VCI ADMINISTRATIVE DEFINITIONS + POLICIES

VENTURE CAPITAL INVESTMENT TAX CREDIT

The Venture Capital Investment (VCI) Tax Credit program improves access to capital for fast growing Indiana companies by providing investors an additional incentive to invest in early stage firms. Investors who provide qualified debt or equity capital to qualified Indiana companies receive a credit against their Indiana tax liability. The Venture Capital Investment Tax Credit is established by I.C. 6-3.1-24 and began in late 2003. The IEDC uses the below definitions and policies to administer the program. Intent of this document is to provide guidance or insight regarding the administration of the program therefore interpretation and application of any definition or policy is at the sole discretion of the IEDC. This document is not guaranteed to be all inclusive and may not provide sufficient guidance for all circumstances, situations, or structures.

QUALIFIED DEBT

I.C. 6-3.1-24-3 Qualified Capital

"Debt investments from financial institutions secured by a valid mortgage, security agreement or other agreement or document that establishes a collateral or security position for the financial institution that is senior to all collateral or security interests of other taxpayers that provide debt or equity capital to the Qualified Indiana Business do not qualify for VCI Tax Credits."

Interpretation of I.C.

Such investments may be secured as long as all investors/taxpayers are equally secured pro rata. There has been an instance where a financial institution and investors had a secured investment pari-passu.

Policy

Further, debt investments may not qualify to the extent that principal be paid or repaid prior to the expiration of a period of at least thirty-six (36) months. Example: Line-of-Credits do not qualify.

Context

Policy was implemented to prevent abuse such as overnight loans. 36 months selected as not being too long or too short in duration since equity holders have no means to sell their respective investments since the securities are not registered therefore no market (not liquid).

Other Debt Policies

- Debt instrument is to be submitted along with the QCI Application for review.
- Debt investments may be treated the same as equity investments for qualified events.
- Qualified events include, but are not limited to, bankruptcy, sale of all or substantially all assets, change in control of majority ownership, a qualified financing (such raise amount is defined by QIB), or an event of default which is not cured.
- Converting debt into equity is allowed at any time, for any reason.
- SAFE agreements are allowed since such instruments are deferred equity instruments.
- Mandatory conversion to equity clause is required for Maturity Dates less than 36 months.
- Debt may not be re-paid or pre-paid prior to the 36 month policy regardless if consent is required from the requisite holders and may not be demanded by the requisite holders regardless if consent is required by the Company, excludes the above noted qualified events.
- QIBs and Investors are informed if the debt instrument template submitted with the QCI Application does not meet such policies.

TWO-YEAR RESIDENCY REQUIREMENT FOR QIBS

Policy

The Company agrees to maintain its headquarters in the State of Indiana for at least two (2) years from the date of it being certified as a Qualified Indiana Business (QIB).

Context

This policy is published in the QIB Approval Letter. Policy was implemented to avoid abuse (raise funds then move). Other State incentives also have a stay requirement, provides consistency.

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LIFETIME MAXIMUM AMOUNT OF CREDITS

I.C. 6-3.1-24-8(c)

Interpretation of I.C.
The phrase 'For a calendar year beginning after (such published date in effect at the time),' has always been interpreted as meaning or having a similar meaning to "starting after" or "effective after", such date published in the code at the time. Then # (2) provided the lifetime cap limitation due to 'lesser of the following' phrase.

INELIGIBILITY OF UNITARY BUSINESS STRUCTURES

Policy
Attempts to create separate entities in order to qualify or obtain TC amounts which may exceed the lifetime policy are considered to be a Unitary Business Model or Structure. Only one entity or Company may qualify for TCs under such structures.

From https://definitions.uslegal.com/u/unitary-business/ Unitary business refers to business activities or operations, which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group. It is characterized by unity of ownership, functional integration, centralization of management and economies of scale. The term can be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership or a trust.

Context
Allowing structures or models which promote multiple lifetime awards is interpreted as violating the intent and spirit of the VCI legislation as a means to circumvent the lifetime policy.

INELIGIBILITY OF UNIDENTIFIED BUSINESS PURPOSE STRUCTURES

Policy
QIB Applicants which cannot identify a specific purpose or project in which the Company will perform qualified activities, as relates to I.C. 6-3.1-24-7 (a) (2), using the funds anticipated to be raised by offering the TCs do not qualify as a QIB. These applicants are referred to as "black box" applicants.

EXAMPLES FOR CONTEXT

An entity applies to be a QIB and intends to use the funds raised to hire tech related personnel. The QIB will market its expertise to the innovative and entrepreneurial ecosystem as the company to engage to develop SaaS and Mobile applications to support e-commerce for entities which do not have their own in-house expertise. Since the QIB Applicant cannot detail to the investors the specific SaaS or Mobile applications they are developing this is a "black box" (unknown) activity. Such structures are viewed as being an outsourcing entity, and not a QIB. Another example is a QIB Applicant that states they design, develop, and sell Mobile Apps. If the applicant cannot specifically inform investors what the application is (because they haven't thought of one yet) this is also the "black box" model even if they state they are not a for hire (outsourcing) entity. The investor has to know what specific activity the QIB will perform with the funds invested. An application which indicates an intent to do a qualified activity is not a specific commitment therefore the intended activity may never be performed by the QIB should they pivot. Fund-of Funds structures are another example of a "black box" entity and such entities are considered QCI Applicants (investors), not QIBs. Funds may apply to become a Qualified Indiana Investment Fund.

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CERTIFICATION FOR INVESTORS FORM

Policy
QCI Applicants are required to obtain a completed Certification for Investors Form (Certification) from the QIB or QIIF in order to obtain a VCI Certification Letter which must be provided to IN DOR to claim the TCs on their respective IN tax return, as set forth in I.C. 6-3.1-24-13. The information that the QIB or QIIF provides in the Certification needs to be accurate within thirty (30) days before or after, receipt of investment funds.

Context
QIB or QIIF affirms to both the investor and the IEDC that they still meet the requirements set forth in I.C. 6-3.1-24-7 to qualify as a QIB or QIIF at the time they accept capital from an investor.

MAJORITY OWNERS NOT ELIGIBLE

Policy
Established by the Indiana Department of Commerce in conjunction with the Indiana Department of Revenue and continued by the IEDC. Revised by the IEDC, Feb. 2013.

Investment up to 50% non-diluted ownership is entitled to credit for existing owners but allows for a majority ownership position as a result of any new investor's initial investment. Incentivizes amount of investment up to a majority limit for existing owners and does not limit outside investors incentive amount for initial investment; maximizes current owner(s) ability to attract outside capital.

Context
Policy was established for two primary reasons: 1) support the intent and spirit of the legislation that the TC is awarded to an investor/taxpayer as a means to assist a QIB in raising outside/ new Venture Capital; and 2) in general the IEDC evaluates incentives offered and provides only a sufficient amount to remain competitive (doesn't automatically provide the max allowable provided in legislation). Therefore IEDC does not need to provide an incentive to an investor which owns a majority of the entity to provide such entity with capital they would have otherwise invested in absence of the TC.

Code Definitions
QIB I.C. 6-3.1-24-2, does not include non-profits because they are not independently owned and operated.

Qualified Capital I.C. 6-3.1-24-3, must be currency and not in-kind services. The phrase 'capital that is provided to' is interpreted as 'cash given to' the QIB in the form of qualified debt or in exchange for equity. Qualified Capital must be unrestricted. Unrestricted means not subject to milestones, draw approvals, investor approvals, escrow, conditions, or any such mechanism or legal structure in which the QIB does not have unrestricted access to the capital.

Currency must be in U.S. Dollars, or after exchanged into U.S. Dollars, prior to certification since IEDC affirms to the IN DOR the amount of capital provided that earned IN tax credits based on U.S. currency.

Not engaged in a business involving I.C. 6-3.1-24-7 (5), may be interpreted broadly since the QIB only has to be a business which performs any activity that "involves" the prohibitions. Involves doesn't mean owns, controls, or other similar terms therefore may include direct or indirect business relationships.

MISCELLANEOUS

Distributed Business Models
Since headcount for distributed business models is widely disbursed the Company must demonstrate that the assets are based in IN. One such example is evidence that the bank account which will hold the funds raised was opened at a branch located in IN so that branch receives credit as being an IN deposit. Also, one active C-suite personnel with managerial responsibility for the Company must be located in IN. For example the CEO.

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QUALIFIED INDIANA INVESTMENT FUND ("QIIF") VCI DEFINITIONS AND POLICIES

I.C. 6-3.1-24-2.5

Definition
Qualified Indiana Investment Fund ("QIIF")
An Applicant must certify to the Indiana Economic Development Corporation the QIIF meets the definition of a Venture Capital Fund per 17CFR275.203(1)-1 based on advice from a licensed professional. General description: A QIIF is not a Private Equity Firm or a Single/Special Purpose investment vehicle such as an LLC. The primary purpose of the fund must be to make numerous high-risk investments in pre-seed, seed, and early-stage high-growth potential businesses in which the primary purpose of such business is the commercialization of R&D, technology transfer, or application of new technology. A Fund must make numerous investments, based on Fund size, to remain a QIIF. A QIIF must provide semi-annual reports on a form prescribed by the IEDC.

Policy
A QIIF may not submit a Qualified Capital Investment ("QCI") Application and receive additional VCI tax credits for any investment made by the Fund.

Context
Investors in a QIIF already received a VCI tax credit for the money invested into the Fund even before the Fund identified or invested in a Qualified Indiana Business or to companies which meet the substantial presence requirement. They may not earn two tax credits on the same investment dollars.

Policy
The IEDC will review the QIIF Semi-Annual Reports not only to ensure the QIIF satisfies the requirements in IC 6-3.1-24-7.5 but also maintains its status an active investor.

I.C. 6-3.1-24-4.5

Policy – Maintaining

Maintain shall mean for a minimum of one (1) year from such date an investment utilizing VCI tax credits is actually provided to, not simply committed to, a qualified business or to companies which meet the substantial presence requirement.

Policy – Headquarters
Headquarters is defined as having the North American Principal Office Address located in Indiana per the Indiana Secretary of State Business Registration Filing and at least one C-Suite position residing in Indiana.

Policy – Payroll
Payroll is defined as total amount of compensation, wages, salaries, bonus, and all other forms of taxable payments made or owed to all company personnel, excluding independent contractors or other outsourced assistance.

Policy
A QIIF which fails to meet investment requirements will be de-obligated and all tax credits may be subject to claw back for the value of the tax credits allocated. IEDC shall determine any party or entity subject to and responsible for the claw back. All decisions by the IEDC are final.

I.C. 6-3.1-24- 7.5

Policy – Prioritizes Investments
Prioritize shall mean at least 60% of invested dollars must be provided to companies which meet the substantial presence requirement or have received funds from the Twenty-First Century Research and Technology Fund (the "21 Fund").

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I.C. 6-3.1-24-8

Policy – Minority Business Enterprise
A Minority Business Enterprise is a Company which is minority owned, controlled, or led at such time the entity applies to become a Qualified Indiana Business (QIB) and maintains QIB status at time of accepting Qualified Capital Investments. The Company is owned, controlled, or led if it has at least 51% minority in its founding/management team or its current governance board or shareholder base; or, the Company is led by a minority group member CEO. "Minority Group" is defined by The Indiana Department of Administration Division of Supplier Diversity (IDOA DSD) 25 IAC Article 5.

Definition – Minority Group
Per the Indiana Administrative Codes, 25 IAC 5-2-1 Definitions "Minority Group" means the following:

(A) Blacks.
(B) American Indians.
(C) Hispanics.
(D) Asian Americans.
(E) Other similar minority groups as defined by 13 CFR 124.103.

Policy – Women's Business Enterprise
A Women's Business Enterprise is a Company which is woman owned, controlled, or led at such time the entity applies to become a Qualified Indiana Business (QIB) and maintains QIB status at time of accepting Qualified Capital Investments. The Company is owned, controlled, or led if it has at least 51% women in its founding/management team or its current governance board or shareholder base; or, the Company is led by a woman CEO.

Definition – Women's Business Enterprise
Per the Indiana Administrative Codes, 25 IAC 5-2-1 Definitions "Women's business enterprise" or "WBE" means one (1) or more persons whose gender is female.

W/MBE Documentation Policy
W/MBE Application Supplemental Documentation includes:

» Detailed, current non-diluted cap table listing all members and ownership percentage;

» Birth certificates covering majority ownership members and/or the CEO; and,

» Current driver's licenses covering majority ownership members and/or the CEO.

Supplemental documents required above is a partial listing of the required documents for W/MBE applicants to the Indiana Department of Administration Division of Supplier Diversity (IDOA DSD). A QIB does not have to obtain W/MBE status from IDOA DSD but Principals would otherwise qualify, if applied.

Policy
To qualify as a CEO, or as a Founder, or as a Principal of a Company

» Must have at least a five (5) percent non-diluted equity interest in the Company.

» A CEO must maintain such position for a minimum of twelve (12) months from the date the qualified investment capital is provided to the Company or must receive IEDC approval to maintain qualified status.

Policy
An existing QIB may apply for W/MBE status. Amount of Tax-Credit Allocated under the new TC percentage will be adjusted to limit the lifetime maximum raise of up to $5M utilizing VCI TCs.

Policy – De-obligation of Awarded Tax Credits
IEDC will not automatically de-obligate credits at the request of an Applicant or Company. IEDC may consider the circumstances for the request prior to final decision. If credits are de-obligated, preference will be given to assigning the credits back to the general annual allotment. QCI Applications are processed via the FIFO method. IEDC will not de-obligate an issued QCI Approval Letter for the purpose of the investor receiving a higher tax credit allocation percentage. All decisions by the IEDC are final.

VCI ADMINISTRATIVE DEFINITIONS + POLICIES
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I.C. 6-3.1-24-8.5

Policy – QIIF Tax Credits
For each QIIF, the maximum amount of tax credits available will be calculated per calendar year and will refresh on January 1 of each year. Tax credits are subject to annual allocation limits.

I.C. 6-3.1-24-15

Policy – Tax Credit Allocation
Effective January 1, 2022, the portion of tax credits which may be allocated to QIIF investors will be allocated to investors making investments in Qualified Indiana Businesses ("QIBs") if the credits have not yet been assigned to QIIF investors after all tax credits allocated strictly to Qualified Indiana Business investors are fully utilized. QIIFs may not be allocated VCI tax credits designated for QIB investments.

Policy – Employee
Employees include all persons engaged in the Company, regardless of compensation. Employee means headcount. Headcount excludes Board of Directors, Advisory Boards, Third-Party Contractors, Interns, Interim and short-term engagements, or Outsourced functions, but does include principals and founders or co-founders.

Policy – Assets Located in Indiana
For assets "located in" Indiana in regards to I.C. 6-3.1-24-7(4), tangible assets must be located in Indiana permanently to be considered located in Indiana. Assets which are easily moved or transported must be located or stationed in Indiana full-time to be an Indiana based asset. Deposit Accounts are considered to be located in Indiana if the Company demonstrates the deposit account was opened at a branch of the depository institution which is located in Indiana. All other forms of intangible assets are considered to be located at Company headquarters, principal office address.

Public Disclosure – Claiming a tax credit for an investment made in a QIIF
NOTICE: a taxpayer may not claim the credit for an investment made in a QIIF before July 1, 2023. A taxpayer may include the tax credit earned for making an investment in a QIIF utilizing the proper tax forms filed on or after July 1, 2023. Tax forms containing a tax credit for an investment made in a QIIF will be declined if filed before July 1, 2023.

Good Standing Policy
Companies and Principals must remain in Good Standing with the State of Indiana for a minimum period of two (2) years from the last date a Company accepted qualified capital from a qualified investor. Failure to be in Good Standing may subject the Company or Principals, or both, from participating in or utilizing Indiana Incentives or Programs for a period of five (5) years. Good Standing means no delinquent or outstanding taxes, reporting requirements, or other State of Indiana compliance or licensing requirement issues.

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VCI Review Committee
IEDC established a VCI review team consisting of at least five (5) members. Odd number to avoid tie breakers. Members usually consist of: VCI Program Manager, Budget Officer, Program Manager, Director of Accounts Management - Counsel, VP Innovation & Strategic Initiatives – Counsel, or Elevate Ventures Counsel. Various positions may have an assignee.

QIB or QIIF Application Decline Appeals
Reviewed by the VCI Review Team and response developed. Engage legal when appropriate. Process is simply to submit in writing the appeal request and reasons which substantiate an approval.

Escrow Accounts
Investors whose investments are placed into an escrow account will not be eligible for the VCI tax credit until the QIB or QIIF provides evidence of the funds being transferred from the escrow account to the QIB's or the QIIF's operating funds account. Escrow accounts are considered restricted funds and subject to conditions.

Third Party Submissions
Applicants are deemed to be fully aware and knowledgeable and are responsible for the accuracy of all information contained in any submission made on their behalf.

Technology Purchases
Applicants which are simply purchasing technology from another entity are not QIBs as such entities are not considered to meet I.C. 6-3.1-24-7(a)(2) is primarily focused on commercialization of R&D, technology transfers, or the application of new technology which is developed or deployed by the applicant. This does not include exclusive licensing agreements for technology use, development, and deployment. Funds received from a QIIF may not be used to purchase technology as such is not considered to meet I.C. 6-3.1-24-7(a)(2).

PROCESSING

Processing Forms
Developed for compliance, accuracy, and history. Processing Checklist Forms: QIB Applications, QCI Applications, QIIF Applications, and QCI Certifications. Forms are scanned with the respective Letters produced.

Processing Review Team
Consists of three members of the Review Committee. Processor, usually the VCI Program Manager, collects necessary documents and creates the checklist. Second Reviewer, usually a Program Manager, reviews checklist and documents for accuracy and compliance. Dual control helps to reduce errors. This dual processing also helps to assure the Signer of the respective Letter produced, usually the Budget Officer, requirements are met and the letter may be signed.

AUDIT

The Qualified Indiana Business (QIB) or Qualified Indiana Investment Fund (QIIF) agrees that the IEDC may elect to engage in monitoring practices independently of, or in conjunction with, other appropriate State agencies or departments at all reasonable times. Upon reasonable notice, the QIB or QIIF shall make available to the IEDC, its agents, or other appropriate State agencies or officials, all books or records in its possession or control which pertain to the Venture Capital Investment (VCI) Tax Credit Program, including but not limited to tax returns, payroll records, capital expenditures, and expense records. If any site visit is made on the premises of the QIB or QIIF the Company shall provide reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of the QIB or QIIF. Should the IEDC make a determination of noncompliance, the IEDC may impose an assessment on the QIB or QIIF in an amount that may not exceed the sum of any and all Venture Capital Investment Tax Credits awarded and may de-obligate any remaining tax credits not allocated.

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