

# ARIZONA

COMMERCE AUTHORITY

## NOTICE OF ADOPTION

### RULE NO. 17-02

- 1. Rule.**  
Small Business Capital Investment Incentive Program Guidelines
- 2. Date of Posting Notice of Rule Making.**  
June 14, 2017
- 3. Public Comment Period.**  
June 14, 2017 to July 15, 2017
- 4. Hearing Date**  
none
- 5. The deadline for the Authority to file a Notice of Adoption.**  
December 11, 2017
- 6. Notice of Adoption Posting Date.**  
July 18, 2017

The Arizona Commerce Authority hereby gives notice that Rule 17-02 has been adopted. The effective date of the Rule is July 17, 2017.



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Michael Kellis  
Associate Counsel

**Arizona Commerce Authority**  
**Small Business Capital Investment Incentive Program**  
(Angel Investment Program)

**Program Guidelines<sup>1</sup>**

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**Section 1. Overview**

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The Small Business Capital Investment Incentive Program (Angel Investment Program) as provided in A.R.S. §41-1518 was established by the Arizona Legislature in 2005 to expand early stage investment in targeted Arizona small businesses. The program became effective July 1, 2006 and has been extended through June 30, 2021. The Angel Investment Program provides tax credits to investors who make capital investments in businesses certified by the Arizona Commerce Authority (the Authority).

From and after June 30, 2017 through June 30, 2021, the Authority may allocate tax credits up to the \$2.5 million annual cap, plus any unused credit capacity carried over from the preceding fiscal year or years. Tax credits are authorized on a first come, first served basis. Income tax credits are equal to 30% or 35% of the investment amount. Tax credits can be claimed over a three year period and any unused credits can be carried forward for up to three tax years.

An investor seeking tax credits under this program must submit an application for an authorization of tax credits to the Authority for each investment in a qualified small business. To obtain an authorization of tax credits an investor must document that each investment and the qualified small business meet the eligibility requirements at the time of the investment. The Authority may issue an authorization of tax credits after determining eligibility of the investor, the investment, and the qualified small business. To receive a twelve-month designation as an ACA certified qualified small business, a business must submit a separate request for certification to the Authority. The Authority will issue a letter of certification after determining eligibility of the qualified small business. The Authority will notify the Arizona Department of Revenue (Revenue) of authorizations and certifications. A qualified small business may apply for additional twelve-month certifications by submitting a new request for certification to the Authority. An investment in a qualified small business that is not certified as a qualified small business at the time of the investment may still qualify for tax credits if evidence exists for ACA to certify the qualified small business at the time the investment was made.

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**Section 2. Eligibility Requirements**

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All the following criteria must be met at the time of investment for the investor to receive an allocation of tax credits.

- A. **An investor** may be a “qualified investor” eligible for tax credits if it:
  - 1. Is an individual, limited liability company, sub-chapter S corporation or a partnership (C corp ineligible).
  - 2. Submits an application to the Authority within 90 calendar days after making a qualified investment.
  - 3. Makes qualified investments in one or more qualified small businesses. Investment amounts made by the investor and its affiliates in a single year up to \$500,000 generate tax credits; investment amounts made by the investor and its affiliates over \$500,000 do not generate tax credits.
  - 4. Immediately before making an investment the investor does not possess, along with its affiliates, more than 30% of the total voting power of all equity securities of the qualified small business.
  
- B. **An investment** may be a “qualified investment” if it:
  - 1. Is made on or after July 1, 2006
  - 2. Is an equity security
  - 3. Is at least \$25,000 in cash or cash equivalent such as cashiers check or travelers check
  - 4. Is reported to the Authority within 90 calendar days after the investment is made
  
- C. **A small business** may be a “qualified small business” if it:
  - 1. Is a corporation, limited liability company, partnership or other business entity (Sole proprietor ineligible)
  - 2. Maintains a portion of its operations in Arizona
  - 3. Has at least two principal non-administrative full-time equivalent employees who are Arizona residents
  - 4. Is in the early stages of development and is not principally engaged in activities precluded by the Authority or by statute (A.R.S. §41-1518(K)(6))
  - 5. Does not engage in activities that involve human cloning or embryonic stem cell research
  - 6. Does not have assets exceeding \$10 million, exclusive of intellectual property and any qualified investment, unless application is made on or before 12/31/11, assets are limited to \$2 million or less

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<sup>1</sup> These Guidelines are provided to assist applicants. In case of conflict between what is presented here and the Arizona Revised Statutes, the statutes and the Arizona Administrative Code shall prevail. See A.R.S §§ 41-1518 and 43-1074.02.

7. Has not received aggregated qualified investments in excess of \$2 million by all qualified investors in all years

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### Section 3. Definition of Program Terms

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For purposes of applying for and maintaining eligibility for the Angel Investment Program, the following terms are either defined by the Authority, defined in A.R.S. §41-1518 or are statutory definitions modified by the Authority. If a term is not defined, the most commonly accepted meaning will apply. For purposes of this program:

1. "Affiliate" means any person or entity that controls, that is controlled by or that is under common control with another person or entity. For the purposes of this paragraph, "control" means the power to determine the policies of an entity whether through ownership of voting securities, by contract or otherwise.
2. "Application" means the **electronic application system ("EASY")** form "Investor's Application for an Authorization of Tax Credits" and all required uploads a qualified investor must submit to apply for an authorization of tax credits.
3. "Asset" means any owned property that has value including financial assets and physical assets. Intellectual property shall not be included when determining total assets.
4. "Bioscience company" has the same meaning as "bioscience enterprise", which means a business whose activity is related to bioscience as determined by the Authority or any corporation, partnership, limited liability company or other business entity that is primarily engaged in a business that conducts research, development, manufacturing, marketing, sales and licensing of products, services and solutions relating to either of the following:
  - a. Medical, pharmaceutical, nutraceutical, bioengineering, biomechanical, bioinformatics or other life-science based applications.
  - b. Applications of modern biological, bioengineering, biomechanical or bioinformatics technologies in the fields of human, plant or animal health, agriculture, defense, homeland security or the environment.
5. "Business day" means a day other than Saturday, Sunday, a legal holiday or the day the State of Arizona observes a legal holiday or a day on which the Authority is authorized or obligated by law or executive order to be closed
6. "Date of receipt" means the day and time **an Application is submitted electronically through EASY** to the Authority.
7. "Full-time equivalent" means any number of Arizona residents whose aggregated work hours constitute full-time.
8. "First come, first served" means the numerical order established by the date and time stamp in which the Authority shall authorize available tax credits.
9. "Full-time" means at least 35 work hours a week.
10. "Primarily engaged" means more than 50 percent of all business activity.
11. "Principal place of business" means the main place in Arizona where work is performed or business is transacted.
12. "Qualified investment" means an investment in an equity security that meets all of the following requirements:
  - a. The equity security shall be common stock, preferred stock, an interest in a partnership or limited liability company, a security that is convertible into an equity security or any other equity security as determined by the the Authority.
  - b. The investment shall be at least twenty-five thousand dollars cash or cash equivalent such as cashiers check or travelers check.
  - c. The qualified investor and its affiliates do not hold, of record or beneficially, immediately before making an investment, equity securities possessing more than thirty per cent of the total voting power of all equity securities of the qualified small business.
  - d. The investment shall not be comprised of an acquisition of control of a qualified small business or the acquisition of the assets and liabilities of a qualified small business.

13. "Qualified investor" means an individual, limited liability company, partnership, S Corporation as defined in section 1361 of the internal revenue code or other business entity that makes a qualified investment in a qualified small business. Qualified investor does not mean a corporation that is subject to tax under title 43, chapter 11.
14. "Qualified small business" means a corporation, limited liability company, partnership or other business entity that:
  - a. Maintains at least a portion of its operations at an office or manufacturing or research facility located in this state.
  - b. Has at least two principal full-time equivalent employees who are residents in this state. For the purposes of this subdivision, "principal" means a person whose sole responsibility is not administrative.
  - c. Does not engage in any activities that involve human cloning or embryonic stem cell research.
  - d. Has total assets not exceeding two million dollars through December 31, 2011 or ten million dollars beginning from and after December 31, 2011, excluding any investment made under this section.
  - e. Has not exceeded the limitation on qualified investments prescribed by A.R.S. § 41-1518(G).
  - f. Does not have a principal business (more than 50% of all activities at all locations) involving activities excluded by the authority. The authority shall provide a list of excluded businesses to any person on request.
  - g. Is registered with either the Arizona Secretary of State, County Recorder or Arizona Corporation Commission.
15. "Request for certification" means the EASY form "Request for Certification as a Qualified Small Business" and all required attachments a qualified small business must submit to apply for a twelve-month letter of certification.
16. "Rural county" means a county that has a population of eight hundred thousand or fewer persons.
17. "Substantially complete" means all questions in the application or request for certification are fully addressed by the applicant and all documents required by the Authority are attached or can be supplied within 14 calendar day after receipt of notification by the Authority of any deficiencies. One extension of an additional 14 calendar days may be requested and granted by the program manager. Additional extensions may also be granted in extraordinary circumstances. Applications or requests for certification that are not substantially complete by stated timeframe will be rejected and the applicant notified.
18. "Timely claim" means the qualified investor and individual co-owners file a return with Revenue by the due date of the return, including extensions, for the tax year for which tax credits are authorized.

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## Section 4. Tax Credits - Provisions and Limitations

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### Tax Credits Provisions

The Angel Investment Program provides **income tax credits** to qualified investors. Under A.R.S. § 43-1074.02, for tax years beginning January 1, 2007 non-refundable tax credits are allowed for a qualified investment in a qualified small business. These tax credits can be used to offset Arizona tax liability for individuals only and cannot be transferred or sold. the Authority shall authorize tax credits to qualified investors on a first come, first served basis according to the date of receipt of an application as provided by A.R.S. § 43-1074.02(F). The tax credits are equal to 30% of the qualified investment unless the investment is made in a rural or bioscience company, which increases the tax credit percentage to 35%. The tax credits can be claimed over a three year period and cannot exceed the following percentages.

	1 <sup>st</sup> Tax Year	2 <sup>nd</sup> Tax Year	3 <sup>rd</sup> Tax Year	Total Tax Credits
<b>Rural or Bioscience Company</b>	12%	12%	11%	35%
<b>Any Other Company</b>	10%	10%	10%	30%

It is important to know there is a delay between the time of the investment and the time the credits can be claimed. See Section 9 – Process for Claiming Tax Credits for details.

### Tax Credits Limitations

1. The Authority cannot authorize more than \$30 million in tax credits from July 1, 2006 through June 30, 2021.
2. After June 30, 2017 through June 30, 2021, the Authority may authorize up to \$2.5 million in tax credits, plus any unused credit capacity carried over from the preceding fiscal year or years each fiscal year.
3. The Authority cannot authorize tax credits in an amount more than 35% of the investment in a rural or bioscience company; nor can the Authority authorize tax credits in an amount more than 30% of the investment in any other company.
4. The Authority cannot authorize credits to an investor and its affiliates for qualified investment amounts that exceed \$500,000 in a single calendar year for one or more qualified small businesses.
5. The Authority cannot authorize credits to qualified investors and their affiliates for qualified investment amounts that exceed an aggregate of \$2 million in a single qualified small business for all years.
6. Investors who timely claim tax credits can carry forward unused tax credit amounts for up to three years.
7. Credits expire if not timely claimed. the Authority cannot reissue unused or expired tax credits under this program; nor shall they be returned to the \$30 million tax credit maximum.
8. Tax credits authorized under this program cannot be transferred or sold.
9. If sufficient tax credits are not available under the program as described in #1 or #2 of this section, to satisfy the requested amount in an application, the Authority may offer the remaining program tax credit amount. The qualified investor may either accept any remaining amount of credits or withdraw the application. The investor must submit a written response to the Authority within 10 business days of the investor's receipt of the offer or the offer of credits expires and the application will be considered withdrawn.
10. If an investor requests tax credits that exceed the limits described in #4 or #5 of this section, the Authority may offer a reduced amount of tax credits. The qualified investor may either accept the reduced amount or withdraw the application. The investor must submit a written response to the Authority within 10 business days of the investor's receipt of the offer or the offer of credits expires and the application will be considered withdrawn.
11. If certification of a qualified small business is revoked or expires, subsequent investments in the business do not qualify for tax credits under this program.
12. Any authorization of or application for tax credits shall not be denied if the investment was made before the date of the expiration or revocation of a letter of certification for a qualified small business.

### Additional Incentive

For tax years beginning January 1, 2014, Revenue shall subtract from the investor's Arizona gross income the amount of any net capital gain included in the federal adjusted gross income for the tax year derived from investment in a business qualified by the Authority pursuant to A.R.S. § 43-1022. Revenue will permit such subtraction so long as the qualified investment was made in a business that was a qualified small business at the time the qualified investment was made, regardless of whether such status is expired at the time of the investor's tax filing claiming such subtraction.

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### **Section 5. Submitting Applications – Investors**

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Investors must submit all applications for tax credits electronically through the Authority's EASY system. The Authority shall accept applications for tax credits on or after the first business day of July 2006. The process described in this section will determine the order in which the Authority authorizes tax credits to qualified investors. the Authority, through the EASY system, will date and time stamp each application on the date of receipt. An investor must submit an application to the Authority within 90 calendar days after making the investment in a small business to be eligible for an authorization of tax credits. The small business must meet the eligibility requirements of the program at the time the investment is made to generate a tax credit. Applications submitted more than 90 calendar days after the investment will be rejected and the investor notified.

An application from an investor is not substantially complete unless the small business has concurrently or previously submitted a request for certification to the Authority or has previously been certified by the Authority. After taking into account the extensions set forth in the definition of "substantially complete" set forth above, any application for tax credits that is not substantially complete will be rejected without further processing and the date of receipt will be canceled. An incomplete application will retain its submission date and priority placement until all applicable extensions are exhausted. If an incomplete application is rejected by the Authority or if all extension periods have been exhausted, the investor may at a later time submit a revised application to the Authority. When the revised application is submitted,

the Authority will issue a new date of receipt. After approval of an application, the Authority will issue an authorization of tax credits to the qualified investor.

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## **Section 6. Review of Applications - Investors**

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A. An investor may apply to the Authority for an authorization of tax credits on or after the first business day of July 2006, which is Monday, July 3<sup>rd</sup>. Application must be the Authority filed electronically through the Authority's EASY system. An investor must submit an application to the Authority within 90 calendar days after making an investment in a small business to be eligible for an authorization of tax credits. An application from an investor is not substantially complete unless the small business has submitted a request for certification to the Authority or has been previously certified by the Authority. An investor may have more than one application at any given time and receive multiple tax credit authorizations if the provisions and limitations outlined in Section 4 are upheld.

The Application shall include, but is not limited to:

1. The name, address and contact information for the investor
  2. Federal income tax identification number of the investor
  3. The name, address and contact information for the qualified small business that received the qualified investment
  4. Federal employer identification number of the qualified small business
  5. Documentation of the qualified investment including the date made
  6. The original Revenue disclosure form "285 SBI" for the applicant
  7. Any additional information that the Authority requires
  8. An original signed affidavit to the Authority in which the investor confirms, but is not limited to, the following:
    - a. That the investor and its affiliates do not possess more than thirty percent of the voting power of all equity securities of the qualified small business
    - b. The right of the Authority to provide Revenue necessary information to administer the program
    - c. The right of the Authority to notify Revenue of misrepresented information on an application, which may initiate denial or revocation of tax credits by Revenue
    - d. That the information contained in the application is true and correct under penalty of perjury
- B. the Authoritythe AuthorityDuring review of a substantially complete application, the Authority may request additional information, conduct a site visit to the small business or discuss the application with the investor or the small business. If required information is not timely submitted to the Authority the application will be rejected, the date of receipt will be cancelled and the applicant notified.
- C. The Authority shall make a determination with regard to each application within 90 days after the date of receipt of an application. Such determination shall have an effective date that is the date the application was submitted.
- D. If the Authority denies an investor tax credits, the investor may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10. An investor may appeal the denial, however, an appeal does not guarantee the receipt of tax credits under the Angel Investment program as the Authority will not reserve any requested tax credits should an appeal be sought.
- E. If an investor is eligible for tax credits and the limitations on tax credits outlined in Section 4 are upheld, the Authority shall issue an authorization of tax credits to the applicant and will notify Revenue of the authorization. One authorization is issued to a qualified investor for each application and the authorization will state the dollar amount of the investment, the authorized dollar amount of the credits, the tax credit percentage for each tax year, the tax years in which the credits may be claimed, and the qualified small business name.
- F. If an investor plans additional qualified investments, a separate application for authorization must be submitted to the Authority for each qualified investment in a qualified small business. The procedures described in this section will apply.
- G. Any application received after the Authority has authorized the entire amount of tax credits available under this program, will be rejected and the applicant notified.

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## **Section 7. Submitting Requests For Certification – Small Businesses**

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A business requesting a twelve-month certification as a qualified small business may apply on or after July 1, 2006. Small businesses must submit all requests for certification electronically through the Authority's EASY system. Qualified small businesses are not subject to a first come, first served process because there is no limit on the number of businesses that may be certified. Generally, requests for certification will be processed in the order received. However, the review of a small business' request may be expedited to facilitate the review of an investor's application. It's important to note, an investor's application is not substantially complete unless the small business has submitted a request for certification to the Authority or has a valid letter of certification. Further, the small business must meet the eligibility requirements of the program at the time an investment is received for the investor to generate a tax credit.

Any request for certification that is not substantially complete will be offered extensions to become substantially complete as set forth in the definition of "substantially complete" set forth above. If an incomplete request for certification is ultimately rejected by the Authority the small business may at a later time submit a revised request for certification to the Authority. After approval of a request for certification, the Authority will issue a letter of certification to the qualified small business effective for a twelve-month period from the date the request for certification was initially submitted. If a qualified small business wants to maintain certification beyond the original certification period, it must submit to the Authority a new request for certification for an additional twelve-month period.

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## **Section 8. Review of Requests for Certifications - Small Businesses**

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- A. A small business may apply to the Authority for a twelve-month letter of certification as a qualified small business on or after July 1, 2006. "Requests for Certification as a Qualified Small Business" must be submitted electronically through the Authority's EASY system. A small business may submit a single request for certification to be eligible for a twelve-month period. During the twelve-month certification any qualified investment may generate tax credits as long as the provisions and limitations outlined in Section 4 are upheld.

The Request for Certification shall include, but is not limited to:

1. The name, address and contact information for the small business.
  2. Federal income tax identification number of the small business.
  3. Documentation that verifies the type of business activities and a description of the technology, idea, process or application that qualifies the small business for certification. A small business applicant may supplement its request by submitting an independent peer review of the company activities performed by a reviewer acceptable to the Authority.
  4. Total asset information.
  5. The original Revenue disclosure form "285 SBI" for the applicant company.
  6. A statement regarding employment and Arizona residency. Please note a small business must obtain a "Residency Affidavit" for each full-time equivalent employee at the Arizona principal place of business whose sole responsibilities are not administrative. The "Residency Affidavit" form is provided by the Authority via email or on its website. The small business must retain this form and any attached documentation in case of audit.
  7. Documentation that the small business is registered and is participating in the E-Verify program pursuant to A.R.S. § 23-214(B).
  8. Any additional information that the Authority requires.
  9. An original signed affidavit to the Authority in which the small business confirms, at least the following:
    - a. That the investor and its affiliates do not possess more than thirty percent of the voting power of all equity securities of the small business (if applicable)
    - b. That the business shall notify the Authority if it no longer meets the requirements of the program. The notice shall be submitted to the Authority within five (5) business days of the loss of eligibility,
    - c. The right of the Authority to provide Revenue necessary information to administer the program
    - d. The right of the Authority to notify Revenue of misrepresented information on an application, which may initiate a penalty against the small business equal to the amount of authorized tax credits
    - e. The right of the Authority to release certified business names, industry sector and contact information on its website and upon request
    - f. That the information contained in the application is true and correct under penalty of perjury
- B. During review of a substantially complete request for certification, the Authority may ask for additional information, conduct a site visit to the business or discuss the application with the investor or the small business. If required

information is not timely submitted to the Authority the request for certification will be rejected and the applicant notified.

- C. The Authority shall make a determination with regard to each request for certification within 90 days after the date of receipt of a request.
- D. If the Authority denies certification to a small business, the small business may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10. A small business may appeal this decision, however, an appeal does not guarantee receipt of tax credits for the investor under the Angel Investment program as the Authority will not reserve any requested tax credits should an appeal be sought.
- E. If a small business is eligible for certification, the Authority shall issue a letter of certification to the small business and notify Revenue. A letter of certification is valid for a twelve-month period and will state the qualified small business' name, effective dates of the certification, and whether the small business is a rural or bioscience company.
- F. Following certification, if a qualified small business fails to maintain eligibility, the business shall notify the Authority within five (5) business days of failing to meet the requirements.
- G. A small business may apply for an additional twelve-month certification by submitting a new request for certification to the Authority. The procedures described above will apply.

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### **Section 9. Process for Claiming Tax Credits**

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Upon approval of an application, the Authority will authorize the entire amount of tax credits generated by the investment. The investor can claim the credits over the three year period identified in the Authority authorization letter. It is important to know there is a delay between the time of the investment and the time the credits can be claimed. The first year an investor can claim credits is the tax year following the investment year. For example, if an investment is made in 2017, the Authority will authorize tax credits to be claimed in three consecutive tax years beginning in 2018. The investor would claim the credits authorized for tax year 2018 when filing its 2018 tax return, which generally occurs in 2019. Likewise, the investor would claim the credits authorized for tax year 2019 when filing the 2019 tax return, which generally occurs in 2020. The same delay would be true for tax year 2020 credits.

For each of the three consecutive tax years for which credits are authorized, the investor must claim the credits on the form provided by Revenue when submitting an original Arizona tax return. When an investor claims tax credits with Revenue, a copy of the Authority's authorization letter must be attached to the tax return. The investor may use all or part of the tax credits authorized for that year and any carry forward available when filing. Unused tax credits may be carried forward for a maximum of three taxable years. If credits are not timely claimed with Revenue, the credits for that year expire and cannot be used, carried forward or reissued. (A.R.S. § 41-1518(H)) Co-owners of a company (including partners in a partnership, LLC members and shareholders of an S corporation) must each timely claim their pro rata share of the tax credits allowed. Again if credits are not timely claimed with Revenue by co-owners the credits for that year expire and cannot be used, carried forward or reissued. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner. (A.R.S. § 43-1074.02(E)) To download Revenue's forms, visit <http://www.azdor.gov/>

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### **Section 10. Revocation of Certification and Recapture of Tax Credits**

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- A. The Authority may revoke a letter of certification at any time or deny a letter of certification if the small business fails to maintain eligibility (A.R.S. § 41-1518 (I)).
- B. If a qualified small business fails to maintain eligibility, the business shall notify the Authority within five (5) business days of failing to meet the requirements. The Authority shall revoke the letter of certification of the business and may assess a penalty against the business equal to the amount of the tax credits authorized after the business became ineligible (A.R.S. § 41-1518 (I)).
- C. If the Authority discovers that an investor who received tax credits misrepresented information on the application, the Authority shall immediately notify Revenue and provide Revenue all information that relates to that investor (A.R.S. § 41-1518 (J)).
- D. If Revenue determines the investor made a misrepresentation on an application, Revenue shall deny the credit if the misrepresentation relates to the qualifications of the investor or the investment (A.R.S. §41-1518 (J)).



- E. In accordance with A.R.S. § 41-1518 (J), if Revenue determines the investor made a misrepresentation on an application, Revenue shall deny or decrease the credit as follows:
1. If the misrepresentation relates to whether the investment was in a qualified small business, Revenue shall deny the credit only if the applicant knew or should have known at any time before the certification that the representation was false.
  2. If the misrepresentation relates to whether the investment was in a rural or bioscience company, Revenue shall decrease the amount of the credit that would have been allowed under A.R.S. § 41-1518 (E)(1) to the amount allowed under A.R.S. § 41-1518 (E)(2) only if the applicant knew or should have known at any time before the certification that the representation was false.

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Questions regarding the program can be directed to  
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**DISCLAIMER:** Neither the State of Arizona, the Authority, nor their employees warrants the accuracy or reliability of the information and transactions of qualified investors or qualified small businesses and do not endorse any content, viewpoints, products, or services and shall not be held liable for any losses caused by reliance on the accuracy, reliability or timeliness of such information. Any person or entity that relies on any program information, certifications or authorizations from the Authority does so at his or her own risk. The Authority's determination of a qualified investor, qualified small business or qualified investment is only for the purposes of eligibility under the Angel Investment program.