (2) do not apply; and

H. that the business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 15, 1983.

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Subp. 2. **Period of certification.** The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. **Annual applications.** A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. **Decision to certify.** Within 30 days of the receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a business entity organized for profit as a qualified small business. The commissioner shall certify the business entity if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), clauses (1) to (5). If the commissioner denies certification, he or she shall provide the applicant with a written reason for the denial.

4351.0600 FALSE INFORMATION.

The commissioner shall deny or withdraw certification to a corporation or business entity that the commissioner determines has knowingly provided false, incomplete, or inaccurate information in the application or other documents required in part 4351.0400 or 4351.0500.

4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE.

APPLICATION FOR CERTIFICATION OF
SMALL BUSINESS ASSISTANCE OFFICE
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

APPROVED BY THE REVISOR OF STATUTES
BY:

Address of business: _____

I _____ affirm that I am the _____ of the above named organization and affirm:

1. that the above named corporation is a nonprofit corporation under Minnesota Statutes, chapter 317 and is an exempt organization under section 501(c)(3) of the Internal Revenue Code, as amended through December 15, 1983;

2. that the above named corporation has as its primary purpose aiding in the formation of new businesses which create jobs in the state by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

3. that the above named corporation will provide audited financial statements to all contributors and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

4. that the above named corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

5. that the above named corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Notary Seal

Signature: _____

Date: _____

4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS.

APPLICATION FOR CERTIFICATION
AS A QUALIFIED SMALL BUSINESS
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

Primary purpose of business: _____

I _____ affirm that I am the _____ of the above named business entity and affirm:

1. that the above named business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

2. that the above named business entity is not engaged primarily in providing licensed professional services;

3. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

4. that the above named business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

5. that the above named business entity is not a subsidiary or affiliate of a business entity with more than 20 employees or with total gross receipts for the previous year of more than $1,000,000, as computed by aggregating all the employees and all the gross receipts of the business entities affiliated with the business;

6. that the above named business entity has its commercial domicile in this state; and

7. that the above named business entity:

(a) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(b) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross

receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (i) the amount of passive income received during its first taxable year was less than $3,000; and (ii) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(c) is a sole proprietorship to which the provisions of clauses (a) and (b) do not apply; and

8. that the above named business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 15, 1983.

Notary Seal

Signature: _____

Date: _____

APPROVED IN THE REVISOR OF STATUTES

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD530

Agency: Department of Energy and Economic Development

Division: Economic Development

Agency Contact: Mary Berg 296-5012

Minnesota Rules: Parts 4351.0100 to 4351.0800

Title: Proposed Rules Governing Tax Credit Certification

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948
Date: June 11, 1984

STATE OF MINNESOTA
Department of Energy and Economic Development

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Energy and Economic Development Governing Tax Credit Certification

ORDER ADOPTING RULES

Notice of Intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 9, 1984 and was sent by United States Mail to all persons on the list maintained by an agency pursuant to Minn. Stat. 14.14, subd. 1, on June 18, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than 25 written requests for a public hearing within the 30-day ccomment period, receiving and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, it is ordered that these rules identified as the Proposed Rules Governing Tax Credit Certification, are adopted this 13th day of August, 1984, pursuant to authority vested in me by Minn. Stat. §§ 14.06 & 116J.035, subd. 2 as amended by Chapter 604, Laws of Minnesota 1984.

State of Minnesota

_____
Mark B. Dayton
Commissioner
Minnesota Department of Energy
and Economic Development

By: Connie J. Lewis
Connie J. Lewis
Senior Administrative Officer
Minnesota Department of Energy
and Economic Development

Energy and Economic Development
Department

Connie Lewis
Name of Employee

July 25, 1984
Date

I, Mark B. Dayton, the duly appointed Commissioner of Energy and Economic Development, pursuant to Minn. Stat. 15.06, subd. 6 (1982), effective July 20, 1984, do hereby delegate to Connie Lewis, Senior Administrative Officer of the Department of Energy and Economic Development:

A. The authority and responsibility for exercising all the specified statutory powers and duties of the Commissioner of Energy and Economic Development except those powers and duties specified herein:

1. The approval of projects on the basis of preliminary information as is required by the Commissioner pursuant to Minn. Stat. § 474.01 (1982), as amended by Minn. Laws 1983, ch. 289, § 115, subd. 1(d) and Minn. Laws 1984, ch. 583, § 34;

2. The implementation and reporting requirements of the Municipal Industrial Development Act, pursuant to Minn. Stat. ch. 474 (1982 and 1983 Supp.) and as amended by Minn. Laws 1984, ch. 582, 583 and 584; and

3. The implementation of the allocation of federal authority to issue certain state and local obligations pursuant to Minn. Laws 1984, ch. 582, Minn. Laws, ch. 584, § 12; and Executive Order 84-9.

B. The authority and responsibility for signing all necessary documents including but not limited to:

All documents pertaining to contracts for grant agreements and non-state employee services and all documents pertaining to accounting and personnel matters that

pertain to the Department of Energy and Economic Development.

This authorization rescinds all prior delegations of authority heretofore filed.

Connie J. Lewis
Authorized Signature of designee

Appointing Authority

cc: Secretary of State
Commissioner, Department of Administration
State Auditor
Commissioner, Department of Finance
State Treasurer
Attorney General
Commissioner, Department of Employee Relations
Executive Director, State Retirement System

Written and oral comments and statements will be accepted until December 2, 1983.

October 13, 1983

Sandra S. Gardebring
Executive Director

Department of Revenue
Corporate Income Tax Division

Department of Energy and Economic Development
Economic Development Division

Notice of Intent to Solicit Outside Opinion Regarding Development of Rules Governing the Operation of the Tax Credit Program for Technology Transfer, Equity Investment and Contribution Credits for "Qualified Small Businesses" and Contributions to "Small Business Assistance Offices" under *Laws of Minnesota* 1983, Chapter 342

Notice is hereby given that the Minnesota Departments of Revenue and Energy and Economic Development are seeking information and opinions from sources outside the agencies in preparation of rules related to the operation of the tax credit program for technology transfer equity investment in "qualified small businesses" and contributions to "small business assistance offices" under *Laws of Minnesota* 1983, chapter 342.

The Department of Revenue is particularly interested in information and opinions regarding the substance and operation of the tax credit program. The promulgation of these rules is authorized by Chapter 342, *Laws of Minnesota* 1983.

The Department of Energy and Economic Development is seeking information and opinions regarding the certification of "qualified small businesses" and "small business assistance offices." The promulgation of these rules is authorized by *Minn. Stat.* § 14.06.

The Department of Revenue and the Department of Energy and Economic Development request information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements regarding the substance and operation of the tax credit programs should be directed to the Department of Revenue:

Harriet Sims
Minnesota Department of Revenue
Centennial Office Building
PO Box 4336
St. Paul, Minnesota 55104
(612) 297-4058

Written statements regarding the definition and certification of a "qualified small business" and a "small business assistance office" should be directed to the Department of Energy and Economic Development:

Charles A. Schaffer
Program of Business Information
Minnesota Department of Energy and Economic Development
480 Cedar Street
St. Paul, Minnesota 55101
(612) 296-0617

Oral statements will be received during regular business hours over the telephone at the telephone numbers given above and in person at the above address.

Pursuant to Chapter 188, *Laws of Minnesota* 1983, the concerns and opinions of small businesses are particularly desired since these tax credits specifically involve small businesses. The credits are intended to stimulate the growth and success of small businesses through encouragement of transfer of technology to small businesses, equity investment in small business and contributions to small business assistance offices.

All statements of information and comment shall be accepted until November 30, 1983. All comments received by the

Department of Revenue and the Department of Energy and Economic Development shall become part of the record in the event that rules are promulgated.

October 11, 1983

W. Wesley Cochrane, Deputy Commissioner
Department of Energy & Economic Development

Dorothy McClung, Director
Office of Legal Research
Department of Revenue

Department of Revenue
Property Equalization Division

Notice of Intent to Solicit Outside Opinion Regarding Rules Establishing a New Certificate of Real Estate Value

The Commissioner of Revenue has been directed by Laws 1983, chapter 342, article 2, section 4, to revise the certificate of real estate value to specifically require terms and conditions of financing relating to sales of real estate. The Department has formulated a working draft of a proposed rule outlining new requirements.

We are now seeking information, opinions, or comments on this draft rule. A copy of the draft rule can be obtained by contacting:

Dorothy McClung, Director
Legal Research Division
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Written information, opinions, or comments will be accepted until November 18, 1983, and should be directed to the address above.

Any written material received shall become part of the background record regarding these rules.

Department of Transportation

Petition of the City of Eveleth for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the City Council of the City of Eveleth made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for the reconstruction of Fayal Avenue from North Court to Park Avenue.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, chapters 161 and 162 (1978) as amended, so as to permit a design speed of 20 miles per hour instead of a required design speed of 30 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 13th day of October, 1983

Richard P. Braun
Commissioner of Transportation

* * *

PUBLIC MEETING ON DEVELOPMENT OF RULES FOR OPERATION OF THE NEW TAX CREDITS RELATING TO TRANSFER OF TECHNOLOGY TO SMALL BUSINESS, EQUITY INVESTMENTS IN SMALL BUSINESSES, AND CONTRIBUTIONS TO SMALL BUSINESS ASSISTANCE OFFICES.

* * *

Transcript of proceedings had before Jeanette D. Bovee, a Notary Public in and for the County of Ramsey, State of Minnesota, on Monday, the 21st day of November, 1983, commencing at approximately 7:15 o'clock p.m., at Control Data Center, in the City of Minneapolis, State of Minnesota.

* * *

MR. SCHAFFER: Good evening and welcome to the first of two public meetings on new tax credits established by the 1983 Legislature Chapter 342 of Laws of 1983. I'm Charles Schaffer from the Minnesota Department of Energy and Economic Development, and joining me this evening is Dorothy McClung from the Department of Revenue, Ms. Harriet Sims from the Department of Revenue, and Ms. Madeline Harris from the Department of Energy and Economic Development. We are here to receive comments, and hopefully primarily the comments of small businesses,relating to these new tax credits. Specifically, Chapter 342 of Laws of 1983 created three tax credits: One for transfer of technology to qualified small businesses, one for equity investments in small businesses, and one for contributions to what are called in the statutes small business assistance offices. If you don't have a copy of the statutory language there are some in the back of the room which you are welcome to take. That same statute gives responsibility for certification of businesses as qualified small businesses for the purpose of the tax credits to the Commissioner of Energy and Economic Development and certification of small business assistance offices as meeting the statutory requirements to the Commissioner of Energy and Economic Development. The authority for substantive operation of the program is vested in the Department of Revenue. To assist both departments in the development of

rules necessary to operate the program, jointly the departments published on October 24th a Notice of Intent to Solicit Outside Opinion. That was followed a week later on October 31st by a Notice of this public meeting and one which will happen tomorrow in Duluth. The two public meetings, tonight's and tomorrow's, are specifically offered to comply with Chapter 188 of the Laws of 1983 which requires that State agencies in their rule making give specific attention and concern to the issues, concerns, problems, thoughts and opinions of small businesses, and for that purpose we certainly welcome and encourage anyone who has a small business or small-business-related issue to speak of this evening. As you will notice, there is a record being made of the comments this evening which will become a part of the rule making record. I would ask that anyone who does speak that they please identify themselves, and if they are speaking on behalf of a business or behalf of a client or if they are representing someone that they please make very clear on whose behalf they are speaking. I would also ask that the people attending tonight sign their names on the sheet in the back of the room. We will send all of the attendees copies of the rules when they are formally proposed. Without further comment, let me ask if anyone would like to begin by offering any comments?

(No response.)

MR. SCHAFFER: Well, perhaps as a spur to comments but with no requirement that anybody make any, I would just speak very briefly about some of the issues that the Department of Energy and Economic Development sees with regard to the development of the certification process. And I'm going to skip ahead in the statute to the definition of a qualified small business. The definition at first reading is very, very straightforward, and I want to make it clear that we are not this evening in the process of actually developing rules and one should not go away believing that anything that one hears this evening necessarily or certainly will find its way into the final rule as it is proposed and promulgated. However, if one looks at the definition of qualified small business I think that in terms of rule making there are a couple of issues which we need to deal with. In Item One of that definition: "20 or fewer employees;" there will be a definitional question as to what is an employee for purposes of the rule. Particularly as it applies to small businesses, it very frequently occurs that corporate officers in small businesses are not employees for payroll purposes; ought they be counted as employees for purposes of the certification? Secondly, on the next piece of this statute: "Is not a subsidiary or an affiliate of a business which employs more than 20 employees or has total gross receipts for the previous year of more than one million

dollars." The question there is what is a subsidiary or an affiliate? Many times a subsidiary is a term of art; an affiliate may or may not be. That has to be defined in the rule. Item Three: "Has its commercial domicile in the state." As a practical matter, a commercial domicile may involve factors other than corporations in the State of Minnesota. Looking also then back at the definition of small business assistance offices; I think that the issue there and also for qualified small businesses is what kind of affirmative burdens will be imposed on businesses or small business assistance offices which seek to be certified by the Commissioner. What kinds of things will they have to produce to show that they do, indeed, meet the statutory requirements? One thing that is presently being considered--and, again, I make no representation that this will, indeed, be translated into the rule as proposed--is to have the certification process, the affirmative process that the business must take, be an affidavit process: Something certifying that you do, indeed, meet these criteria. I personally think we will probably see that, together with some requirements of submission of documents of the corporations and so on. But in any case, I anticipate that those kinds of definitional issues will be the ones we will most substantially have to deal with. Does anybody else have any comments or questions or suggestions?

MS. McCLUNG: Charles, I'm Dorothy McClung with the Department of Revenue. Another issue that I think you are going to have to address, and we will too, is at what point in time do you measure the qualifications of a small business? At its very inception when it may have no employees yet? Six months later? What are your future plans for that small business? Same thing with the requirement of revenues. At what point in time do you look at the revenues to make the determination? And I think those are some of the issues that perhaps some of the people here might help us with. Perhaps having gone through the development of a small business you might be able to tell us what is the most appropriate time to look at that business to make that qualification.

MR. SCHAFFER: The scenario to which Dorothy refers is simply this: Suppose you come in tomorrow after the tax credits take effect and say, "I'm starting a small business; it has no employees, it has no revenues and it's not an affiliate or subsidiary of an existing business." Does it automatically even at that very early stage meet the definition of a qualified small business? Or ought it meet the definition of a qualified small business at that point?

AUDIENCE REPLY: If it doesn't then it never will.

MR. SCHAFFER: That may be.

MR. JOHNSON: If that is a question I would have a couple of comments on that.

MR. SCHAFFER: Please do. If you would be gracious enough to identify yourself for the record.

MR. JOHNSON: Sure. Ted Johnson; Minnesota Corporation Office. I was involved with the formulation of some of this legislation that we are talking about, and the intent of the legislation at the time it was enacted was that it would help in the formulation of new businesses in the State. And I think--at least in my opinion and in those that drafted the legislation--our opinion was that it certainly would qualify at the time of origin of the company. That's exactly what you are trying to do is assist it and spur the capital formation for new firms. I think the larger or additional question is at what time do you chop it off, if ever, with the criteria of number of employees and revenue? There are, I suspect, thousands of small businesses in the State that will never expand beyond 20 employees and a million dollars. Do you let them take the credit that we are talking about here? I suspect that problem will take care of itself by the standpoint of those businesses are so small that they would not meet the thresholds for size investment. In other words, a minimum of ten thousand or twenty-five thousand; it would be a little unlikely that most businesses would look to have investment beyond that, the very small businesses. So

perhaps it's not a problem, but perhaps there smells like a loophole there somewhere that could point to an area that we haven't intended in the legislation. So I guess that was my primary comment at this time.

MR. SCHAFFER: Thank you, sir.

MS. SIMS: Harriet Sims; Department of Revenue. We are going to be developing rules for the substantive provisions of this act and some of the problems that we see; I guess the main one is with the technology transfer credit. How do you value the technology? Who values it? The law provides that there may be expert witnesses used, you could hire a consultant to certify what the value of the technology is. Something else that was brought up; do you take this at its fair market value--what a willing seller would take from a willing buyer? Or is it at cost? These are some of the problems, one of the main problems. Another thing is that once the transferor transfers the technology they cannot retain a proprietary or financial interest. Well, one of the problems here is what would qualify as a proprietary or financial interest? One of the early questions was would the granting of a nonexclusive license or lease be in itself a proprietary interest? And I think we determined, at least preliminarily, that it really shouldn't be if this is just a straight lease of the technology back to the transferor at the same terms that anybody on the market would

be able to have. Another thing that was brought up in one of the letters was a royalty-free interest. I don't know exactly what is meant by that, but that is another question--if it's something free. The other requirement is that before the transferor can get the investment credit the transferee must have made a substantial investment in the technology, and that is further defined in the statute. One of the questions is over what period of time? The way the statute reads now you don't get the credit until the substantial investment is made. One of the things we had talked about was perhaps amending the law so that there could be a recapture provision at some point. The transferor could get the credit and if the requisite investment was not made there would be some sort of recapture after a certain period of years. Another method that was brought up in one of the earlier meetings was the transferee giving a promissory note to the transferor for the amount of the investment with payment over a period of time and then forgiveness of the note could be arranged as a direct investment in planning, equipment and so forth was made. That's another avenue that we could use, although nothing has been decided at this point. Another question that was raised was that the transferor may retain an equity, may get and take an equity investment in the transferee that is not to exceed twenty-five percent. Now, when you get further on in the law there is the equity investment credit.

The question is, would the transferor be also allowed to take this credit, too? In other words, would one count against the other, or should one count against the other? You could go either way on that; there are a couple of good arguments either way. Those are pretty much the main questions that I see which would come up, and I'm sure that there might be more depending on the specific situation. But if anybody has any thoughts on either those specifically or anything else we would be glad to hear them.

(No response.)

MR. SCHAFFER: Well, seeing no other takers, let me remind the audience to remind anybody else who might be interested that the comment period under that initial Solicitation of Outside Opinion runs until November 30th and we certainly--we being both departments, Revenue and Economic Development--welcome the comments and concerns of any interested parties. That being all, let's close the meeting. Thank you all.

(At this time the meeting was adjourned, the time being approximately 7:25 p.m.)

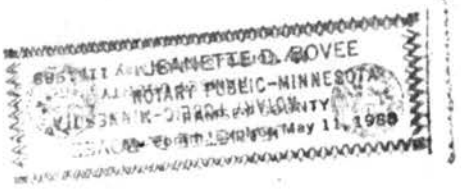
* * *

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
: ss.
COUNTY OF RAMSEY)

I, Jeanette D. Bovee, do hereby certify and state that the foregoing transcript consisting of 10 pages is a true, correct and complete transcription of my shorthand notes taken at the time and place in the caption formally set forth.

WITNESS MY HAND AND SEAL THIS 5TH DAY OF DECEMBER, 1983.



ORIGINAL

PUBLIC MEETING

In Re: Development of rules for operation of the new tax credits relating to transfer of technology to small businesses, equity investments in small businesses, and contributions to small business assistance offices.

HEARING

(The following is the hearing taken at the Business Techology Center, 325 Lake Avenue, Duluth, Minnesota, commencing at 1:00 p.m., November 22, 1983.)

APPEARANCES:

Charles A. Schaffer
Minnesota Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101

Madeline Harris
Minnesota Deprtment of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101

P R O C E E D I N G S

***

MR. SCHAFFER: I am Charles Schaffer from the State of Minnesota's Department of Energy and Economic Development. And I want to welcome you all here today. We are here to receive comments, concerns and opinions regarding three tax credits established by the 1983 legislature. Chapter 342 Laws of Minnesota of 1983 establish a -- established a tax credit for technology transfer to qualified small businesses, a tax credit for equity investments for qualified small businesses and a tax credit for contributions to not-for-profit organizations called small business assistance offices.

If anyone needs a copy of that statute, I have extra copies of it up here. That same statute, Chapter 342, gives authority to my department, the Department of Energy and Economic Development, for certification of small business assistance offices as meeting the statutory definition of what is a small business assistance office, and certification of small businesses as qualified small businesses for purposes of the tax credits. The statute gives the Department of Revenue the authority and responsibility for the substantive operation of the tax

credit program. To assist both departments in the development of the rules neccesary for operation of the tax credit program, together they published in the State Register on October 24 of this year, a notice of intent to solicit outside opinion regarding the development of rules.

The comment period for comments under that solicitation ends on November 30, and I would encourage anyone who is here today, but not planning to speak, who as a result of today's meeting, or as a result of later conversations, considerations, chooses to make comments, to direct written comments either to the Department of Revenue or the Department of Economic Development under that solicitation.

This particular meeting is one of two, the first one held yesterday in Minneapolis, conducted under Chapter 188 of laws of Minnesota 1983. For those of you who may be unfamiliar with that statute, it requires that henceforth state agencies in their rule making give special attention to the concerns of small businesses in the making of those rules. And it's for that purpose primarily that these meetings are being held, to solicit particular concerns, comments and opinions of small businesses on the tax credits.

A record is being made of the proceedings today. The comments received will become a part of the rule making record. If you wish, you may, in addition to making

written comments in the record today -- making oral comments in the record, you may make written comments as well, either now or by mail to the Department of Revenue or the Department of Energy and Economic Development.

As a sort of spur to the possible -- possibility of discussion today, and comments, I would like to just raise a couple of the issues that appear, at first glance, to be involved in the future operation of the tax credit program. Certainly I'll speak to the ones that affect my department's activity, that is the certification process. And those concerns are primarily definitional in nature. When one looks at the statutory language for definition of small business assistance office, and qualified small businesses, the definitions appear, at least at first glance, to be very straightforward. But in practice, when one comes to develop rules, there are certain issues which come up. Principally what kind of affirmative burdens need to be imposed on a potential small business, or a potential small business assistance office, to show, to demonstrate that it does meet the statutory criteria. So I just thought it would be profitable to go through the statutory definitions for both small business assistance office and qualified small business, and point out to you some of the concerns that the Department of Energy and Economic Development will be addressing in its rule making.

I cannot tell you today, since really pen has not officially touched paper with regard to the development of those rules, exactly what the definitions will look like and sound like, and exactly how the issues I raise will be treated in the proposed rules. But these are kinds of things that we are going to be dealing with. So if you look at the statutory handout I have, beginning in what is to be Minnesota Statutes 290.069, small business investment credits, subdivision 1. Small business assistance office means a non-profit corporation which is formed under Chapter 317, meaning Chapter 317 of Minnesota Statutes.

So one immediate issue is that the statute requires that these be Minnesota corporations. It is an exempt organization under Section 501 (c)(3) of the Internal Revenue Code, and I think it appears to be an issue there that statute, at least initially at first reading, indicates that the exemption must be in hand at the time that the application or the indication of seeking certification as a small business assistance office is made. The statute goes on to identify five conditions. One, the primary purpose of the corporation is to aid in the formation of new businesses which create jobs, et cetera. Kind of affirmative burden, I would expect, that would be imposed on a potential small business assistance office there, given the fact that the earlier section requires

those corporations to be formed under Minnesota Statutes, Chapter 317, is that the articles of incorporation clearly state that the primary purpose of the corporation is to aid in the formation of new businesses, et cetera, as it's indicated in subsection 1.

Subsection 2, the corporation provides audited financial statements, I think is fairly clear and straightforward.

Three, the corporation employs at least two full-time professional employees or the equivalent. Or the equivalent meaning of course that it's possible to have equivalent full-time equivalent employees, four half time employees, six one-third time employees or whatever, as long as one indeed does indeed come up with a total equivalent of two full-time professional employees.

Subsection 4, the corporation is not engaged in providing financing or primarily engaged in arranging financing for businesses. It is possible to write those rules in such a way that some kind of finance related -- financing relating activities are allowed. It has been suggested informally in some conversations in our department that, for example, organizations which are engaged in assisting businesses to secure federal grants or contracts might be able to provide that service, and have the rules written in such a way that that kind of activity

does not fall into the definition of providing financing or arranging for financing. Any other kind of activity, I would think would require a showing, and if anyone feels that their -- their business is involved in other kinds of activities, and can make the case that other kinds of finance activities ought to be allowed under that statute, why I certainly would want to hear that.

Item 5 of course is the commissioner, planning and development, which is now the commissioner of engergy and economic development, makes a certification of the corporation satisfies the requirements of that paragraph for the calendar year.

The definition then of qualified small business begins on the next page. Qualified small business means a business entity organized for profit, if the entity, in subsection 1, has 20 or fewer employees and less than one million dollars in gross annual receipts. In that sentence there are two issues. One is the definition of employee. It's very common to find, particularly in small business start-ups, the president and other officers of the company, who are not employees of the company for payroll purposes, meaning they take no direct payroll enumeration, are they or are they not employees. Ought they or ougth they not to be counted in determination of how many employees the company has.

Gross annual receipts is a phrase which is a hair different from the statutory definition in the earlier section of Minnesota Statutes 290. As a practical matter I anticipate that we will use the statutory definition and write the rules in such a way that gross annual receipts means gross annual revenues, which is the phrase that's used in the rest of the tax code.

Subsection 2, is not a subsidiary or affiliate of a business. An interesting question is what is indeed a subsidiary and what is an affiliate. And is it possible that, for example, for purposes of the technology transfer, by receiving the technology, do you become an affiliate of another business. We are in the process of trying to write a definition there which will allow for the broadest possible definition.

Three, has its commercial domicile in this state. In practice we anticipate that that would mean that it has its principal place of business in this state. Four and five are fairly straightforward. Four, does not -- business may not derive more than 20 percent of its gross receipts from passive sources, royalties, rents and dividends and the like.

Five, it may not be engaged in a trade or business, the primary purpose of which is described in section 103 (b)(6)(0) of Internal Revenue Code which I have here. And

which effectively excludes retail food and beverage services, automobile sales and services, the provision of recreation or entertainment. Private and commercial golf courses, country clubs and massage parlors, tennis clubs, skating facilities, rollerskating, skateboard and ice skating facilities. Racquet sports facilities, including handball and racquetball courts. Hot tub facilities, sun tan facilities or race tracks.

All of those issues are ones that we will be dealing with at our department. The principal issue I think that the Department of Revenue will be dealing with, deals with the technology transfer credit. And that is the entire question of valuation of technology. The tax credit is allowed on a net value of technology up to one million dollars. And the statute does allow for some sort of expert appraisal. The big question will be how indeed is the Commissioner of Revenue going to value technology which is to be transferred.

With all of that as background, I'm going to open the record up for comments by anyone who cares to make them. And one person has indicated in advance that they would like to speak. And that's Mr. Ron Dysvick of Community Enterprises of Duluth. I am going to ask Ron and anyone else who speaks, if they would please identify themselves by name, and also if -- if you would spell your name for

the reporter and state whether you are speaking on your own behalf or representing an organization.

MR. DYSVICK: My name is Ronald Dysvick, D-y-s-v-i-c-k. I am representing Community Enterprises. Community Enterprises is a 501 (c)(3) licensed community development corporation. And I want to particularly respond to Chapter 342, article 8,290.069, subdivision 1, definitions, paragraph (a)(4), as given by the 73rd Legislature.

Paragraph (a)(4) reads, the corporation is not engaged in providing financing or primarily engaged in arranging financing for businesses. Although Community Enterprises does not primarily engage in arranging financing, we have quite innovatively developed a revolving loan fund for small business start up and expansion. With this vehicle Community Enterprises has created 14 new businesses in eight months. This is part of our process. We provide a great deal more technical assistance than financing. To disallow such activity on behalf of small business assistance offices -- we qualify under every other definition -- is to prevent or curtail such developments and results in job creation and services to small businesses.

The financing provided by our loan fund is not an alternative to conventional financing. It fills market

gaps for working capital and equity. It is combined with conventional financing to provide more opportunities for development, growth and job creation than would otherwise occur with this type of financing's absence.

If it is the intent of paragraph (4) to prevent small business assistance offices from becoming alternatives to banks and other conventional sources, I would strongly suggest changing the language to reflect this desire, and not totally remove this important tool from the hands of business assistance offices. Such language could be as follows: the corporation is not engaged in providing market rate financing, o the corporation is not engaged in financing that could be alternatively provided by conventional sources. Now our guidelines at Community Enterprises reflect that latter philosophy. In our guidelines we can't provide financing in situations that could receive all of their financing through conventional sources.

I guess those are -- are after the fact. But I think that if it's not possible to change the language of the legislation, then perhaps the rules could -- could address the issue specifically.

MR. SCHAFFER: Let me make two comments. One with regard to the possibility of changing the legislation. Certainly it's possible to approach the legislature with

some possible recommendations to law. It's important to note, I think, though that this is merely a pilot program and that it is due to sunset in 1985. That may influence the legislature's willingness in the next legislative session to consider amendments, in the sense that the legislature may feel that the entire program is of sufficiently short duration, that no amendments need be done now, but they will wait the extra years and make -- if they like the program, they will go ahead and make such changes as they feel appropriate at that time.

I don't say that to discourage you or any other organization from seeking amendments to that -- to that language. I will have to speak with the Revenue Department really and see whether or not they feel the state departments might appropriately go forward with that kind of suggestion.

Secondly, let me mention again about the rules definition process. It is indeed possible to write the rules in such a way that certain kinds of financing activities may be allowed. Whether we could legally, in terms of conformity with the statute, say that financing is narrowly defined to mean market rate financing, I don't know. That's -- that's something we certainly will explore though.

MR. DYSVICK: It could have been interpreted

differently if the "primary" was flipped before financing rather than "financing or primarily". If it were interpreted that way it would be very easy, I think, for most business assistance offices to qualify. But the business assistance office here in the Meierhoff and the business assistance office that we have at Community Enterprises would be very difficult for any of us to qualify. And I know a number of them around the state that it would be very difficult to qualify for also. So therefore we are either going to be looking at newly developed business assistance offices, and disallow all of the existing ones from partaking in this method of -- of financing ourselves actually, and -- we have to -- we have to work with the existing business assistance offices through your office and try to appeal to you, I guess, and that's what we're doing.

MR. SCHAFFER: Okay. Thank you very much.

MR. DYSVICK: Thank you.

MR. SCHAFFER: Anyone else?

MR. BAKER: Yeah, my name is Wallace Baker. I'm with the Duluth Cooperation Office, and I have a couple questions. First of all, does the contribution have to be cash on these -- otherwise in our situation here at the Meierhoff Building, if space was made available by the owner of building, for instance, or if some other

contribution was made available to help us, could that qualify -- the value of that contribution qualify or does it have to be cash?

MR. SCHAFFER: We are speaking about the equity investment credit; is that correct?

MR. BAKER: Yeah.

MR. SCHAFFER: The honest answer is that is to be determined, whether or not non-cash contributions can qualify. One other issue you will note, if you look at the equity investment credit. It specifies that the equity investment credit is to be given for investments in excess of 25 thousand dollars in, quote, "the equity stock of the firm." The presumption being that there is stock. And it is entirely possible, I think, that we will get some businesses which are partnerships which might otherwise qualify for -- for the -- the equity investment, and that is another issue that is going to have to be resolved. Whether that can be resolved in rule, or whether that would require statutory change, I honestly don't know.

So the answer to your question is we don't know, but that is an issue that will be decided.

MR. BAKER: Okay. I guess some clarification on two full-time people, and I know you spoke to that. We in the business office, business assistance office, full-time people, professional people meaning those people like

myself and Ron who are actually giving the advice. Can you explain that a little better? Or are we talking about like in my case I have a person that comes in once a week, can I add that all up?

MR. SCHAFFER: I certainly will -- will take under consideration any suggestions anyone wants to make as to what is a professional person, for that professional employee for purposes of that definition. As to whether or not one can add them all up, or the equivalent there, I assume probably means or the equivalent in terms of time commitment.

MR. BAKER: Okay. For instance, we have a --

MR. SCHAFFER: I don't know whether it's different to add two people or 40 people.

MR. BAKER: You are talking about more along the lines of --

MR. DYSVICK: How about one person working 80 hours a week?

MR. BAKER: That's not a bad idea. You are talking about a 40-hour week. And I have a part-time computer person who comes in now from about 26 hours a week, and then I have George the inventor counselor who comes in every week. Then I have a secretary who spends part of her time on the computer, which actually takes the position of a professional person when shes on that computer doing word

processing and accounting and so on. And I guess I'd like to clear it up because I think we can come awful close to meeting that two person right now without hiring anyone.

MR. SCHAFFER: We can't clear it up today, except insofar as to say we certainly will consider that kind of situation, which I think is probably very common situation.

MR. BAKER: Yeah.

MR. SCHAFFER: For potential small business assistance offices in adapting the rules.

MR. BAKER: That would be my questions for now.

MR. SCHAFFER: Anyone else?

MR. LUND: Mr. Schaffer, my name is Oscar Lund speaking on behalf of myself as a marketing consultant. I'm also involved in the start up of a small business concerning a software retail sales, but I'll speak on behalf of myself as an individual.

In today's retail environment the idea of locally owned, locally managed franchise is a very important vehicle by which retail enterprises are initiated anywhere. And I have some concern that subdivision 1, article (f), item (2) might disqualify a franchise, and would like to recommend that that be, you know, considered as long as the franchise, you know, met some criteria of local ownership and management that it not be excluded.

MR. SCHAFFER: That it not be considered a

subsidiary or affiliate as long as it had some local control?

MR. LUND: Yes.

MR. SCHAFFER: I think that is a very reasonable suggestion. Any other comments, suggestions, questions --

MR. LAMBERT: I have one.

MR. SCHAFFER: -- concerns. Yes, sir.

MR. LAMBERT: I have a question.

MR. SCHAFFER: Surely. Would you please give us your name for the record, and if you are representing another organization would you tell us that.

MR. LAMBERT: My name is Ed Lambert. I'm not representing another organization. I'm with the Wadena Community Development Office. My question is, does the legislation absolutely restrict the tax credit to the amount of money in excess of 25 thousand dollars provided? Is that it?

MR. SCHAFFER: Could you ask me your question in a little bit different way?

MR. LAMBERT: Okay. My understanding is that the tax credits available for the amount of money put into a small business in the form of common stock amounts in excess of 25 thousand dollars; is that correct?

MR. SCHAFFER: The statutory language is for tax credits is not available for equity investments in excess

of 25 thousand dollars in the equity stock of the business. Before you came in the question was raised, one, are we talking exclusively about cash contributions there. That remains to be seen. And two, what do we do in situations where there is no stock. Where we are dealing with, for example, with a partnership. And that also remains to be seen. But as I understand your question, yes, it is on the amount in excess of 25 thousand dollars.

MR. LAMBERT: Okay. My comment is that if that is, of course it doesn't apply to the rule making process, however, as a typical investor in a small business does not invest more than 25 thousand dollars, unless he's involved in starting in some way. When one is trying to capitalize a venture you are more typically going to see 5, 10, if you are lucky, 20 thousand dollar investments. If you seek investments in excess of 25 thousand dollars from anybody you are going to be talking about investment partnership, largely. So my statement is, it wouldn't seem to help small businesses very much. But the in-kind issue though, if the in-kind issue could be opened up that could be a significant assist.

MR. SCHAFFER: Again I'm not sure whether the non-cash contribution issue is one that can be resolved in rule making or whether that would require statute change. Though it's not related specifically to the tax credits,

you should be aware that there is consideration by some members of the legislature for having a state version of a bill which was pending before Congress this year creating a new class of stock to be called opportunity stock, which would provide for that same sort of tax credit for equity investments in the stock as defined in the statute as qualified small businesses in amounts demonstrably less than 25 thousand dollars. Again whether that kind of legislative consideration will see the light of day as a proposed bill, and if it does, whether it will see the light of day as an enacted statute, it remains to be seen. But there is considerable concern to encourage cash investment in small businesses by providing those kinds of tax incentives. Both for stock investments and also for what are called small business participating debentures, which are essentially small business bonds. So I think you probably will see some reference to secure some form of that tax break for investors who have less than 25 thousand dollars.

MR. LAMBERT: Will that be proposed by the Department of Revenue?

MR. SCHAFFER: I can't speak for the Department of Revenue, because I am in the Department of Economic Development. I will tell you that the chairman of the house -- of the subcommittee on small business of the House

Commerce and Economic Development, Mr. Phil Riveness, has copies of California's version of that bill, as well as copies of the federal version that was before the Congress this past session. Whether or not he or any of his committee members will choose to introduce it I don't know.

MR. LAMBERT: But the issue of the in-kind and the partnership program may be handled in the rule making process here?

MR. SCHAFFER: Certainly those issues will be addressed in the rule making process. With regard to both of those, I don't know whether or not they are issues that can be addressed in the rule making, or whether they require statutory language, but if they can be, yes, they will be.

Yes, sir.

MR. ELDEN: Yes. My name is John Elden, E-l-d-e-n. I am representing myself. I am employed with the Arrowhead Regional Development Commission. I have a question on the investment tax credit. Does that credit also apply to small business investment company as -- as certified by the Small Business Administration.

MR. SCHAFFER: I don't know. And I don't know whether that issue has come out.

MR. ELDEN: That's all I have.

MR. SCHAFFER: Anybody else? Well, I want to

thank all of you for coming. And if you would all be kind enough to leave me a copy of your name and address, I will make sure that everyone gets a copy of rules as they are indeed proposed.

You should all be aware that beginning this year Chapter 188 of laws of 1983 requires us, in our rule making, to say what we have done about the concerns that have been raised by small businesses at meetings like this. So these kinds of issues will be addressed in the rule making process, and will be addressed in what's called the statement of need and reasonableness that the agencies developed to accompany those rules. I will get everybody a copy of that statement of need and reasonableness as soon as it's available.

Thank you all for coming.

(The meeting was concluded at 1:31 p.m.)

C E R T I F I C A T E

I, RANDY WAGNER, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the proceedings at the time and place aforesaid; and that the foregoing transcript consisting of 21 pages is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Duluth, Minnesota, this 1st day of December, 1983.

Randy Wagner

RANDY WAGNER
Registered Professional Reporter

4-87

NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING

State of Minnesota

Department of Energy & Economic Development

In the Matter of the Proposed Adoption Of Rules of the State Department of Energy & Economic Development Governing Tax Credit Certification	ORDER FOR NOTICE INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 18th day of June 1984 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their name with the State Department of Energy and Economic Development for that purpose and be published in the State Register.

STATE OF MINNESOTA

Mark B. Dayton
Commissioner of Energy & Economic Development

STATE OF MINNESOTA
Department of Energy and Economic Development

In the Matter of the Proposed
Adoption of Rules of the State
of Minnesota Department of
Energy and Economic Development
Governing Tax Credit Certification

AFFIDAVIT OF MAILING

State of Minnesota)
) SS
County of Ramsey)

Denise Garcia, being first duly sworn, deposes and says:

That on the 18th day of June 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules without a Public Hearing by depositing in the State of Minnesota central mail system at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all associations and persons who have requested that their names be placed on file with the Minnesota Department of Energy and Economic Development for the purpose of receiving notice of the proposed adoption of rules by this Notice of Intent to Adopt Rules without Public Hearing.

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHISAGO COUNTY
My Commission Expires Sep. 17, 1985

Madeline Harris
Notary Public
June 18, 1984.

Denise Garcia

Denise Garcia

CERTIFICATE

In the Matter of the Proposed
Adoption of Rules of the State
of Minnesota Department of
Energy and Economic Development
Governing Tax Credit Certification

MAILING LIST CERTIFICATE

State of Minnesota
County of Ramsey

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. 14.14, subd.1, that their names be placed on file with and maintained by the State Department of Energy and Economic Development for receiving notice of the proposed adoption of rules by the Minnesota Department of Energy and Economic Development is complete and accurate as of 4:30 p.m., this 18th day of June, 1984.

Madeline Harris

Madeline Harris

3. milk lines;

4. milk pumps;

5. pressurized hot water systems;

6. a waste disposal system more elaborate than one necessary to handle waste associated with the cleaning of milk handling equipment; and

7. labor costs in excess of ten percent of the total investment reimbursement approved by the commissioner.

D. Incomplete requests or receipts. In the event that a request or a receipt is incomplete, the department shall return the request or receipt to the qualified applicant specifying the deficiencies. The applicant shall have until April ~~1~~ 15, 1985, or 15 days from the postmarked date of the notice, whichever is later, to complete the request or receipt, unless the qualified applicant shows hardship in accordance with 3 MCAR § 1.1347 [Emergency].

3 MCAR § 1.1347 [Emergency] Hardship.

Late financial information, request for payment, or receipt for investment expenditures may not be considered by the commissioner unless the eligible or qualified applicant shows hardship causing the delay. Any claim of hardship must be submitted in writing to the department. The commissioner shall evaluate and determine the reasonableness of any claim of hardship.

3 MCAR § 1.1348 [Emergency] Approval; payment.

A. Verification; approval. All requests and receipts for investment reimbursements submitted in support of an application are subject to verification and approval by the commissioner.

B. Schedule for payments. After the commissioner's approval, investment reimbursements must be made for investment expenditures in accordance with ~~Laws of Minnesota 1983, chapter 232, section 2~~ Minnesota Statutes, section 32.417. All investment reimbursements must be made by June 30, 1985.

Repealer. Exhibit 3 MCAR § 1.1344 [Emergency] D.2.-1 (side 1) and Exhibit 3 MCAR § 1.1344 [Emergency] D.2.-1 (side 2) are repealed.

Department of Energy and Economic Development

Proposed Rules Governing Tax Credit Certification

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Energy and Economic Development proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Energy and Economic Development has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to utilize the provisions of Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Charles A. Schaffer, Director
Program of Business Information
MN Dept. of Energy & Economic Development
900 American Center
150 East Kellogg Boulevard
St. Paul, MN 55101
612/296-0617

Any person requesting a public hearing should state his/her name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for adoption of these rules is contained in Minn. Stat. § 116J.035 Subd. 2 as amended by Chapter 604, Laws of Minnesota 1984. Additionally, a statement of need and reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

You are hereby advised, pursuant to *Laws of Minnesota 1983*, Chapter 188, Small Business Considerations in Rulemaking, that the proposed rules will have a beneficial impact on some small businesses in Minnesota. The tax credits are intended to stimulate the growth and success of small businesses through encouragement of transfer of technology to small businesses, equity investment in small business and contributions to small business assistance offices.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to:

Charles A. Schaffer, Director
Program of Business Information
MN Dept. of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
612/296-0617

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Charles A. Schaffer at the above address.

Mark B. Dayton
Commissioner
MN Dept. of Energy & Economic Development

Rules as Proposed (all new material)

4351.0100 DEFINITIONS.

Subpart 1. Scope. For purposes of this chapter, the following terms have the meanings given them.

Subp. 2. Business entity. For purposes of certification as a qualified small business, "business entity" means a business conducted for profit as a corporation, partnership, or proprietorship, except an entity engaged primarily in providing licensed professional services and except an entity primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a).

Subp. 3. Employee. For purposes of certification as a qualified small business, "employee" means any person who is permanently on the payroll of a business entity at the time the business entity seeks certification as a qualified small business. An employee is determined on an annualized full-time equivalent basis by dividing total payroll hours (excluding overtime) worked by all employees during the year by 2,080 hours.

Subp. 4. Subsidiary or affiliate. For purposes of certification as a qualified small business, a business entity is a "subsidiary" of a transferor or investor if the business entity is a corporation and the transferor or investor owns more than 50 percent of the value of the outstanding stock of the entity corporation, or the entity is not a corporation and the transferor or investor owns more than 50 percent of the value of the capital interest or the profit interest in the entity.

For purposes of certification as a qualified small business, a business entity is an "affiliate" of a transferor or investor if:

A. the business entity is a corporation and the transferor or investor owns more than 20 percent of the value of the outstanding stock of the entity corporation:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. the business entity is not a corporation and the transferor or investor owns more than 20 percent of the capital stock interest or the profit interest in the entity; or

C. other facts and circumstances indicate that the transferor or investor possesses effective control of the entity as evidenced by:

(1) contractual arrangements that provide for allocation of the entity's output to the transferor or investor or that require the purchase of inputs from the transferor or investor;

(2) a high percentage of the ownership by transferor or investor, but less than 50 percent, and fragmentation of the ownership of the other interests among various other individuals or entities;

(3) a majority of the membership of the entity's board of directors or other governing body is held by employees, directors, or owners of the transferor or investor; or

(4) other relevant factors.

A business entity is a subsidiary or affiliate of a transferor or investor if the entity and the transferor or investor are both subsidiaries or affiliates, or some combination thereof, of a common third party.

A separately incorporated franchise is not a subsidiary or affiliate.

Subp. 5. **Commercial domicile.** For purposes of certification as a qualified small business, "commercial domicile" means the state where the business entity maintains the principal office from which it manages and directs its business.

Subp. 6. **Taxable year.** For purposes of certification as a qualified small business, "taxable year" means the period for which the business entity filed its Minnesota income tax return. The period may be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which the return is made.

Subp. 7. **In operation.** For purposes of certification as a qualified small business, "in operation" means performing the services or other business activities for which the entity was organized.

Subp. 8. **Passive income.** For purposes of certification as a qualified small business, "passive income" means gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Subp. 9. **Engaged primarily in providing licensed professional services.** For purposes of certification as a qualified small business, "engaged primarily in providing licensed professional services" means the business entity has as its primary purpose the rendering of personal service by a professional or professionals pursuant to a license or certificate issued to the professional by the state of Minnesota or similar laws of another state including but not limited to the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying or landscape architecture, accountancy, or law.

Subp. 10. **Commissioner.** For purposes of certification as a qualified small business and for purposes of certification as a small business assistance office, "commissioner" means the commissioner of energy and economic development or his or her designee.

Subp. 11. **Audited financial statements.** For purposes of certification as a small business assistance office, "audited financial statements" means financial statements on which a state licensed public accountant has delivered an opinion according to generally accepted auditing standards that the financial statements soundly and fairly present the business's financial data.

Subp. 12. **Full-time professional employee or the equivalent.** For purposes of certification as a small business assistance office, "full-time professional employee or the equivalent" means:

A. an individual who is on the payroll of a nonprofit corporation, who performs services directly related to the primary purpose of a nonprofit corporation, and who works at least 2,080 hours per year; or

B. a combination of professional employees who are on the payroll of the nonprofit corporation, who perform services directly related to the purpose of the nonprofit corporation, and who individually work fewer than 2,080 hours per year but who aggregately work at least 2,080 hours per year.

Subp. 13. **Shared professional employee.** For purposes of certification as a small business assistance office, a corporation "shares" a professional employee with another organization if the following criteria are met:

A. the "shared" employee performs services directly related to the primary purpose of the corporation;

B. the corporation pays the direct compensation and fringe benefits for the "shared" employee in proportion to the services received; and

C. the "shared" employee is employed by an organization (whether organized for profit or not and regardless of the business form in which it is organized) which trains or provides direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of businesses.

Subp. 14. Financing. For purposes of certification as a small business assistance office, "financing" means the making of market rate loans. Financing does not mean assisting with the securing of grants or contracts from public or private sources.

4351.0200 PURPOSE.

The purpose of this chapter is to provide notice of the procedures and criteria used by the commissioner of energy and economic development to certify a nonprofit corporation as a small business assistance office and to certify a business entity organized for profit as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraphs (a) and (f).

4351.0300 COMPUTATION OF GROSS ANNUAL RECEIPTS.

For the purpose of certification as a qualified small business, gross annual receipts is determined by using the following computations (the forms and lines referenced relate to 1983 federal tax forms, or their equivalent forms and lines in the future):

A. For businesses filing a federal corporation income tax return, use the total income increased by the cost of goods sold and/or operations (IRS form 1120, the sum total of lines 11 and 2).

B. For businesses filing a federal income tax return for a chapter S corporation, use the sum of the total income, cost of goods sold and/or operations, and the long and short term net capital gain or losses. (IRS form 1120S, use line 9 and increase it by the amount on line 2. Increase this total by the amount on IRS schedule D, form 1120S, by the amounts on lines 1, 2, and 9.)

C. For businesses filing federal sole proprietorship or partnership interest returns, use the gross receipts or sales less returns or allowances plus other income (IRS from 1040 schedule C, use the total amounts on lines 1c and 4b.)

If form 1040 schedule D is filed, use the net short and long term capital gain or loss excluding any gain made on the sale of your home. (IRS form 1040 schedule D, line 6 less line 2 plus line 17 less line 10.)

If form 1040 schedule E is filed, use any rental income and any other business income (IRS from 1040 schedule E, lines 3, 27, 31, and 33.)

D. If an IRS form 1065 is filed, use the gross receipts or sales less returns or allowances (line 1c), plus ordinary income from other partnerships (line 4, only if positive amount), plus interest and dividends (line 5), plus gross rents (line 6a), plus income from royalties (line 7), plus any other income or loss (line 10).

4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

Subpart 1. Application. For a nonprofit corporation to be certified as small business assistance office under Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), it must submit to the commissioner an application form provided by the commissioner along with a copy of the articles of incorporation; a copy of the designation by the Internal Revenue Service that the corporation is exempt from taxation under section 501(c) (3) of the Internal Revenue Code of 1954, as amended through December 15, 1983; the most recent audited financial statement; and a recent payroll abstract or the equivalent.

The application form must contain the corporate name, principal place of business of the corporation, and an affirmation made by an officer of the corporation affirming the following:

A. that the primary purpose of the corporation is to aid in the formation of new businesses which create jobs by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

B. that the corporation provides audited financial statements to all contributors seeking the tax credit and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

C. that the corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

D. that the corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Subp. 2. Period of certification. The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 3. Annual applications. A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. Decision to certify. Within 30 days of receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a nonprofit corporation as a small business assistance office. The commissioner shall certify the corporation for a calendar year if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), clauses (1) to (4). If the commissioner denies certification, he or she shall provide the applicant with a statement of the reason for the denial.

4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

Subpart 1. Application. For a business entity to be certified as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), it must submit to the commissioner an application form provided by the commissioner along with a copy of its three most recent individual or corporate federal income tax returns, a list of the entity's shareholders and their voting interest, a copy of the articles of incorporation and its amendments or partnership agreement if the business entity is a partnership, or a certificate of limited partnership when the business entity is a limited partnership, a recent payroll abstract or the equivalent, and any other information requested by the commissioner as reasonably needed to certify the business entity as a qualified small business.

The application must contain at a minimum the name and address of the business, the taxable year of the business, and an affirmation by an officer of the business affirming:

A. that the business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

B. that the above named business entity is not engaged primarily in providing licensed professional services;

C. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

D. that the business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

E. that the business entity is not a subsidiary or an affiliate of a business entity which employs more than 20 employees determined on an annualized full-time equivalent basis or which had total gross receipts for the previous year of more than $1,000,000, computed by aggregating all of the employees and gross receipts of the business entities affiliated with the business;

F. that the business entity has its commercial domicile in Minnesota;

G. that the above named business entity:

(1) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(2) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (a) the amount of passive income received during its first taxable year was less than $3,000; and (b) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(3) is a sole proprietorship to which the provisions of subitems (1) and (2) do not apply; and

H. that the business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 15, 1983.

Subp. 2. Period of certification. The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. Annual applications. A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. Decision to certify. Within 30 days of the receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a business entity organized for profit as a qualified small business. The commissioner shall certify the business entity if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), clauses (1) to (5). If the commissioner denies certification, he or she shall provide the applicant with a written reason for the denial.

4351.0600 FALSE INFORMATION.

The commissioner shall deny or withdraw certification to a corporation or business entity that the commissioner determines has knowingly provided false, incomplete, or inaccurate information in the application or other documents required in part 4351.0400 or 4351.0500.

4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE.

APPLICATION FOR CERTIFICATION OF
SMALL BUSINESS ASSISTANCE OFFICE
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

I _____ affirm that I am the _____ of the above named organization and affirm:

1. that the above named corporation is a nonprofit corporation under Minnesota Statutes, chapter 317 and is an exempt organization under section 501(c)(3) of the Internal Revenue Code, as amended through December 15, 1983;

2. that the above named corporation has as its primary purpose aiding in the formation of new businesses which create jobs in the state by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

3. that the above named corporation will provide audited financial statements to all contributors and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

4. that the above named corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

5. that the above named corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Notary Seal

Signature: _____
Date: _____

4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS.

APPLICATION FOR CERTIFICATION
AS A QUALIFIED SMALL BUSINESS
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

Primary purpose of business: _____

I _____ affirm that I am the _____ of the above named business entity and affirm:

1. that the above named business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

2. that the above named business entity is not engaged primarily in providing licensed professional services;

3. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

4. that the above named business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

5. that the above named business entity is not a subsidiary or affiliate of a business entity with more than 20 employees or with total gross receipts for the previous year of more than $1,000,000, as computed by aggregating all the employees and all the gross receipts of the business entities affiliated with the business;

6. that the above named business entity has its commercial domicile in this state; and

7. that the above named business entity:

(a) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(b) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (i) the amount of passive income received during its first taxable year was less than $3,000; and (ii) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(c) is a sole proprietorship to which the provisions of clauses (a) and (b) do not apply; and

8. that the above named business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 15, 1983.

Notary Seal

Signature: _____

Date: _____

Department of Revenue
Property Equalization Division

Proposed Emergency Rules Relating to Railroads

Notice of Intent to Suspend Permanent Rules and to Adopt Emergency Rules

Notice is hereby given that the State Department of Revenue, Property Equalization Division, proposes to suspend Minnesota Rules 8105.0100 to 8105.9900 entitled "Ad Valorem Tax: Valuation and Assessment of Railroads." This suspension is made pursuant to Findings of Fact, Conclusions of Law and Order for Judgment issued by the Minnesota Tax Court on November 13, 1983 in the matter of the Soo Line Railroad Company vs. the Commissioner of Revenue. This order reads in part . . . "Regulations of the Commissioner of Revenue that do not conform to the statutes do not have the force and effect of law and will be disregarded." Additionally, in his memorandum attached to this Order, Judge Carl A. Jensen states, "The evidence produced at the trial of this matter indicated the Rules 13 MCAR § 1.0024 (now recodified into MR 8105) adopted by the Commissioner of Revenue to determine valuation of railroad property do not properly reflect the valuation and to the extent that they conflict with this decision, the rules are overruled."

Rather than speculate on which part of the rules do not conform to the statutes and which rules do not properly reflect the valuation of railroad property, the Commissioner of Revenue now proposes to suspend Minnesota Rules Chapter 8105.

Acing under authority given by the Minnesota Legislature in Laws of 1984, Chapter 502, Article 9, Section 2, the Commissioner of Revenue proposes to adopt an emergency rule governing the valuation and assessment of railroads which will replace the suspended rule. The adoption of this rule will follow the procedures set forth in Minnesota Statutes, section 14.29 to 14.36.

This notice of intent to adopt emergency rules will be mailed to all interested parties registered with the Department of Revenue and a certified copy of the mailing list together with an affidavit of mailing will be submitted to the Attorney General for his review prior to adoption of the rule. Additionally the notice of intent to adopt an emergency rule together with the rule itself is being published in the *State Register*.

STATE OF MINNESOTA
Department of Energy and Economic Development

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Energy and Economic Development Governing Tax Credit Certification

FINDINGS OF FACT AND CONCLUSIONS

The above entitled rules are being adopted without a public hearing pursuant to the provisions of Minn. Stat. 14.21 to 14.28.

The Notice of Intent to Adopt these rules without a public hearing was published in the State Register July 9, 1984 (9SR90). There were no comments received during the comment period.

The Department of Energy and Economic Development makes the following:

FINDINGS OF FACT

There is a minor revision required in the above referenced rules changing the amended date for the Internal Revenue Code of 1954 from December 13, 1983 to December 31, 1983. The change is necessary to reflect the statutory language in Chapter 514, Article 1, Section 8, Laws of Minnesota 1984. This change will be reflected in each of the four places it appears in these rules. p. 9, 10, 12

Mark B. Dayton
Commissioner
Minnesota Department of
Energy and Economic
Development

By: Connie J. Lewis
Connie J. Lewis
Senior Administrative Officer
Minnesota Department of Energy
and Economic Development

STATE OF MINNESOTA
Department of Energy and Economic Development
Economic Development Division

In the Matter of the Proposed Adoption of Rules Governing the Certification of "Qualified Small Businesses" and "Small Business Assistance Offices" under Laws of Minnesota 1983, Chapter 342 as amended by Laws of Minnesota 1984, Chapter 502, Article 5

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Department of Energy and Economic Development presents herein facts and justifications establishing the need for and reasonableness of the above captioned proposed rules.

Authority and Need

These rules are being developed under the general grant of authority contained in Minn. Stat. 14.06.

These rules are necessary since the statutory language relating to definitions and criteria used in the certification process described at Minn. Stat. 290.069 Subd. 1(a) - (f) does offer opportunities for confusion. These rules will:

1. Provide clear, uniform definition of terms used in the certification procedure;

2. provide clear notice of the procedures to be used in certification;

3. eliminate any concern that subjective or varying criteria might from time to time be applied to applications for certification.

4351.0100 Definitions

1. Scope. Definitions in this section provide common terminology and meaning for terms used in discussing and understanding the substantive provisions of this rule.

2. Business entity. The term business entity is defined to encompass organizations doing business as corporations, partnerships and proprietorships, except entities engaged primarily in providing licensed professional services and except entities engaged primarily in farming as defined in Minn. Stat. 290.09, Subd. 29(a). This is consistent with the statutory language and with

the legislative intent of making these tax credits widely available in order to encourage job-producing investments in qualified small businesses. The legislative intent was to make these credits widely available, with certain statutory exceptions. The exceptions are included in the definition of business entity in order to give potential applicants clear notice of them.

3. Employee. It is anticipated that a number of new small business start-ups will seek certification as qualified small businesses. It is very common to find in such start-up situations in which the officers of the new business take no payroll remuneration but do devote full time efforts to the business. Since the statutory definition of a qualified small business limits the number of possible employees, it is necessary to determine how such a situation is to be treated. Since the credits are to be widely available as an economic development incentive, it is reasonable to define employee only as a person on the formal payroll of the business. 1984 amendments to the statute require the number of employees for purposes of certification as a qualified small business to be determined on an "annualized full time equivalent basis." The term "annualized full time equivalent basis" is not defined in Minnesota Statutes. The definition thus clarifies how the number of employees is to be determined. The definition is consistent with the definition of "full time professional employee," Rule 4351.0100, Subpart 12, and uses 2080 hours as the number of hours worked in a year by an employee (40 hours per week **x** 52 weeks = 2080 hours per year). Overtime hours are excluded because overtime hours generally are worked by existing employees, and thus counting overtime hours in determining the number of full time equivalent employees could overstate the number of employees and thus potentially restrict the number of small businesses that could qualify for certification.

4. Subsidiary or affiliate. A subsidiary is normally understood to mean a corporation in which more than 50 percent of the ownership interest is owned by another corporation. Use of 50 percent is consistent with the 49 percent limitation on ownership contained in Minn. Stat. 290.069 subd. (4). The term "affiliate" does not generally have a common meaning. The use of the 20% ownership interest is an arbitrary one intended to reflect a degree of ownership less than that required for a subsidiary yet still sufficient to indicate more than minimal ownership. It is necessary also to consider that circumstances may arise where percentage ownership formulas may not apply. It is reasonable in that case to identify other facts such as contractual arrangements, shared management or directors, and fragmentation of ownership interests be included to reflect other means of control of the business entity.

5. Commercial domicile. This term has been used by the Minnesota Supreme Court to designate the state in which a corporation maintains a principal office from which it directs its business. (See e.g., Marshall-Wells Company v. Commissioner of Taxation, 220 Minn. 458; 20 N.W. 2nd 92 (1945); Cargill, Inc., v. Spaeth, 215 Minn. 540, 10 N.W. 2d, 728 (1943). The definition has been included to clarify the term "commercial domicile" in Minn. Stat. 290.069.

6. Taxable year. 1984 amendments to the statute state that an applicant for certification as a qualified small business cannot derive more than 20 perent of its gross receipts from passive sources during one or more of the three previous "taxable years." "Taxable year" is not defined in the statute. The definition is consistent with the definition of taxable year in Minnesota Statutes 290.01 Subd. 9 and clarifies that the determining factor is the period of time for which the tax return was required, and not whether or not a tax is due.

7. In operation. 1984 amendments to the statute state that a business which is "in operation" for less than a year cannot be certified as a qualified small business if it intends or is likely to derive more than 20 percent of its gross receipts from passive income. "In operation" is not defined in the statute. The definition looks to whether the entity is engaged in the activities for which it was organized in determining whether it is "in operation."

8. Passive income. 1984 amendments to the statute limit the percentage of "passive income" an applicant for certification as a qualified small business may receive. In addition, an applicant for certification as a qualified small business is required to affirm that its passive income did not exceed statutory limits. The statute does not define "passive income." The context of the statute suggests the Legislature intended "passive income" to include royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities. The rule clarifies the apparent legislative intent.

9. Engaged primarily in providing licensed professional services. 1984 amendments to the statute state that a qualified small business does not include an entity engaged primarily in providing licensed professional services. "Licensed professional services" is not defined. The definition is consistent with the definition of a provider of licensed professional services contained in Minnesota Statutes 319A.01, Subdivision 2, pertaining to the organization of professional corporations.

10. Commissioner. The statute gives the Department of Revenue the authority and responsibility for the substantive operation of the tax credit program. The Department of Energy and Economic Development has the responsibility for the necessary certifications for eligibility to receive these credits. The definition of Commissioner is included to eliminate any confusion as to which commissioner is being referenced.

11. Audited financial statements. By statute, small business assistance offices are required to provide audited financial statements. This section simply provides further clarification of the statutory term "audited financial statements." The definition reflects the requirements of Minn. Stat. 325.165 on the delivery of opinions on financial statements.

12. Full time professional employee or equivalent. By statute, small business assistance offices are required to employ, at least, two full time professional employees or the equivalent as one of the conditions they must satisfy for certification. By statute, this requirement is satisfied if the small

business assistance office employs one full time professional employee and shares a professional employee with another organization engaged in related activities. This definition is needed to clarify the definition of "full time" by excluding individuals or firms retained from time to time on a fee for service or contract or consulting basis for less than 2080 hours per year. It is also needed to clarify that a "professional" employee must be directly involved in performance of services relating to the statutorily defined primary purpose of the corporation. The definition of equivalent means that it is possible and permissible to have full time equivalent employees as long as the total equivalent is two full time professional employees. The definition of a "shared" professional employee is addressed in Subpart 13.

13. Shared professional employee. By statute, a small business assistance office satisfies the requirement that it employ two full time professional employees or the equivalent if it employs one full time professional employee and shares a professional employee with another organization engaged in related activities. The definition clarifies that the shared employee must perform services directly related to the primary purpose of the corporation, and thus is consistent with the definition of full time professional employee contained in Subpart 12. The definition further clarifies that to be considered a shared employee, the individual must be paid by the corporation. This requirement is consistent with Subpart 12 which requires a full time professional employee to be on the payroll of the corporation. It also is consistent with Supart 3, which defines an employee (in part) as a person on the payroll of the business entity. The definition also clarifies that the "shared" employee need not be employed by a nonprofit corporation. The statute does not require such a limitation. To restrict the "shared" employee to employees of nonprofit corporations would unnecessarily limit opportunities for organizations to obtain the expertise of a broad range of resources.

14. Financing. The corporation cannot be engaged in providing financing or primarily engaged in arranging financing for businesses. As noted in the section of the Statement regarding comments received under Chapter 188, Laws of Minnesota 1983, many organizations which might otherwise qualify as small business assistance centers do provide below market rate loans. Likewise, they do provide assistance with securing grants or contracts. To disallow these forms of assistance would curtail an already existing form of assistance. By narrowly defining financing to mean market rate financing, the organizations will not be discouraged from providing creative alternatives to conventional financing that fit market gaps for working capital and equity.

Purpose

This section is consistent with recommended rule format of the Revisor's Office and clarifies the purpose of these rules. References to the Internal Revenue Code have been changed from the Internal Revenue Code of 1954, as amended through January 15, 1983 to the Internal Revenue Code of 1954, as amended through December 31, 1983 to reflect Instructions to the Revisor

contained in the 1984 Minnesota Session Laws, which instruct the Revisor of Statutes to substitute the phrase "Internal Revenue Code of 1954, as amended through December 31, 1983" for the words "Internal Revenue Code of 1954, as amended through January 15, 1983" wherever the phrase occurs in Chapter 290. 1984 Minnesota Laws, Ch. 514, Art. 1, Sec. 8.

Computation of Gross Annual Receipts

"Gross annual receipts" is not a term defined in Minnesota Statutes. To make this definition clear to our audience which will be composed of small businesses organized in a variety of forms, "gross annual receipts" is defined by reference to the computations and reporting on federal tax returns. Since these businesses are organized in different ways, it is necessary to enumerate the different tax forms, lines, and schedules involved.

Certification as Small Business Assistance Office

This section seeks to clarify the affirmative burdens which will be imposed on small business assistance offices which seek to be certified by the Commissioner. Subsections b, c and d, while repeating statutory language, are included so that all the necessary requirements will be complete and clearly shown in the rules.

1. Application. Because these tax credits are a benefit program rather than a regulatory program, the rules include only those requirements consistent with the statutory authority of the program. The use of an application by affirmation represents a simplified approach consistent with the intent of making the application process as easy as possible. The submissions to accompany the application (articles of incorporation, designation by the Internal Revenue Service as a 501(c)(3) organization and a payroll abstract) will evidence compliance with the statutory requirements of a statement of the primary purpose of the corporation, possession of 501(c)(3) status, organization under Minn. Stat. 317, and at least two full time professional employees or the equivalent.

2. Period of certification. The Commissioner will make certifications on a calendar year basis. Submission by November 15 will allow adequate processing time for the Commissioner's determination.

3. Annual application. The statute provides that the tax credits are available on an annual basis for tax years beginning after December 31, 1983. Since the criteria for eligibility are statutorily defined, and since small business assistance offices are free to change their function and form, it is necessary and reasonable that they reapply for evaluation each tax year.

4. Decision to certify. The 30 day period gives the commissioner adequate time to consider the application, taking into account the sections of Minn. Stat. 290.069 subd. (1)(a)(1-4), and approve the application if it meets these criteria. It is also adequate time to notify the applicant if the certification is disapproved. It is reasonable to state the reason for such disapproval.

4351.0500 Certification as Qualified Small Business

1. Application. In order to make the application process as easy as possible for applicants, an application by affirmation is being used. The language there repeats the statutory language about which affirmation is made. The submissions to accompany the application will evidence compliance with the statutory criteria.

2. Period of certification. Initial certification is for the calendar year 1984. The submission date of November 15 is reasonable to allow adequate time for processing applications at the end of the year.

3. Annual applications. There are many factors affecting eligibility for certification that may change in a year's period. A separate application each year allows the Commissioner to make a determination based on the current status of the business.

4. Decision to certify. Thirty days is adequate for the Commissioner to certify a qualified small business. Written reason for denial affords the applicant an opportunity to cure any defects in the application or know the reasons for the Commissioner's action.

4351.0600 False Information

This section is necessary because the department has streamlined and expedited the application process by relying upon the applicant as the provider of information. To maintain the integrity of the process, it is reasonable that there be a consequence to misrepresentation or omission.

Chapter 188

The tax credits available under Laws of Minnesota 1983, Chapter 342 as amended by Laws of Minnesota, Chapter 502, specifically involve small business. The credits are intended to stimulate the growth and success of small businesses through encouragement of transfer of technology to small businesses, equity investment in small business and contributions to small business assistance offices. Because the entire program is directed at small business, no special provisions or exceptions need to be enumerated. Rather, the proposed rules are formulated to accommodate the needs, capabilities and circumstances of small business.

I. Impact on Small Business

In considering the methods prescribed in Laws of Minnesota 1983, Chapter 188, Section 1, for reducing the impact on small business, it should be noted

that the proposed rules do not establish a regulatory compliance or reporting program with mandatory application to a particular business sector. Rather, the rules clarify policy and procedures for the operation of a benefit program, and the decision whether or not to participate in the program is voluntary. Thus, in one sense, the impact of the rule on small business is within their own control.

Even though the concepts of "compliance or reporting requirements" and "design or operational standards" are not, strictly speaking embodied in the proposed rule, the Department of Energy and Economic Development has addressed each method specified in Chapter 188, Section 1, to the extent applicable.

Less Stringent Compliance or Reporting Requirements

There are no reporting requirements for small business. While the application process is not, strictly speaking, a "reporting requirement," the Department of Energy and Economic Development has taken a less stringent approach to informational requirements in the application process than is typically used in similar programs. Application is by affirmation that the statutory criteria are met together with the minimum documentation necessary to support the application.

Because it is a benefit program, rather than a regulatory program, the rule clarifies eligibility requirements for the Commissioner's certification rather than compliance requirements. The Department has adopted the least stringent eligibility requirements consistent with statutory authorizations of the program.

Schedules for Compliance or Reporting.

There are no reporting schedules determined by the proposed rule.

Simplification of Compliance or Reporting.

Viewing the application process as a "reporting requirement," the Department of Energy and Economic Development has adopted a very simplified approach. The proposed rule provides that the Commissioner will make available application forms for certification for qualified small businesses or small business assistance offices. The use of these application forms will help small business applicants define the precise information necessary for certification and will assist the applicant in organizing and presenting the application data in its most favorable light. The information required on the application is limited to that information necessary for the determination of eligibility. Thus, both the structure and content of the application requirements are designed to simplify the process for small businesses and small business assistance offices.

Performance, Design or Operational Standards.

The proposed rule does not contain any design or operational standards; therefore the Department of Energy and Economic Development did not consider the substitution of performance standards in lieu thereof.

Exemption of Small Business from Rule Requirements.

As previously disccussed, the entire tax credit program is intended to benefit small businesses and small business assistance offices. Thus, all of the proposed rule requirements are promulgated with the capabilities and needs of small business in mind. Further, the requirements adopted in the rule are minimal and necessary to fulfillment of statutory requirements and standards. Further exemptions are neither appropriate nor authorized.

II. Small Business Participation in Rulemaking.

1. The Department of Energy and Economic Development and the Department of Revenue published a joint notice of intent to solicit outside opinion regarding the development of these rules. This notice included a statement regarding the impact of the rule on small business. That notice appeared at 8 SR 970, Monday, October 24, 1983.

2. Notification was made to those bodies generally recognized as related to small business (e.g., AVTI's, small business development centers, chambers of commerce).

3. Direct notification of many small businesses that might be interested in the rule was made.

4. Publication of notice about the credits and 1984 amendments to the statute were made in newspapers and magazines of general circulation (e.g., Minnesota Small Business Newsletter, Winter 84; Citibusiness, January 18, 1984; Minnesota Business Journal, June, 1984).

5. Two public meetings were held, specifically targeted to small business. One was November 21, 1983 in the Twin Cities (Control Data's Business and Technology Center) and the other November 22, 1983 in Duluth (Control Data's Business Center). Transcripts of the public meetings are part of the rulemaking record. Public meetings were not held following the 1984 amendments. The amendments did not change the substantive requirements of the certification process.

Below is a summary of comments received during the public meetings and the Department's response:

Comments Relating to Definition and Certification of "Small Business Assistance Office

COMMENT: Diane Weber, Grand Rapids Business and Technology Center. The statutory definition of "small business assistance office" should be expanded to include not only 501(c)(3) corporations but also 501(c)(4) corporations.

RESPONSE: Such change is beyond the scope of rulemaking and will involve statutory amendments.

COMMENT: Ron Dysveck, Peoples Community Enterprises, Duluth. The definition of "providing financing" or "arranging financing" on the part of small business assistance offices should be written in such a way that it would allow existing loan programs of various assistance offices to remain in place.

RESPONSE: The Department has written the definition of financing as the making of market-rate loans. The definition was also written so as not to include assisting with the securing of grants or contracts from public or private sources.

COMMENT: Wallace Baker, Duluth Cooperation Office. Non-cash contributions to small business assistance offices should be eligible for the tax credit.

RESPONSE: This subject is beyond the scope of this department's rulemaking under the statute.

Comments Relating to Definition of "Qualified Small Business"

COMMENTS: Ted Johnson, Minnesota Cooperation Office. Firms should be able to qualify at time of organization--even if they have no employees, products, or sales at that time.

RESPONSE: The statute does not require businesses to have employees or products or to conduct business at the time of seeking certification.

COMMENT: Oscar Lund, Private Business Consultant. The definition of "subsidiary" or "affiliate" should be written sufficiently narrowly that independently owned franchises do not fit the definition.

RESPONSE: The definition has been so written that a separately incorporated franchise is not a subsidiary or affiliate.

COMMENT: Ed Lambert, Duluth. Tax credits should be allowed on equity investments less than $25,000 to make it easier for small firms to attract more capital.

RESPONSE: Such a change is beyond the scope of rulemaking and will involve statutory amendments.

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Energy and Economic Development Governing Tax Credit Certification

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Christie Eller, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Christie Eller

Christie Eller
Special Assistant Attorney General

September 10, 1984
(dated)