



Economic Development, Investment and Trade

A GUIDE TO

THE SMALL BUSINESS VENTURE CAPITAL

TAX CREDIT PROGRAM

Under

**s. 11.13-11.17 of *The Income Tax Act* (Manitoba) (the "Act")
and Regulation #181/2007 (the "Regulation")**

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Use of this Guide

This guide was developed to assist eligible small businesses in making an application under the Small Business Venture Capital (SBVC) tax credit program. It is intended to be a general guide on the eligibility requirements as well as the administration of the program.

Applicants are advised to read the legislation and regulation pertaining to the SBVC tax credit which may be accessed at www.gov.mb.ca/jec/busdev/financial/sbvctc/index.html

Applicants are also advised to seek legal, accounting and tax advice prior to making an application under the SBVC tax credit program.

Applications may be submitted to:

SBVC Tax Credit Program
Economic Programs Branch
Suite 1010 – 259 Portage Avenue
Winnipeg, Manitoba R3B 3P4
Phone: 204-945-2475
Email: ecdevprograms@gov.mb.ca

Where to find an Application

The application form for the SBVC tax credit program can be found at:

www.gov.mb.ca/jec/busdev/financial/sbvctc/index.html

What information to provide

The application must include (in addition to the application form) the following:

- A copy of the applicant's most recent annual financial statements;
- A copy of the applicant's most recent income tax return and notice of assessment issued by Canada Revenue Agency (CRA);
- A copy of the terms and conditions that will apply to the shares being issued, including any ownership restrictions; and
- A description of the proposed use of the SBVC share proceeds.
- Where the applicant is a start-up, a letter from the applicant's Legal Counsel or Accountant in a form acceptable to the Department.

INTRODUCTION

The SBVC tax credit program assists eligible small business corporations to issue new equity to primarily new investors.

Eligible small business corporations can issue eligible shares for new equity investments of \$100,000 up to a maximum of \$10,000,000. Eligible investors who purchase eligible investments are able to earn a 45% non-refundable tax credit against Manitoba taxes payable. The SBVC tax credit is not a tax benefit for the eligible corporation.

An eligible investor must invest a minimum of \$10,000 during the approval period to be eligible for the tax credit; the maximum investment for tax credit eligibility purposes is \$500,000 per company per investor. The maximum tax credit that may be earned is \$225,000, and the maximum that can be claimed in a tax year is \$120,000. Any unused tax credit may be carried forward for up to ten years or carried back for three years.

Approval to issue eligible shares must be received in advance of the applicant issuing shares OR receiving cash investment from prospective investors.

ELIGIBLE SMALL BUSINESS CORPORATION

An applicant will be eligible to issue shares under the SBVC tax credit program if it meets ALL the following criteria:

1. a Canadian Controlled Private Corporation (CCPC) with a permanent establishment in Manitoba;
2. all, or substantially all of the corporation's assets are used in active business;
3. all, or substantially all of the corporation's revenue is derived from active business
4. the corporation's stated capital is at least \$25,000 prior to the issue of eligible shares;
5. the corporation has either:
 - a. 100 or less full time equivalent employees (defined below), or
 - b. Less than \$15 million in gross revenue
6. 25% of the corporation's employees are resident in Manitoba;
7. it is not a Reporting Issuer as defined in *The Securities Act* (Manitoba); (<http://web2.gov.mb.ca/laws/statutes/ccsm/s050e.php>); and
8. it has previously issued less than \$10,000,000 in eligible shares under the SBVC tax credit program either on its own, or combined with an affiliated company.

FULL TIME EQUIVALENT EMPLOYEE

The number of full-time equivalent employees (FTEs) that an applicant and its affiliates have is important because if it exceeds 100, the applicant will not meet the definition of "eligible small business corporation" and will therefore not be eligible for the SBVC tax credit program.

The application form requires the applicant to indicate how many FTEs the applicant and its affiliates have. Examples of FTE calculations are:

- An employee working 40 or more hours a week for 52 weeks is 1 FTE;
- An employee working 40 hours a week for 26 weeks is 0.5 of a FTE;
- Four employees each working 10 hours a week for 52 weeks is 1 FTE;

AFFILIATES

The applicant's relationship with other corporations may impact on its ability to meet the definition of "eligible small business corporation" because the eligibility criteria are applied on the basis of "the applicant and its affiliates". A company is affiliated if it has the same owner or if it has the same group of owners.

For example: If owners A, B and C own >51% of Company 1 and owners A, B and C own > 51% of Company 2, then Company 1 and Company 2 are affiliated.

Please contact program staff to discuss whether your application will be subject to affiliation rules.

EQUITY SHARE

To be eligible for a SBVC tax credit, the "Equity share" to be issued must be a common share or preferred share that may not be redeemed, sold or transferred during the holding period and represents new shares issued by the issuer.

Shares acquired through the exercise of rights under a convertible debenture are not "equity shares" that can earn the SBVC tax credit. Common shares acquired by converting preferred shares are not "equity shares" that can earn the SBVC tax credit. Common shares acquired by exercising an option (if issued out of treasury) are "equity shares" that may earn the SBVC tax credit.

ELIGIBILITY FOR SBVC TAX CREDIT / ELIGIBLE INVESTOR

- A common or preferred share must be paid for and issued to the investor after the issuer has been approved into the program;
- the eligible investments must have been issued before expiry of the approval period (12 months from approval date unless an extension to the approval period has been granted);
- at any time within the past 24 months, the investor was not a specified shareholder (see Specified Shareholder below);
- the investor must be an accredited investor or must sign an Acknowledgement of Risk Form (provided on approval of the applicant into the program);
- at any time within the past 24 months the investor did not dispose of any capital stock of the applicant or of an affiliate of the applicant, or of a predecessor of either of them; and
- the investor must have paid at least \$10,000 for the eligible investments but not more than \$500,000 for shares issued after April 6, 2021 for the eligible investments;

SPECIFIED SHAREHOLDER

"Specified shareholder", for purposes of the SBVC tax credit program, means a shareholder of a corporation that owns, directly or indirectly, at any time in the year, 35% or more of the issued shares of any class of the capital stock of the corporation or its affiliates. The federal Income Tax Act further explains that the shares owned by anyone related to that shareholder are deemed to be owned by that shareholder for the purposes of this definition.

For an investor to be eligible for the SBVC tax credit, the investor cannot have been a specified shareholder of the applicant or its affiliates at any time within 24 months immediately preceding the purchase of eligible shares.

If an eligible investor becomes a specified shareholder as a result of his or her initial investment, that investor is still entitled to the tax credit for that initial investment, subject to minimum and maximum investment levels. However, as long as that investor continues to be a specified shareholder, they and any parties related to them will not be entitled to further tax credits.

An investor will only be eligible for further tax credits for purchasing eligible shares once they are no longer a specified shareholder for at least 24 months

Applicants need to give consideration to future rounds of financing they may require if they intend to use the SBVC tax credit program to ensure that eligible investors do not inadvertently become specified shareholders in a first financing round, and thus be unable to invest further and receive the tax credit.

USE OF SBVC SHARE PROCEEDS

The SBVC share proceeds must be used within the holding period (three years from date shares issued) for the purposes approved in the application.

PROHIBITED USE OF SBVC SHARE PROCEEDS

The SBVC share proceeds cannot be used for any of the following purposes:

- To invest outside Manitoba;
- To lend to others;
- To pay for a business re-organization
- To pay a dividend or return capital to a shareholder;
- To pay an amount owing to a shareholder, an affiliate, or a person related to a shareholder or affiliate;
- To purchase, develop or maintain land or equipment for sports;
- To support an ineligible activity (see below); or
- To support an activity that does not promote economic development or is contrary to public policy.

INELIGIBLE BUSINESS ACTIVITIES

An applicant whose principal business activity falls into any one of the following activities will not be considered eligible to participate in the SBVC program:

- Professional services that are regulated by a governing body which is established under an Act of the Legislature;
- Providing management, administrative, financial or other similar services;
- Leasing, developing or selling real property;
- Exploring for, developing or processing mineral, oil or gas resources;
- Farming, except for commercial crop production in a climate controlled environment, fishing, hunting, or similar activity but NOT processing products from these activities;
- Holding, operating or granting franchises
- Operating a restaurant, lounge, bar or similar establishment, except for brewpubs;
- Performing arts, amusement or gaming activities; or
- Providing educational, health care, social or other similar service.

APPROVAL PERIOD and EXTENDING THE APPROVAL PERIOD

If an application has been approved, the applicant must issue the eligible investment within the approval period set out in the approval notice. The approval period will expire 12 months after the approval date.

If the applicant needs more time to issue the eligible investments, the applicant may apply in writing to have the approval period extended.

The application to extend should include the following information:

- Whether the applicant still meets the definition of "eligible small business corporation".
- Confirmation that the intended use of the SBVC share proceeds has not changed from what was indicated in sections 12(a) and 12(b) of the approved application.
- Reasons for requesting the extension, including why some or the entire approved amount of equity has not been raised.

PERMITTED SHARE TRANSFERS

Eligible shares must be held by the investor for three (3) years from the date the shares were issued. This is referred to as the "holding period". During this period, the shares issued as eligible investments may not be transferred without the issuer being assessed a penalty on the transferred share amount, equivalent to the amount of the tax credit i.e., 45%.

Two main exceptions to this are:

1. on the death of the investor, the shares may be transferred to the individual's estate or to his/her heirs; and
2. the person to whom the shares are being transferred has agreed to purchase 100% of the outstanding shares of the issuer.

After the "holding period" expires, there are no restrictions on the transfer of the shares.

ANNUAL RETURN OF INFORMATION

Applicants that are approved to issue shares as eligible investments are required to provide an annual report to the administrator for each fiscal period of the issuer that begins during the holding period of the shares.

The annual report consists of:

- financial statements that have been either prepared, reviewed or audited by a professional accountant, who is not an officer or employee of the issuer; and
- a completed information return in the form provided by the administrator to approved applicants.

The information return also includes a questionnaire that is designed to assist the Manitoba Government in evaluating the effectiveness of the SBVC tax credit program.

SHARES ISSUED AS ELIGIBLE INVESTMENTS MAY LOSE THAT STATUS

If, during the holding period, an approved applicant ceases to have a permanent establishment in Manitoba or if fewer than 25% of the applicant's and its affiliates' employees are resident in Manitoba, the shares that were issued as eligible investments lose that status. If this occurs, the approved applicant, not the investor, will be subject to a penalty of up to 45% of the share proceeds.

PENALTIES AND RECOVERY OF TAX CREDIT

If the approved applicant does not abide by the legislation and regulations governing this program, the approved applicant, not the investor, will be subject to a penalty of up to 45% of the share proceeds.

Penalties and recovery of the tax credit are assessed by the Administrator.