



Ohio Administrative Code

Rule 122:24-1-10 Disqualification of small business investment certificates.

Effective: December 27, 2018

(A) A disqualification of a small business investment certificate may occur at several points in the procedure:

(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 paragraph (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 paragraph (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 paragraph (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. Such efforts shall include, but are not limited to:

(a) An investment of money that is comprised of a loan, granted by or through the small business enterprise to an eligible investor when the eligible investor intends to make an investment of money in the small business enterprise;

(b) An investment of money that is derived from a loan in which the assets of the small business enterprise have been pledged as collateral or otherwise encumbered;

(c) An investment of money that is derived from an extraordinary or non-recurring distribution of equity from the small business enterprise to an eligible investor when the eligible investor intends to



make and investment of money in the same small business enterprise; or

(d) Expenditures allowed pursuant to division (A)(1)(c) of section 122.86 of the Revised Code but that are made with a related party.

(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 invest 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 (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 again met the limitation described in paragraph (F) of rule 122:24-1-06 of the Administrative Code.