

Form QBA

Application for Designation as a Qualified Business for the Qualified Equity and Subordinated Debt Investments Tax Credit

See the instructions for when and where to apply.

Name (Please Print)	FEIN
Trading As	Date Incorporated
Street Address	For Calendar Year
City, State and ZIP Code	
NAICS Code	Office Use Only

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:** The Form QBA does not have to be filed prior to making issuances. Title 23 of the *Virginia Administrative Code (VAC)* 10-110-225 et seq. provide regulations on this credit. Additionally, see instructions for investor information.

Check this box to allow the Department to notify the Governor’s office that your company is approved for this credit.

Business Entity Identification: See the definition of “Qualified Business” in the instructions, *Va. Code* § 58.1-339.4, or 23 VAC 10-110-225 et seq.

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

Business Criteria (check one):

- | | | |
|--|---|---|
| <input type="checkbox"/> Advanced Computing | <input type="checkbox"/> Advanced Materials | <input type="checkbox"/> Advanced Manufacturing |
| <input type="checkbox"/> Agricultural Technologies | <input type="checkbox"/> Biotechnology | <input type="checkbox"/> Electronic Device Technology |
| <input type="checkbox"/> Energy | <input type="checkbox"/> Environmental Technology | <input type="checkbox"/> Information Technology |
| <input type="checkbox"/> Medical Device Technology | <input type="checkbox"/> Nanotechnology | <input type="checkbox"/> Any Similar Technology-Related Field |

Describe: _____

1. Was your business created to commercialize research developed at or in partnership with an institution of higher education?

Yes No

If yes, what is the name of the institution?

2. Is its principal office or facility in Virginia?

Yes No If No, STOP; the business does not qualify

3. 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

4. Were the business entity’s annual gross revenues for the most recent fiscal year \$3 million or less?

Yes No If No, STOP; the business does not qualify

If yes, what were the annual gross revenues?

\$ _____

5. 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

6. Provide a detailed description of the type of business or activities in which the entity is primarily engaged or primarily organized to engage (attach additional pages if necessary).

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Issuance Information

Describe the type of instrument the business entity is planning to issue for the 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	
Email Address	FAX Number	

Instructions for the Qualified Business Designation Application - Form QBA

Qualified Equity and Subordinated Debt Investments Tax Credit

Pursuant to *Va. Code* § 58.1-339.4, this credit is effective for taxable years beginning on and after January 1, 1999. 23 VAC 10-110-225 et seq. provide 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 the applicable regulations, Tax Bulletin, or additional forms, see the Where to Get Help section.

Under *Va. Code* § 58.1-339.4 (E), the Qualified Equity and Subordinated Debt Investments Tax Credit is capped at \$5 million annually. Of the amount of available credit, one-half of this amount must be allocated to commercialization investments and the other half is available for all other qualifying investments. If credit applications for either half exceed the allowed amount, the credits for that half will be prorated. If credit applications for either half are less than the allowed amount, the balance will be available for allocation to the other type of credits.

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 804-367-8031. Visit **www.tax.virginia.gov** for most Virginia tax forms, regulations and additional tax information. Forms are available from your local 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 \$5 million, the Department will prorate the allowable credit for each taxpayer.

Taxpayers cannot receive a grant from the Small Business Investment Grant Fund and take the Qualified Equity and Subordinated Debt Investments Tax Credit for the same investment.

- **Equity** received in connection with a qualified business investment must be held by the taxpayer for at least 3 full calendar years following the calendar year for which a tax credit is allocated.
- **Subordinated Debt** received in connection with a qualified business investment must be held by the taxpayer for at least 3 years from the date of issuance.
- **Holding Period Exception** – 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 3 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 1% per month, compounded monthly from the date the tax credits were claimed.

Who Must File This Application, Form QBA

Businesses that 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 that the business wants to be eligible to offer this credit to its investors.

All businesses should be registered with the Department before completing Form QBA. If you are not registered, complete Form R-1.

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 **804-774-3902**, 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 copy of the qualified business certification from the Department and a statement on the business entity's letterhead that contains the following information:

- The investor's name;
- The investment by amount (list each amount separately);
- The investment by type (equity or debt);
- The investment by date (specific to each investment amount); and
- Verification that the investment meets the definition of a "qualified investment" for the purposes of claiming the credit pursuant to *Va. Code* § 58.1-339.4. 23 VAC 10-110-225 et seq. provide regulations on how this credit applies.

Please specifically state that the investor (name), nor any of his/her family members, nor any entity affiliated with him/her 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 or within 1 year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

- The statement should be signed by a company officer. For investors affiliated with the qualified business, such as a Corporate Officer, CFO, etc., the statement should be signed by another member of the company.

Please note: For married investors, the credit cannot be issued jointly. The investment must be made individually and a separate Form EDC and business statement must be provided for each spouse.

If the investment is 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 3 years of the issuance date.

If the investment is 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 3 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 the 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 3 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 3 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 1 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 fiscal 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 primarily engaged or is primarily organized to engage in the following fields:

1. advanced computing,
2. advanced materials,
3. advanced manufacturing,
4. agricultural technologies,
5. biotechnology,
6. electronic device technology,
7. energy,
8. environmental technology,
9. information technology,
10. medical device technology,
11. nanotechnology, or
12. any similar technology-related field determined by regulation by the Department of Taxation.

“Commercialization investment” means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

A business in its first taxable year of operation will be deemed to have annual gross revenues of no more than \$3 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).

“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.