

INVESTOHIO ADMINISTRATIVE RULES

122:24-1-01 Definitions.

Capitalized terms used in rules 122:24-1-01 through 122:24-1-14 shall have the following meaning:

- (A) "Annual sales" means the gross sales of the Small Business Enterprise using generally accepted accounting principles for the twelve months preceding the date of the Investment of Money.
- (B) "Application" means the process of submitting a Qualifying Investment with the department of development for the purposes of the InvestOhio Program. An Application may only be completed after both the Eligible Investor and the Small Business Enterprise have registered with the InvestOhio Program, in a manner prescribed by the Director. The Application will identify a specific dollar amount, the date of the Investment of Money, the Eligible Investor and the Small Business Enterprise.
- (C) "Assets" means the total book value of Assets of the Small Business Enterprise using generally accepted accounting principles for the twelve months preceding the date of the Investment of Money.
- (D) "Director" means the Director of the department of development of the state of Ohio.
- (E) "Disqualifying Event" means a situation in which either the Eligible Investor or the Small Business Enterprise performs, or fails or perform, an act that renders either a registered party to the transaction or qualifying transaction between the registered parties partially or wholly ineligible for the tax credit described in Section 122.86 of the Revised Code.
- (F) "Eligible Investor" has the same meaning as described in Section 122.86(A)(3) of the Revised Code.
- (G) "Full-time Equivalent Employees" means, for purposes of Section 122.86(A)(1)(b) of the Revised Code, the quotient obtained by dividing the total number of hours for which employees were compensated for employment at the Small Business Enterprise by two-thousand eighty within the twelve months preceding the date of the Investment of Money. Employment positions in existence for

- less than one full year shall be prorated in determining the number of Full-Time Equivalent Employees at the Small Business Enterprise. Ohio Full-Time Equivalent Employees are those Full-Time Equivalent Employees subject to the tax imposed by Chapter 5747 of the Revised Code or Full-time Equivalent employees that are exempt from the tax imposed by Chapter 5747 of the Revised Code.
- (H) "Investment of Money" means a new investment of cash by an Eligible Investor to a Small Business Enterprise. It does not include a contribution of non-cash Assets or other impermissible investments described in rule 122:24-1-05 of the Administrative Code.
 - (I) "InvestOhio Program" means the tax credit program established in Section 122.86 of the Revised Code. This program is also identified as the "Small Business Enterprise Investment Tax Credit" administered by the Director of development.
 - (J) "InvestOhio Transaction ID" means the alphanumeric code issued by the Director for a Qualifying Investment that has successfully applied to the InvestOhio Program. InvestOhio Transactions IDs are issued sequentially in the order that applications are received.
 - (K) "InvestOhio User ID" means the alphanumeric code issued by the Director to Eligible Investors and Small Business Enterprises that have successfully registered with the InvestOhio Program.
 - (L) "Pass-through Entity" has the same meaning as described in Section 5733.04(O) of the Revised Code.
 - (M) "Managers of the Enterprise" means individuals who have the responsibility for the day to day operations of the business or exercise decision making authority for the entity, regardless of their title, compensation, ownership and regardless of whether they are salaried or hourly employees.
 - (N) "Qualifying Investment" has the same meaning as described in Section 122.86(A)(2) of the Revised Code.
 - (O) "Register" means the process of creating a user account with the InvestOhio Program. Registration may require the establishment of an Ohio Business Gateway account as well. Eligible Investors and Small Business Enterprises must Register separately in order to participate in the InvestOhio Program, even if they are the same

person, and must certify the accuracy of the information provided in each registration.

- (P) "Related Entities" means entities, determined by the Director pursuant to Section 122.86(F)(5) of the Revised Code that: (1) have (i) significant common purposes and substantial common membership or (ii) have directly or indirectly substantial common direction or control; (2) exhibit an ownership structure where either entity owns (directly or through one or more entities) a 50 per cent or greater interest in the capital or profits of the other; or (3) other determinations made by the Director.
- (Q) "Small Business Enterprise" has the same meaning as described in Section 122.86(A)(1) of the Revised Code.
- (R) "Tax Commissioner" means the commissioner of the department of taxation of the state of Ohio.
- (S) "Time of Investment" means the date on which an Eligible Investor completes all of the investments in money to a Small Business Enterprise that are outlined in the Application submitted through the InvestOhio Program, regardless of the date on which the Small Business Enterprise issues the equity to the Eligible Investor
- (T) "United States" means the fifty states, the District of Columbia, Puerto Rico, American Samoa, Guam, Johnston Island, Midway Island, Wake Islands, Northern Mariana Islands, and US Virgin Islands.

122:24-1-02 Procedure for InvestOhio Program.

- (A) The InvestOhio Program is a multistep process in which the following acts must occur:
- (1) The Small Business Enterprises and Eligible Investors that wish to participate in the program must Register with the InvestOhio Program. The registration process is further described in rule 122:24-1-03 of the Administrative Code.
 - (2) After registration is complete, a registered Eligible Investor and a registered Small Business Enterprise must reach an agreement that permits the Eligible Investor to make an Investment of Money to the Small Business Enterprise for an equity interest in the Small Business Enterprise. The Time of Investment must occur in the same state fiscal biennium as Application described in subdivision (A)(3) of this rule.
 - (3) One of the parties to the Qualifying Investment described in subdivision (A)(2) of this rule must apply to the InvestOhio Program. The Application process is further described by rule 122:24-1-04 of the Administrative Code. The date and time in which the Application is received by the Director determines the priority that the Qualifying Investment has under the InvestOhio Program. Each transaction will be given an InvestOhio Transaction ID to denote the priority of the transaction.
 - (4) Once the Application has been submitted to the Director, the Eligible Investor must make the Investment of Money consistent with rule 122:24-1-05 of the Administrative Code.
 - (5) Within six months of the date on which the Investment of Money occurs, the Small Business Enterprise must make allowed expenditures consistent with Section 122.86(A)(1)(c) of the Revised Code.
 - (6) The Director will begin to issue small business investment certificates to those Qualifying Investments that have that met each of the requirements listed in subdivision (A)(1) through (A)(6) of this rule in the order of InvestOhio Transaction IDs. The certificate shall establish the maximum amount of the tax credit that may be claimed; however the amount listed may be reduced if a Disqualifying Event occurs, as described in rule 122:24-1-10 of the Administrative Code. The Director will issue small business investment certificates until the amount of tax credits awarded meets the limitation imposed by Section 122.86(C)(3) of the Revised Code.

(7) The Director will verify the continuing eligibility of all small business investment certificates after the holding period for that transaction has run. The verification process is further described in rule 122:24-1-09 of the Administrative Code. The Director will notify the Eligible Investor and the Tax Commissioner of any Disqualifying Events, which are further described in rule 122:24-1-10 of the Administrative Code.

(8) Eligible Investors that possess small business investment certificates that have not been disqualified may claim a tax credit consistent with Section 5747.81 of the Revised Code.

122:24-1-03 Registration process.

- (A) There are two parties that are required to Register with the department of development as part of the process of issuing a small business investment certificate, the Eligible Investor and the Small Business Enterprise. Registration shall be accomplished using the Ohio Business Gateway at: <http://business.ohio.gov>, or the website address located at: <http://invest.ohio.gov>.
- (B) In order to Register as an Eligible Investor with the InvestOhio Program in accordance with division (A) of this rule, at the location denoted in division (A) of this rule, the following information must be provided: the entity type; its name and address; email address; social security number or federal employer identification number; an acknowledgement that the investment must be for the acquisition of capital stock or other equity interest in a Small Business Enterprise; and such additional information as the Director may deem to be necessary.
- (C) When the registration process has been completed, pursuant to this rule, an InvestOhio User ID will be issued. This number will be used to identify the Eligible Investor throughout the InvestOhio Program. The InvestOhio User ID is used to match the Eligible Investor up to Qualifying Investments, as defined by Section 122.86(A)(2) of the Revised Code. If an Eligible Investor makes multiple investments with the same or different Small Business Enterprises, the same InvestOhio User ID will be used for each Application.
- (D) In order to Register as a Small Business Enterprise with the InvestOhio Program in accordance with division (A) of this rule, at the location denoted in division (A) of this rule, a corporation, Pass-through Entity or other person must provide the following information: the entity type; its name and address; email address; social security number or federal employer identification number, the business registration number issued by the Ohio Secretary of State; its North America Industry Classification System code; information relating to meeting the employee requirement, as described in Section 122.86(A)(1)(b) of the Revised Code; information relating to meeting the sales requirement, as described in Section 122.86(A)(1)(a) of the Revised Code; information relating to meeting the asset requirement, also as described in Section 122.86(A)(1)(a) of the Revised Code; and such additional information as the Director may deem to be necessary.

- (E) When the registration process has been completed, an InvestOhio User ID will be issued. This number will be used to identify the Small Business Enterprise throughout the InvestOhio Program. The InvestOhio User ID is used to match the Small Business Enterprise with Qualifying Investments, as defined in Section 122.86(A)(2) of the Revised Code. If a Small Business Enterprise accepts multiple Qualifying Investments with the same or different Eligible Investors, the same InvestOhio User ID will be used for each Application.
- (F) All registrants are required to update their registration information if changes occur. Each party to a Qualifying Investment must affirm the accuracy of this information in the Application process as described in rule 122:24-1-04 of the Administrative Code.
- (G) The act of registration alone does not entitle either an Eligible Investor or a small business entity to a tax credit under the InvestOhio Program.

122:24-1-04 Application process.

- (A) In order to complete an Application for a Qualifying Investment, both the Eligible Investor and the potential Small Business Enterprise have registered with the InvestOhio Program and have received an InvestOhio User ID. This process is described in rule 122:24-1-03 of the Administrative Code.
- (B) Prior to submitting an Application for a Qualifying Investment, the Eligible Investor and Small Business Enterprise must have exchanged the information necessary to complete an Application for a Qualifying Investment. Either party may apply under the InvestOhio Program. The information necessary shall include:
 - (1) The amount of the Qualifying Investment, which must be an Investment of Money; and
 - (2) The Time of Investment; and
 - (3) (a) In the case of a Small Business Enterprise that wishes to apply, the InvestOhio User ID of the Eligible Investor that will make a Qualifying Investment in the Small Business Enterprise; or

(b) In the case of an Eligible Investor that wishes to apply, the InvestOhio User ID for the Small Business Enterprise in which the Eligible Investor will make a Qualifying Investment.
- (C) This Application is complete when the Qualifying Investment transaction is issued an InvestOhio Transaction ID. The Director will use the InvestOhio Transaction ID to order the priority Qualifying Investments as required by Section 122.86(B) of the Ohio Revised Code. Once an Application is complete, no amendments of that Application will be permitted.
- (D) For purposes of clarification and/or completion, the Director may, from time to time and as necessary, request in writing additional information from Eligible Investors and Small Business Enterprises. The Director will not consider any materials unless they are requested by the Director.
- (E) The Director shall process all transactions in the order of InvestOhio Transaction ID.

- (F) All Qualifying Investments and its corresponding investment Application to the InvestOhio Program must occur within the same State of Ohio fiscal biennium. Failure to comply with this division shall render a small business investment certification all, or partially, void. At the end of each fiscal biennium, the list of InvestOhio Transaction IDs that have not been awarded a tax credit will lapse. At the beginning of each fiscal biennium the Application process starts over, except that registrants from a previous biennium do not have to complete the registration process again. Previous registrants however, are required to update their registration information to the extent that any of the information provided has changed.

The Director will publicly announce, in a manner determined by the Director, with at least ten business days' notice, the date upon which the registration of Qualifying Investments will begin to be accepted in each future state fiscal biennium.

122:24-1-05 Validation of Qualifying Investment.

- (A) Within thirty days of the Time of Investment, or for an Investment of Money made prior to the effective date of these rules, on a date determined by the Director, the Eligible Investor must supply to the Director evidence that the transfer of the Investment of Money has been made. The Time of Investment must occur within thirty days of the date supplied in the Application. Items which may be considered evidence of an Investment of Money can be found in rule 122:24-1-11(C) of the Administrative Code.
- (B) Within thirty days of the date in which the Small Business Enterprise completes its expenditures pursuant to Section 122.86(A)(1)(c)(i)-(v) of the Revised Code, or for expenditures made prior to the effective date of these rules, on a date determined by the Director, the Small Business Enterprise identified in the transaction must supply to the Director evidence of such expenditures. The Director shall prescribe guidelines for what constitutes reasonable evidence of an allowed expenditure. Regardless of when the expenditures are made within the six month period described in Section 122.86(A)(1)(c) of the Revised Code, the Small Business Enterprise must supply to the Director evidence of such expenditures no later than seven months from the date of the Investment of Money.
- (C) On or before the date described in division (A) of this rule, any Eligible Investor that is a Pass-through Entity that wishes to receive a small business investment certificate must provide to the Director a list of partners or members, including the correct legal name, taxpayer identification number, and proportion of ownership interest in the entity. To the extent that any of the parties denoted on this list are themselves a Pass-through Entity, the Eligible Investor that is participating in the InvestOhio Program must supply a list of partners or members, including the correct legal name, mailing address, email address, taxpayer identification number, and proportion of ownership interest in the entity. This process shall continue until all listed parties are individuals subject to the tax found in Chapter 5747 of Revised Code. This allocation of ownership in the Eligible Investor shall determine the amount of tax credit that each owner is entitled to claim, subject to the limitations imposed by Section 122.86(C)(1) of the Revised Code.
- (D) The Director may, from time to time and as necessary, request in writing additional information from the qualifying applicants in order to ascertain whether the parties to the transaction qualifying as Small

Business Enterprises, as defined in Section 122.86(A)(1) of the Revised Code, and Eligible Investors, as defined in Section 122.86(A)(3) of the Revised Code.

- (E) To the extent that the Qualifying Investment is validated, the Application may still be disqualified subject to the provisions of rule 122:24-1-10 of the Administrative Code.
- (F) The cash comprising an Investment of Money cannot be derived from a loan made to the Eligible Investor by or through the Small Business Enterprise when the Eligible Investor intends to make an Investment of Money in that same Small Business Enterprise. Such an arrangement shall be determined to be a subversion of the purpose of the InvestOhio Program pursuant to Section 122.86(F)(5).

122:24-1-06 Issuances of Small Business Investment Certificates.

- (A) Subject to the limitations described in division (C) of this rule, once the Director has determined that the Qualifying Investment meets the requirements of Section 122.86 of the Revised Code and rule 122:24-1-05 of the Administrative Code, the small business investment certificate shall be issued to the Eligible Investor. Tax credits will only be available to the identified owners of Pass-through Entities and only in proportion to their ownership interests. Each member or partner on the list required by division (C) of rule 122:24-1-05 of the Administrative Code shall receive a small business investment certificate for their proportionate share of the Qualifying Investment; however owners that are not identified will be ineligible for a tax credit. No entity or person shall be entitled to claim more tax credit than is allowed under Section 122.86(C)(1) of the Revised Code. Small Business Investment Certificates are not transferrable.

- (B) Except as otherwise provided in division (C) of this rule, to the extent that an Eligible Investor makes an Investment of Money that is different than the amount supplied in the transaction Application, the Director shall only issue a small business investment certificate equal to the lesser of the following:
 - (1) The actual amount of the investment made to the extent it is less than the amount stated in the transaction Application; or
 - (2) The amount supplied in the transaction Application to the extent that the investment in cash exceeds that amount; or
 - (3) The maximum amount permitted by Section 122.86(C)(1) of the Revised Code.

- (C) Pursuant to Section 122.86(F)(5) of the Revised Code, the Director shall consider an Investment of Money that is less than fifty percent of the amount described in the Qualifying Investment Application to be an subversion of the InvestOhio Program and the Director shall deem such lesser investment as a complete Disqualifying Event for the transaction.

- (D) The Director shall issue a partial small business investment certificate to an Eligible Investor that has completed a Qualifying Investment that is accompanied by allowed expenditures if the

amount of the tax credit requested cannot be fulfilled due to the limitation set forth in Section 122.86(C)(3) of the Revised Code.

- (E) To the extent that any disqualifications of investments are determined, pursuant to rule 122:24-1-10 of the Administrative Code, by the Director for InvestOhio Transaction IDs that precede a partial small business investment certificate issued under this division (D) of this rule, the Director shall attempt to complete the unfulfilled portion of the small business investment certificate before continuing to process subsequent Qualifying Investments in a manner and schedule determined by the Director.
- (F) When the total amount of intended Qualifying Investments indicated on transaction Applications reaches the amount that would generate the maximum allocated tax credits in any fiscal biennium, the Director may not issue any additional small business investment certificates for that fiscal biennium.
- (G) The tax credit shall be claimed in accordance with section 5747.81 of the Revised Code.
- (H) The Eligible Investor shall submit the small business investment certificate with the first Eligible Investor's annual return due to be filed under section 5747.08 of the Revised Code after the expiration of the holding period. The Eligible Investor may claim the tax credit listed on the small business investment certificate in the priority order prescribed by Section 5747.98 of the Revised Code. Each year, any credit amount in excess of the tax due for that year under Section 122.86 of the Revised Code, after allowing for all other credits with greater priority than the InvestOhio tax credit, may be carried forward consistent with Section 5747.81 of the Revised Code.

122:24-1-07 Tax Considerations for Eligible Investors.

(A) (1) Eligible Investors are not limited to residents of the State of Ohio. Small Business Enterprises are required to make investments in property used within Ohio, creating a nexus with Ohio for purposes of taxation. The business income of a Pass-through Entity flows through to the equity investors as business income. Therefore, a Qualifying Investment to a Pass-through Entity under the InvestOhio Program allows for an Eligible Investor to file a personal Ohio income tax return and claim a nonrefundable tax credit under Section 5747.81 of the Revised Code, after the requisite holding period has been met.

(2) For example, "Investor A", a Canadian citizen, makes a Qualifying Investment in a Small Business Enterprise that is structured as a limited liability company that is treated as a partnership for federal income tax purposes. As such, "Investor A" is a member of a Pass-through Entity that has nexus with Ohio. Therefore, the business income of the Small Business Enterprise will flow through to "Investor A" and retain its characteristic as business income in the hands of "Investor A". Because "Investor A" now has Ohio-sourced income, "Investor A" will be responsible for paying the Ohio tax on that income. By filing an Ohio personal income tax return as a non-resident, "Investor A" will be able to claim the InvestOhio credit on the Ohio personal income tax return.

(3) Eligible Investors in a Pass-through Entity can only claim the nonrefundable credit on an Ohio personal income tax return. If an Eligible Investor has no other requirement to file an IT-1040 personal income tax return and would normally rely upon the Pass-through Entity to file a composite return on its behalf, the Eligible Investor must notify the Pass-through Entity that they are not to be included in any composite Ohio tax return (e.g., Forms IT-4708) that the entity may file.

(B) (1) Nonresident Eligible Investors in a C Corporation may or may not be able to claim the nonrefundable tax credit. Unlike Pass-through Entities, the business income of the C Corporation does not flow through to the investor. The C Corporation maintains its separate and distinct nature for taxation purposes. Therefore, in order to claim the nonrefundable tax credit, a non-resident would need to have Ohio-sourced income independent from the business income of the C Corporation.

(2) For example, two non-resident "Investor A" and "Investor B", each make a \$1 million equity investment in "Corporation X", a C Corporation. "Corporation X" has more than fifty percent of its United States workforce in Ohio and uses the entire \$2 million to make, within 6 months of the investors' equity investments, expenditures that are authorized under Section 122.86(A)(1)(c) of the Revised Code. "Corporation X" does not issue any dividends to the investors during the holding period. The business income or loss of "Corporation X" does not flow through to its shareholders. Therefore, "Investor A" and "Investor B" will not receive any Ohio-sourced income from "Corporation X." "Investor A" does not have Ohio-sourced income from sources other than "Corporation X", whereas "Investor B" has Ohio-sourced income unrelated to "Corporation X." Under these facts, "Investor A" would not be able to claim the InvestOhio credit whereas "Investor B" would be able to claim the credit. "Investor A" would be able to claim the credit, consistent with Section 5747.81(B) of the Revised Code if "Investor A" has Ohio-sourced income in one or more of the next seven succeeding taxable years.

122:24-1-08 Small Business Enterprise.

- (A) In order for a business entity to qualify as a Small Business Enterprise either its Assets cannot exceed fifty million dollars or its Annual Sales cannot exceed ten million dollars. For example, a business entity having five hundred million dollars of Assets but only nine million dollars in annual sales, would qualify under Section 122.86(A)(1)(a) of the Revised Code. These calculations are to be made at the time of each Qualifying Investment and are to be calculated based upon generally accepted accounting principles.

- (B) In order for a business entity to qualify as a Small Business Enterprise, it must employ at least fifty Full-time Equivalent Employees in Ohio for whom it is required to withhold Ohio income taxes from their wages or more than one-half of the business entity's total number of Full-time Equivalent Employees employed in the United States are employed in Ohio and are subject to the withholding requirement. The determination of whether this employment test has been met is made on the date of each Qualifying Investment. This requirement is illustrated as follows (all employees are assumed to be full-time):
 - (1) A business entity having fifty-one employees working in Ohio and for whom it is withholding Ohio income taxes from their wages will meet the employment test, even if the business has two hundred full-time equivalent employees working in the United States.

 - (2) A business entity having seven employees working in Ohio and for whom it is withholding Ohio income taxes from their wages will meet the employment test, so long as it has no more than thirteen employees working in the United States, even if the business has one thousand full-time equivalent employees working globally.

 - (3) For a new business entity created after July 1, 2011 with no employees at the time of its creation, the new business entity must meet the employment requirement of Section 122.86(A)(1)(b) of the Revised Code prior to receiving any Qualifying Investment.

- (C) A Small Business Enterprise is required to annually update its registration information for the InvestOhio Program, described in rule 122:24-1-03 of the Administrative Code, with the Director. This report shall be in a format established by the Director and shall provide the

Director with information necessary for the Director to make a determination as to the entity's status as a Small Business Enterprise as well as whether the entity is complying with requirements associated with its reinvestment of the Qualifying Investments.

122:24-1-09 Verification of Small Business Investment Certificates.

- (A) Annually on a date determined by the Director and again upon the completion of the holding period for a Qualifying Investment that was given an InvestOhio Transaction ID, the Eligible Investor shall supply to the Director evidence of its continued ownership interest in the Small Business Enterprise that was a party to the Qualifying Investment.
- (B) Annually on a date determined by the Director and again upon the completion of the holding period for a Qualifying Investment that was given an InvestOhio Transaction ID, the Small Business Enterprise shall supply to the Director evidence of its continuous ownership of the property it acquired or employment positions it funded pursuant to Section 122.86(A)(1)(c) of the Revised Code.
- (C) An Eligible Investor shall not claim a tax credit pursuant to Section 5747.81 of the Revised Code if it fails to retain an ownership interest greater than or equal to that which it acquired as a result of the Investment of Money for the entirety of the holding period.
- (D) An Eligible Investor shall not claim a tax credit pursuant to Section 5747.81 of the Revised Code if the Small Business Enterprise fails to retain all of the property or employment positions for which allowed expenditures under division (B) of this rule and consistent with Section 122.86(A)(1)(c) of the Revised Code.
- (E) The Director shall annually, or as often as the Director determines necessary, notify the Tax Commissioner of the following:
 - (1) A registry of all registered Small Business Enterprises; and
 - (2) A registry of all small business investment certificates together with their InvestOhio Transaction IDs; and
 - (3) All known InvestOhio Transaction IDs in which violations of divisions (C) or (D) of this rule have occurred and consequences of those violations.
- (F) In the event that an Eligible Investor is a Pass-through Entity in which only some of the participating owners or members have held their equity or other ownership interests in the Small Business Enterprise

for the applicable holding period, the Director shall disqualify only those owners or members who failed to hold their interests for applicable holding period. The remaining owners or members shall be entitled to claim tax credits equal to their respective Qualifying Investments.

- (G) When the Director disqualifies a small business investment certificate, or any portion thereof, the Director shall restore that amount to the InvestOhio Program and follow the procedures set forth in rule 122:24-1-06(E) of the Administrative Code to continue to award tax credits to InvestOhio Transaction IDs that have not received either their full allocation of tax credits or any tax credit. The Director shall cease reinstatement under this division upon the end of each state fiscal biennium.

122:24-1-10 Disqualification of Small Business Investment Certificates.

- (A) A disqualification of a small business investment certificate may occur at several points in the procedure discussed in rule 122:24-1-02 of the Administrative Code:
- (1) During the process of applying for a small business investment certificate that is set forth in rule 122:24-1-04 of the Administrative Code, as such disqualification is further outlined in division (B) of this rule; or
 - (2) During the validation of the Application for a small business investment certificate that is set forth in rule 122:24-1-05 of the Administrative Code, as such disqualification is further outlined in division (C) of this rule; or
 - (3) During the verification of the small business investment certificate that is set forth in rule 122:24-1-09 of the Administrative Code, as such disqualification is further outlined in division (D) of this rule, after the holding period has run.
 - (4) At any time if the Director determines that an Eligible Investor or the Small Business Enterprise has engaged in any activity that represents an effort to subvert the purpose of Section 122.86 of the Revised Code.
- (B) Application disqualifications. If the Director determines that a Disqualifying Event occurs in an Application for a small business investment certificate (e.g., the investment will not take place during the current state biennium, the proposed amount of the Investment of Money exceeds the amount for which the Director may issue tax credits, one of the registered parties to the transactions is determined to be ineligible to participate in the InvestOhio Program, etc.), the Director shall notify the Small Business Enterprise and the Eligible Investor to that transaction of the Disqualifying Event in writing via email at the addresses provided in their respective registrations. Following notification of the parties, the Director may allow the submission of evidence that rebuts the Director's determination, in a time period specified by the Director. The Director will issue a final determination if this allows for the submission of rebutting evidence and such evidence may be provided by either party to the qualifying transaction.

- (C) Validation disqualifications. If the Director determines that a Disqualifying Event occurs during the validation of an Application for a small business investment certificate (e.g., the Investment of Money was not used exclusively for the acquisition of an ownership interest, the Small Business Enterprise does not reinvest in allowable expenditures, the Small Business Enterprise does not complete its allowed expenditures within the statutory six month time period, etc.) has occurred, the Director shall notify the Small Business Enterprise and the Eligible Investor to that transaction of the Disqualifying Event in writing via email at the addresses provided in their respective registrations. Following notification of the parties, the Director may allow the submission of evidence that rebuts the Director's determination, in a time period specified by the Director. The Director will issue a final determination if this allows for the submission of rebutting evidence and such evidence may be provided by either party to the qualifying transaction.

- (D) Verification disqualifications. If the Director determines that a Disqualifying Event has occurred during the verification period of a small business investment certificate, as described in rule 122:24-1-02(A)(7) of the Administrative Code (e.g., the Eligible Investor does not retain its investment for the full holding period, the Small Business Enterprise does not retain the Assets it purchased for the full holding period, the business enterprise fails to meet the requirements of a Small Business Enterprise, etc.) has occurred, the Director shall notify the Small Business Enterprise and the Eligible Investor to that transaction of the disqualification in writing via email at the addresses provided in their respective registrations. Following notification of the parties, the Director may allow the submission of evidence that rebuts the Director's determination, in a time period specified by the Director. The Director will issue a final determination if he/she allows for the submission of rebutting evidence and such evidence is provided by either party to the qualifying transaction.

- (E) Effect of disqualifications. If a Disqualifying Event occurs, the Director will determine the effect of the Disqualifying Event and adjust the amount of the requested tax credit to align with the proper amount of the Investment of Money and corresponding allowable expenditures. If any amounts of investment are disqualified, the Director will restore that amount to the InvestOhio Program. The Director will then resume processing qualifying transactions that have not received either their full allocation of tax credit or any tax credit in order of their InvestOhio Transaction ID. The Director shall stop processing transactions again

once it has met the limitation described in division (F) of rule 122:24-1-06 of the Administrative Code.

122:24-1-11 Maintenance of records.

- (A) Both Eligible Investors and Small Business Enterprises shall be required to maintain records necessary to prove that they meet the various requirements of section 122.86 of the Ohio Revised Code. The burden of proof shall rest with the Eligible Investor and the Small Business Enterprise and compliance with the suggestions below does not shift the burden of proof to the State, the Director, or the Tax Commissioner.
- (B) All records must be preserved for a period of five years from the completion of the applicable holding period for the Qualifying Investment, as described in Section 122.86(A)(4) of the Revised Code.
- (C) Each Eligible Investor intending to claim the nonrefundable investment credit must maintain, among other things, complete and accurate records to establish the Time of Investment and amount of their Qualifying Investment in a Small Business Enterprise. This documentation could include:
 - (1) Records establishing an equity interest such as stock certificates, membership certificates, partnership agreements, corporate minutes, documentation of the entity's ownership structure immediately before and immediately after the investment, or other legal documents;
 - (2) Records establishing the date and amount of the investment such as cancelled checks, wire transfer authorization, journal entries of the Small Business Enterprise, or the equity accounts of the Small Business Enterprise.
- (D) Each Small Business Enterprise must maintain, among other things, complete and accurate records to establish its qualification as a Small Business Enterprise. This documentation includes:
 - (1) Payroll policies establishing the entity's criteria for an employee being full-time, as well as payroll records showing names and hours of all employees both in Ohio and in the United States.
 - (2) Records necessary to establish and validate the date, amount and location of the investments described in Section 122.86(A)(1)(c) of the Revised Code. This could include contracts, purchase invoices, sales invoices, cancelled checks, wire transfer authorization, bank records, or registration documents.

- (E) The failure to maintain complete records which may be used in verifying the accuracy of the figures reported by the investors or Small Business Enterprises may result in the disqualification of the small business investment certificate, or the nonrefundable investment credit being denied.

122:24-1-12 Signature; Trade Secrets; Redactions.

- (A) The registration, validation of the Investment of Money, and validation of the allowed expenditures submitted by a Eligible Investor or Small Business Enterprise pursuant to the rules set forth in Chapter 122:24-1 of the Administrative Code shall include an attestation that the document has been completed by an authorized representative of the entity required to complete the document or form that the information contained in the Application or report is true, correct, and complete.
- (B) Either an Eligible Investor or a Small Business Enterprise may apply for the Small Business Investment Certificate described in Section 122.86(B) of the Revised Code. At that time, the party that does apply will be required to certify that to the best of their knowledge all of the information contained in the request is a truthful and accurate representation of the Qualifying Investment.
- (C) Information that qualifies as a trade secret under Ohio law may be exempt from release as a public record pursuant to Section 122.36 of the Revised Code. State law generally requires that documents containing both trade secret information and non-confidential information be disclosed with trade secret information redacted. To assist the Director in identifying trade secret information submitted to the Director as part of an Application for certification or otherwise in connection with the certification of a qualified energy project, the applicant should mark trade secret information by placing an asterisk before and after each line containing trade secret information and underlining the information considered to be a trade secret.

122:24-1-13 Delegation of functions.

Except as provided in this rule, each and any of the powers and duties of the Director under this chapter may be performed by the assistant Director of development or such other officers and employees of the department of development as may be designated in writing by the Director or such assistant Director. Any such designation under this chapter shall continue to be effective unless and until it is terminated or superseded in writing, notwithstanding any succession in the office of Director or assistant Director. Any reference in this chapter to the Director includes the assistant Director or such other designated officers or employees.

122:24-1-14 Severability.

If any clause, provision or Application of any of the rules in Chapter 122:24-1 of the Administrative Code is determined to be invalid or unenforceable, such determination shall not affect the remainder of such rule, other Application of the rule, or Application of other rules of this chapter, which shall be applied as if the invalid or unenforceable portion, Application or references to the invalid or unenforceable portion did not exist.