

Application for Designation as a Qualified Business for the Qualified Equity and Subordinated Debt Investments Tax Credit
 For calendar years beginning on or after January 1, 2007.
 See the instructions for when and where to apply.

| | |
|----------------------------------|--------------------------|
| Name (Please Print) | Official Use Only |
| Trading As | |
| Street Address | |
| City, State and ZIP Code | FEIN |
| Principal Business Activity Code | Date Incorporated |

Use this form to apply for designation as a qualified business for purposes of issuing equity or subordinated debt instruments which qualify for the Virginia Qualified Equity and Subordinated Debt Investments Tax Credit. **IMPORTANT:** Starting in 2005, the Form QBA doesn't have to be filed prior to making issuances. Regulation Title 23 Virginia Administrative Code (VAC) 10-110-225 et seq. provides regulations on this credit. Additionally, see instructions for investor information.

Business Entity Identification (Attach a separate page if additional space is needed.)

TYPE (check one): Corporation S Corporation Partnership Limited Liability Company (LLC)

- See "Qualified Business" in instructions, *Code of Virginia* Section 58.1-339.4, or 23 VAC 10-110-225 et seq.
- Is its principal office or facility in Virginia? **Yes** **No** If No, STOP; the business does not qualify
- Is Virginia where the business entity is primarily engaged in business or does substantially all of its production? **Yes** **No** If No, STOP; the business does not qualify
- Were the business' annual gross revenues for the most recent fiscal year \$3,000,000 or less? **Yes** **No** If No, STOP; the business does not qualify

If yes, what were the annual gross revenues? _____

- Has **the business** obtained, during its existence, more than \$3 million in aggregate gross cash proceeds for the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions)? **Yes** If Yes, STOP; the business does not qualify
- Briefly describe the type of business or activities in which the entity is primarily engaged or primarily organized to engage.

ISSUANCE INFORMATION

7. Describe the type of instrument the business entity is planning to issue for purposes of this tax credit.

| Type of Instrument | Estimated Amount | Anticipated Date of First Issuance |
|--|------------------|------------------------------------|
| <input type="checkbox"/> Equity | \$: _____ | Date: _____ |
| <input type="checkbox"/> Subordinated Debt | \$: _____ | Date: _____ |

Declaration

I, the undersigned officer or other person authorized to act on behalf of the business entity, have read and understand the limitations and restrictions set forth for this application and the associated tax credit.

| | | |
|----------------------|--------------|------|
| Authorized Signature | Title | Date |
| Printed Name | Phone Number | |
| E-mail Address | FAX Number | |

Instructions for the Qualified Business Designation Application - Form QBA

Qualified Equity and Subordinated Debt Investments Tax Credit

Pursuant to *Code of Virginia* Section 58.1-339.4, this credit is effective for taxable years beginning on and after January 1, 1999. Regulation 23 VAC 10-110-225 et seq. provides regulations on this credit, including definitions of terms used in this application. *Virginia Tax Bulletin* 00-5, dated July 31, 2000, also provides additional information on this credit. For a copy of this regulation, bulletin, or additional forms, see the section on Where to Get Help.

What's New For Taxable Years Beginning On Or After January 1, 2005

- The General Assembly has modified the definition of a "*Qualified Business*." Please refer to the updated *Definitions* section of these instructions.
- The holding period for the equity has changed from five to three years. For additional information, see the General Information Section below.

Where To Get Help

Write to **Department of Taxation, Tax Credit Unit, P. O. Box 715, Richmond, VA 23218-0715** or call **804-786-2992**. To order forms, bulletins or regulations call 804-440-2541. Visit www.tax.virginia.gov for most Virginia tax forms, regulations and additional tax information. Forms are available from your Commissioner of the Revenue, Director of Finance or Director of Tax Administration.

Tenemos servicios disponible en Español.

General Information Concerning This Credit

The Qualified Equity and Subordinated Debt Investments Tax Credit is allowed to **taxpayers** making a qualified investment in the form of equity or subordinated debt from a **qualifying business** which is engaged in business or does substantially all of its production in Virginia. The credit equals 50% of the amount of qualifying investments made during the taxable year. The total amount of credit that may be used per taxable year is the lesser of the tax imposed or \$50,000. The credit is nonrefundable. Excess credits may be carried forward for up to 15 years. If total annual requests for this credit exceed \$3 million, the Department of Taxation will prorate the allowable credit for each taxpayer.

Equity and/or Subordinated Debt received in connection with a qualified business investment must be held by the taxpayer for at least three full calendar years following the calendar year for which the tax credit is allocated except in the following instances: the liquidation of the qualified business issuing such equity; the merger, consolidation or other acquisition of such business with or by a party not affiliated with such business; or the death of the taxpayer.

If the three calendar year holding period is not met, the taxpayer forfeits the unused credit amount and will be assessed for the credit used, to which shall be added interest, computed at the rate of one percent per month, compounded monthly from the date the tax credits were claimed.

Who Must File this Application, Form QBA

Businesses who want to sell equity and subordinated debt investments for which taxpayers may claim credit for the Qualified Equity and Subordinated Debt Investments Tax Credit must file. The qualification is valid for the calendar year of the application. A separate application is required for each year the business wants to be eligible to offer this credit to its investors.

When to File This Application, Form QBA

File Form QBA any time during the calendar year.

You need to reapply each year that you plan to be designated as a qualified business.

Where to File This Application, Form QBA

File Form QBA with the **Department of Taxation, Tax Credit Unit, P.O. Box 715, Richmond, VA 23218-0715**.

You may also fax it to **804-786-2800**, but please **do not do both**.

Information To Be Provided To Taxpayers (Investors)

Upon issuance of equity or subordinated debt, the qualified business must provide each taxpayer with a statement on the business' letterhead containing:

- A copy of the qualified business certification from the Department of Taxation, a description of each investment by amount and type (i.e., equity or subordinated debt), and verification that the investment meets the definition of a qualified investment for purposes of claiming the tax credit.
- If an equity investment, the statement must indicate that the issuance is original, providing new capital to the qualified business and that it is not required, or subject to an option, that the issuer redeem the issuance within three years of issuance date.
- If a subordinated debt investment, the statement must indicate that the issuance is original, providing new capital to the qualified business and that, by its terms, requires no repayment of principal for three years after issuance, is neither guaranteed nor secured by assets of the issuer nor by any other person or entity, and is subordinate to all indebtedness and obligations to national or state chartered banking or savings and loan institutions.

The taxpayer is required to attach this statement to their Qualified Equity and Subordinated Debt Investments Tax Credit Application (Form EDC).

Definitions

“Equity” means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, any of which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within five years from the date of issuance.

“Subordinated debt” means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms requires no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or entity, or secured by any assets of the issuer or any other person or entity; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

“Qualified investment” means a cash investment in a qualified business in the form of equity or subordinated debt.

An investment shall not be qualified, if the taxpayer who holds such investment, or a member of taxpayer’s family, or any entity affiliated with such taxpayer, receives (or has received) compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with such business or within one year before or after the date of such investment.

For purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation. A qualified investment shall not include existing investments or instruments that have been purchased, transferred, or otherwise obtained without providing new capital to a qualified business.

“Qualified business” means a business which

- (i) has annual gross revenues of no more than \$3 million in its most recent tax year;
- (ii) has its principal office or facility in the Commonwealth;
- (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth;
- (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions); and

(v) is not primarily engaged, or is not primarily organized to engage, in any of the following types of businesses:

1. Banks;
2. Savings and loan institutions;
3. Credit or finance;
4. Financial, broker or investment;
5. Businesses organized for the primary purpose of rendering professional services as defined in the *Code of Virginia*, Chapter 7 (Sections 13.1-542 et seq.) of Title 13.1;
6. Accounting;
7. Government, charitable, religious or trade institutions or organizations;
8. Conventional coal, oil and gas, and mineral exploration;
9. Insurance;
10. Real estate design or engineering;
11. Construction or construction contracting;
12. Business consulting or business brokering;
13. Residential housing, real estate brokerage, sale or leasing businesses, or real estate development; or
14. Any business which the Department of Taxation determines by regulation to be against the public interest, the purposes of Virginia Code Section 58.1-339.4 or is violation of the law.

A business in its first taxable year of operation will be deemed to have annual gross revenues of no more than \$5 million and be primarily engaged in business and do substantially all of its production in the Commonwealth if the commercial domicile pursuant to 23 VAC10-120-140 of such business is within the Commonwealth. (23 VAC10-110-225). For taxable years beginning on and after January 1, 2005, **the dollar limitation has been lowered to \$3 million** by the General Assembly.

“Commercial domicile” means the state where the principal office from which the business affairs of the corporation are normally directed or managed. See 23 VAC10-120-140 D.

“Primarily engaged in business in the Commonwealth” means 50% or more of the entity’s gross receipts are derived from sources within Virginia.

“Substantially all of its production in the Commonwealth” means 80% or more of the entity’s expenses are incurred within Virginia.

Virginia Tax Bulletin 00-5, dated July 31, 2000, and Title 23 of *Virginia Administrative Code* (VAC)10-110-225 provide additional information on this credit. To obtain this bulletin, see “Where To Get Help” above.