
**Rules of
Department of Economic
Development**

**Division 80—Economic Development Programs
Chapter 7—Certified Capital Companies**

Title	Page
4 CSR 80-7.010 Definitions	3
4 CSR 80-7.020 Procedures	4
4 CSR 80-7.030 Applications	5
4 CSR 80-7.040 Tax Credits; Continuance of Certification; Qualifying a Missouri Small Business; and IRR Determination	6

**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 80—Economic Development
Programs
Chapter 7—Certified Capital
Companies**

4 CSR 80-7.010 Definitions

PURPOSE: This rule provides definitions for terms and phrases contained in the Missouri Certified Capital Company Law, sections 135.500 through 135.529, RSMo Supp. 1997. The following definitions relate to the content of the Missouri Certified Capital Company Law.

(1) “Affiliate of a certified capital company,” as used in sections 135.100 to 135.529, RSMo means “affiliate of a certified company” as used in section 135.500.2(1), RSMo.

(2) “Affiliate of an insurance company” means the same as “affiliate of an investor,” as defined herein.

(3) “Affiliate of an investor” means:

(A) Any person, directly or indirectly owning, controlling, or holding power to vote ten percent (10%) or more of the outstanding voting securities or other ownership interests of the investor;

(B) Any person whose ten percent (10%) or more of outstanding voting securities or other ownership interest are directly or indirectly owned, controlled, or held with power to vote by the investor;

(C) Any person directly or indirectly controlling, controlled by, or under common control with the investor;

(D) A partnership in which the investor is a general partner; or

(E) Any person who is an officer, director, or agent of the investor.

(4) “CAPCO” means the same as a certified capital company.

(5) “Capital in a qualified Missouri business” means capital invested in a Missouri qualified business exclusive of an investment which has a refunding nature, such as a revolving line of credit or the repurchase of equity. In such cases, the annual average amount outstanding at the end of each month shall be the amount of “capital in a qualified Missouri business.” For example, if the annual average (twelve (12) month-end amount outstanding) for the first year is \$100,000, and the second year annual average is \$200,000, then the amount considered to be “capital in a qualified Missouri business” is \$150,000.

(6) “An investment of cash,” as used in section 135.500.2(4), RSMo, means:

(A) An investment of cash in exchange for an equity interest of any type, including common stock, preferred stock, partnership interests, or shares in a limited liability company; or

(B) An investment of cash in exchange for a debt instrument such as a note or debenture; however, such debt instrument must have an original maturity date of at least five (5) years from the date of issuance and may be repaid in accordance with a schedule which is no faster than a level principal amortization over five (5) years, and may not contain payment or distribution features which are related to the certified capital company’s (CAPCO’s) profitability or the performance of the CAPCO’s investment portfolio. In the event a CAPCO redeems or repurchases debt securities within five (5) years of issuance, any premium tax credits used by the investor applicable to such debt securities shall be immediately repaid to the Department of Economic Development.

(7) “Primary business activity,” as used in section 135.500.2(5), RSMo, means that the CAPCO’s preponderance of business operations are for the investment of cash in qualified Missouri businesses.

(8) “Investor,” as used in section 135.500.2(8), means “any insurance company that contributes cash.” The insurance company/investor must either purchase an ownership position in a CAPCO; provide a loan to a CAPCO; or some combination thereof, if the CAPCO is established as a for profit entity. If the CAPCO is a nonprofit entity, the insurance company/investor may provide a loan to the CAPCO or make a contribution with no further repayment consideration.

(9) “Liquidating distributions,” as used in section 135.500.2(9), RSMo, means distributions, except: a) qualified distributions and b) repayments of principal and interest on indebtedness of the CAPCO, including indebtedness of the CAPCO on which investors earned premium tax credits. Earnings include any funds provided to an investor or the CAPCO except qualified distributions.

(10) “Reasonable costs and expenses of forming, syndicating, managing, and operating the certified capital company,” as used in section 135.500.2(11)(a), RSMo, means an annual management fee paid to a CAPCO or to an affiliate of a CAPCO in an amount that does not exceed two and one-half percent (2 1/2%) of the CAPCO’s certified capital, plus reasonable and necessary fees paid for professional services (such as legal and accounting services) related to the operation of the CAPCO. Professional firms providing services to

a CAPCO cannot be affiliated with the CAPCO, or such fees shall be included in the limit for the CAPCO or CAPCO affiliate.

(11) “Management fees for managing and operating the certified capital company,” as used in section 135.500.2(11)(b), RSMo, means “reasonable costs and expenses,” as stated in section 135.500.2(11)(a), RSMo.

(12) “Any increase in federal or state taxes,” as used in section 135.500.2(11)(c), RSMo, means distributions related to the payment of such taxes resulting from the earnings or other tax liability of the CAPCO.

(13) “Independently owned and operated business,” as used in section 135.500.2(13), RSMo, shall not include a business that, when taken together with any company (other than a CAPCO that intends to invest in the business) owns fifty percent (50%) or more of the equity of such business at the time the CAPCO invests in the business, and does not meet the other requirements of a “qualified Missouri business” as stated in section 135.500.2(13), RSMo.

(14) “Located in Missouri,” as used in section 135.500.2(13), RSMo, means that the primary operations of the business is physically located in the state of Missouri at the time of the CAPCO’s investment.

(15) “In need of venture capital,” as used in section 135.500.2 (13), RSMo, means the company requires additional debt and/or equity funds for expansion, additional sales growth, modernization, or retention of current operations, except that the requirement of funds would generally not include funds for a business that plans to relocate from one (1) area (generally thirty (30) miles or more) in the state to another, unless it can be documented that, but for the CAPCO’s investment, the business would relocate to another state.

(16) “Venture capital,” as used in section 135.500.2(13), RSMo, means any type of debt financing and/or equity investment.

(17) “Cannot obtain conventional financing,” as used in section 135.500.2(13), RSMo, means that the business has failed in an attempt to obtain loan funding from banks or other commercial lenders, or that the business could not reasonably be expected to qualify for such loans under normal commercial lending standards.

(18) “Such business shall have no more than two hundred employees, eighty percent of which are employed in Missouri,” as used in section 135.500.2(13), RSMo, means that



such employment requirements are applicable at the time that the CAPCO invests in the business.

(19) "Such business shall be involved in commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce," as used in section 135.500.2(13), RSMo, means that over fifty percent (50%) of the revenue of the business for the immediately preceding calendar year or, if a new enterprise, fifty percent (50%) of the projected revenues of the new enterprise must be derived from these specified types of commercial categories taken as a whole. Service means conducting work on behalf of another person or business.

(20) "Qualified Missouri business," as defined in section 135.500.2(13), RSMo, shall not include:

(A) A business engaged primarily as a passive business (irregular or noncontinuous operations, or which derives substantially all of its income from passive investments that generate interest, dividends, royalties, or capital gains);

(B) A subsidiary of the CAPCO;

(C) Another CAPCO;

(D) An affiliate of the CAPCO (except that, pursuant to section 135.500.2(1), RSMo, if a legal entity is not an affiliate before a CAPCO initially invests in the entity, it will not be deemed an affiliate of the CAPCO merely as a result of the CAPCO's investment);

(E) An investor of the CAPCO or an affiliate or subsidiary of an investor of the CAPCO (unless approved in writing by the department);

(F) Any business whose primary operation is retail sales, real estate sales or development; insurance; or professional services provided by accountants, lawyers, or physicians. ("Primary," as used in this sentence, shall mean over fifty percent (50%) of the business' revenues for the preceding fiscal year, or, if a new enterprise, projected revenues over fifty percent (50%) of its projected revenue for its first fiscal year, taken as a whole); or

(H) Any business that promotes a religion, political party or candidate, any illegal business, or gambling.

(21) "Services in interstate commerce," as used in section 135.500.2(13), RSMo, means that the business must demonstrate the reasonable potential that, within a period of at least three (3) years after the date of the CAPCO's investment, at least one-third (1/3) of its annual revenues will be derived from out of the state of Missouri. The department shall determine whether or not such business will

likely meet the one-third (1/3) out-of-state revenue requirement based on—

(A) The typical in-state/out-state sales of other similar service companies; and

(B) Whether a marketing plan of the business provides reasonable documentation that the company can derive at least one-third (1/3) of its revenue from out of state within three (3) years. The failure of a qualified Missouri business to achieve the out-of-state revenue test shall not be a cause for decertification of the investment or any other penalty.

(22) "In existence," as used in section 135.500.2(13), RSMo, means the date that the business first started producing a product or providing a service.

(23) "Related provisions," as used in section 135.500.2(14), RSMo, are sections 148.320, 148.340, and 148.376, RSMo.

(24) "Funding period," as used in section 135.505, RSMo, shall mean the time (twelve (12) months from the date of certification) that the CAPCO has to obtain its investments from investors.

(25) "At all times during the company's (CAPCO's) participation in the program," as used in section 135.508, RSMo, is the time period between the date that the CAPCO is certified and the date the CAPCO has invested at least one hundred percent (100%) of its certified capital in qualified Missouri businesses.

(26) "Liquid asset base for certified companies," as used in section 135.508, RSMo, means a contribution, equity investment, or loan to the CAPCO from any source. The liquid asset base shall be segregated and separately accounted for on the CAPCO's books in an account known as the "CAPCO Liquid Asset Base Account" (hereafter referred to as base account). The base account may be invested in—

(A) Certificates of deposit or other obligations, maturing within three (3) years after acquisition thereof, issued by any bank or trust company incorporated under the laws of the United States of America;

(B) Marketable obligations maturing within five (5) years or less after the acquisition thereof which are rated "A" or better by any nationally recognized credit rating agency;

(C) Mortgage-backed securities with an average life of five (5) years or less, after the acquisition thereof, which are rated "A" or better by any nationally recognized credit rating agency;

(D) Open market commercial paper;

(E) Interests in money market funds, the portfolio of which is limited to cash and the

obligations described in subsections (26)(A) through (D) above; or

(F) With the prior written approval of the Department of Economic Development, qualified investments as defined in the Missouri Certified Capital Company law. The base account shall be a minimum of five hundred thousand dollars (\$500,000). Any amounts in excess of five hundred thousand dollars (\$500,000), including earnings on the liquid asset base, may be withdrawn from the liquid asset base and placed in qualified investments.

(27) "Thoroughly acquainted," as used in section 135.508, RSMo, means the officers, directors, partners, trustees, and managers of a CAPCO must sign a notarized sworn affidavit which certifies that they have read and fully understood the requirements of sections 135.500 to 135.529, RSMo.

(28) "Distributions," as it appears in section 135.516.2, RSMo, that includes the phrase "other than qualified distributions" in the same sentence, is meant to be "liquidating distributions," as defined in section 135.500.2(9), RSMo.

(29) "A cost," as used in section 135.516.3, RSMo, means "an amount."

AUTHORITY: section 135.529, RSMo Supp. 1997. Emergency rule filed Jan. 2, 1997, effective Feb. 3, 1997, expired July 1, 1997. Original rule filed Dec. 15, 1997, effective June 30, 1998.*

**Original authority 1996.*

4 CSR 80-7.020 Procedures

PURPOSE: This rule describes certain procedures to be followed in the operation of the Missouri Certified Capital Company Law as contained in sections 135.500 through 135.529, RSMo Supp. 1997.

(1) One hundred percent (100%) of the cash being invested in a business by a certified capital company (CAPCO) must be for operations of the business located within the state of Missouri. Such funds cannot be used for capital improvements, working capital, or other costs (with the exception of marketing activities) for operations outside the state of Missouri.

(2) Not for profit entities may be certified as CAPCOs. Because such entities may not sell stock in their corporations, investors in a not-for-profit CAPCO (or for-profit CAPCO) may be insurance companies that either make

a contribution to the CAPCO or provide a loan to the CAPCO.

(3) Being a managing general partner of a CAPCO or controlling the direction of investments of a CAPCO shall not preclude an insurance company from exercising its legal rights and remedies (which may include the interim management of a CAPCO) in the event that a CAPCO is in default of its statutory obligations or its contractual obligations to its investors. In the event an insurance company does assume an interim management capacity of a CAPCO, it must immediately notify the department and provide a plan and timetable for selecting another CAPCO manager.

(4) Notifications to the Department of Economic Development from a CAPCO may be in the form of facsimile, e-mail, regular mail, express mail, or overnight courier. In the case where receipt cannot be verified (facsimile and e-mail), the sending party may telephone the receiving party to verify receipt with a verification code.

(5) Certified capital which has not yet been placed in qualified investments may not be invested in an investor of the CAPCO or an affiliate or subsidiary of such investor of the CAPCO. Such funds may also not be invested with a person (or another entity in which the person or an immediate family member has a substantial interest) who is affiliated (employee, agent, or board member) with a principal person of the Missouri Department of Economic Development who is involved in administering the CAPCO program.

(6) Distributions or payments to debt holders of a certified capital company may be made without restrictions. The restrictions that apply to liquidating distributions do not apply to such payments, including payments made with respect to debt on which tax credits were earned. However, all such payments are to be included in the internal rate of return calculation.

AUTHORITY: section 135.529, RSMo Supp. 1997. Emergency rule filed Jan. 2, 1997, effective Feb. 3, 1997, expired July 1, 1997. Original rule filed Dec. 15, 1997, effective June 30, 1998.*

**Original authority 1996.*

4 CSR 80-7.030 Applications

PURPOSE: This rule describes the procedure by which an entity makes application to the

Department of Economic Development to be certified as a certified capital company.

(1) Applications may be submitted by hand delivery or mail to the Missouri Department of Economic Development, Room 720, P.O. Box 118, Truman Office Building, 301 W. High Street, Jefferson City, MO 65102, no earlier than 9:00 a.m., February 10, 1997. Three (3) copies of such application, all with original signatures, must be submitted. Any proposed application submitted prior to that time (whether by hand delivery, mail, or otherwise) shall be considered as not received by the department and shall be returned to the applicant in the same manner in which it was delivered to the department. The department shall review and approve or reject applications in the order submitted, except in the case of incomplete applications or applications for which additional information is requested by the department and is not supplied by the certified capital company (CAPCO) within the allowable time limits established in section (4) of this rule.

(2) In the event more than one (1) application is received by the department on any date, all such applications will be reviewed and approved simultaneously except in the case of incomplete applications or applications for which additional information is requested by the department and is not supplied by the CAPCO within the allowable time limits established in section (4) of this rule.

(3) A completed application shall include the following:

(A) Legal name, address (of headquarters and all other operations), telephone number, contact person for the CAPCO, and a sworn statement signed by the chief officer of the CAPCO that the headquarters and primary operation of the CAPCO will remain in Missouri for the lifetime of the CAPCO;

(B) A listing of the liquid assets of the CAPCO (which must be at least five hundred thousand (\$500,000)), with supportive documentation;

(C) Current certificate of good standing from the Missouri secretary of state (if the CAPCO is a corporation);

(D) A listing of all members (with home addresses, Social Security numbers, and dates of birth) of the board of directors, partners, trustees, and managers (principals) of the CAPCO or CAPCO affiliates;

(E) A notarized sworn affidavit from all principals of the CAPCO or CAPCO affiliates involved in the management of the CAPCO stating that they—

1. Have read sections 135.500 to 135.529, RSMo;

2. Fully understand the requirements of the CAPCO statute;

3. Are not affiliated (employee, board member, or agent) with a principal of the Missouri Department of Economic Development or the Missouri Development Finance Board, and will not be affiliated with such persons during their affiliation with the CAPCO;

4. Will not be affiliated (employee, board member, owner, or agent) with an investor of the CAPCO (or if so, has disclosed such affiliation);

5. Have never been convicted of or are not currently under indictment or prosecution for securities fraud or other criminal acts (other than minor vehicle violations);

6. Have no overdue federal, state (any state in the United States), or local (any local government in the United States) tax payments or liens, or outstanding child support payments (from Missouri or any other state);

7. Have not filed for personal bankruptcy within the past ten years; and

8. Have not been ordered to pay, or are not currently involved in legal action with the state of Missouri or any agency thereof for the payment of funds owed to the state, any agency of the state of Missouri, or other parties that the state of Missouri represents;

(F) A certification from the chief officer of the CAPCO that the principals named in the application are a complete and accurate listing of all principals of the CAPCO and any CAPCO affiliates involved in the CAPCO's management, and that persons affiliated with an investor of the CAPCO are not and will not control the direction of investments of the CAPCO;

(G) Organizational documents of the CAPCO (certified copy of articles of incorporation or organization, partnership agreements, or other similar documents) or, if the CAPCO is to be managed by a management company or CAPCO affiliate, similar organizational documents as previously specified;

(H) The names and addresses of at least two (2) key employees of the CAPCO, or an affiliate of the CAPCO who are involved in the CAPCO's management decisions, and who will work and reside within the state of Missouri;

(I) Business history of the CAPCO (a listing of all business activities within the past three (3) years, including a listing of all venture/seed capital investments in such period). (If the CAPCO has just been formed, the business history is not required);

(J) A certification by the chief officer of the CAPCO that any offering material involving the sale of the CAPCO's securities to an investor shall include the following statement: "By authorizing the formation of a certified capital company, the state of Missouri does not necessarily endorse the quality of management or the potential for earnings of

such company, and is not liable for damages or losses by an investor. There are certain statutory limits on the amount of tax credits that may be granted under the provisions of subsection 3 of section 135.503, RSMo. These statutory limits may limit the amount of tax credits that may be earned by any investor as a result of an investment in a Missouri certified capital company. In the event certain statutory provisions (as specified in sections 135.500 to 135.529, RSMo) are violated, the state of Missouri may revoke unused tax credits and require repayment of used tax credits”;

(K) Copies or drafts of all offering materials used or to be used in investor solicitations;

(L) A certification signed by every principal of the CAPCO that acknowledges and approves the following conditions for certification as a CAPCO:

1. The CAPCO shall immediately notify the department when the CAPCO is unable to continue as a viable going concern; when it is subject to litigation which may affect its viability, or if the key management that previously directed or maintained the investments are no longer affiliated with the CAPCO;

2. The CAPCO shall maintain as its primary business activity the investment of seed/venture capital in qualified Missouri businesses;

3. The CAPCO shall be headquartered and have its primary business location within the state of Missouri and at least two key employees of the CAPCO or an affiliate (who are involved in the CAPCO’s investments) shall work and reside within the state of Missouri; and

4. Any false, inaccurate, or misleading information provided in the application may be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such certification.

(4) In the event that an incomplete application is submitted or additional information is requested by the Department of Economic Development, the department shall notify the applicant within fifteen (15) working days of receipt of the application. If an incomplete application is completed or incomplete information is supplied within five (5) working days of the applicant’s receipt of such notice, then the completion of the application or submission of additional information shall have no effect on the date by which the certification applied for must be issued or refused under section 135.508, RSMo, or its place in line for review and approval for certification. If an incomplete application is not completed

or the additional information is not supplied within five (5) working days of the applicant’s receipt of the notice thereof, then the number of days in excess of the fifteen (15)-day period shall be added to the seventy-five (75)-day period provided for in section 135.508, RSMo. If such information is not supplied within one hundred and fifty (150) days of the date that the applicant received the notice of an incomplete application or request for additional information, the application shall be deemed to be withdrawn, and the department has no obligation to provide additional notices to the applicant.

(5) Notwithstanding the provisions of section (4) above, evidence that the five hundred thousand dollar (\$500,000)-liquid asset base is available must be submitted at the time of application, or the application shall be deemed not to have been filed. Any application that is deemed not filed by operation of this paragraph must be resubmitted in its entirety, and its place in line for review and approval for certification shall not begin until such resubmission with appropriate evidence that the five hundred thousand dollar (\$500,000)-liquid asset base is available.

(6) The department shall not recognize applications or will not certify a CAPCO if there has been an exchange of money or other consideration for purposes of gaining an increase in a CAPCO’s place in line for review and approval of an application for certification. If a CAPCO or CAPCO affiliate has purchased the assets or otherwise taken control of another CAPCO for the purpose of gaining certification, such CAPCO shall immediately be decertified.

(7) The department shall recognize an application for recertification from CAPCO’s certified or recertified in an immediately preceding year. This application should be presented in the form of a letter listing any changes over the previously filed full application. The CAPCO must provide evidence that the original five hundred thousand dollar (\$500,000)-liquid asset base is still available. Capital raised through different allocations must be administered through separate funds for the purpose of measuring investment benchmarks.

AUTHORITY: section 135.529, RSMo Supp. 1997. Emergency rule filed Jan. 2, 1997, effective Feb. 3, 1997, expired July 1, 1997. Original rule filed Dec. 15, 1997, effective June 30, 1998.*

**Original authority 1996.*

4 CSR 80-7.040 Tax Credits; Continuance of Certification; Qualifying a Missouri Small Business; and IRR Determination

PURPOSE: This rule describes the methods for claiming tax credits, for continuing certification as a CAPCO, for qualifying as a qualified Missouri small business, for the making of payments to the Missouri Development Finance Board, for decertification of CAPCOs by the Department of Economic Development, for conducting audits, for determining conflicts of interest, for determining whether records are open or closed, and for maintaining communications between the Department of Economic Development and CAPCOs.

(1) Tax credits shall not be approved or denied before the official tax credit allocation date as announced by the department. The announcement of the allocation date shall not be less than thirty (30) days in advance of such date. Tax credits shall be approved or denied in the following manner:

(A) Tax credits will be allocated to CAPCOs in the order that the required information is filed with the department on Form 135-5, Part A. The information required is—

1. The name of each investor;
2. The amount of the investment of certified capital or the amount of a binding letter of intent for the investment of certified capital;
3. The amount of tax credits requested; and

4. The date the certified capital was received or the date a binding letter of intent was made. A binding letter of intent from the investor is needed to allocate the tax credits. A binding letter of intent is an agreement of an investor to commit an investment of certified capital. The amount of the commitment is subject to reduction only if the investor’s ability to make an investment of certified capital is limited by the application of section 135.503(4) or reduced by the rebalancing allowed under 4 CSR 80-7.040(1)(M). A binding letter of intent from an investor must be converted into an investment of certified capital in a CAPCO within thirty (30) days from the date that such CAPCO receives written notification of the allocation of tax credits pursuant to section 135.503(4). A CAPCO may not submit a binding letter of intent from an investor exceeding the ten (10) million dollar investor limit, except as allowed in 4 CSR 80-7.040(1)(N). A CAPCO may not submit binding letters of intent from investors exceeding the twenty-five (25) million dollar per CAPCO limit, except as allowed in 4 CSR 80-7.040(1)(K).

(B) In the event that more than one (1) CAPCO submits the specified documentation

to the department requesting tax credits on the same day, and the amount of such proposed investments exceed the limit of available tax credits, the amount of tax credits approved shall be approved *pro rata* to the amount requested. For example, in a given calendar year, if CAPCO A's investors request twenty (20) million dollars (over ten years) in tax credits; CAPCO B requests twenty-five (25) million dollars; and CAPCO C requests twenty-five (25) million, then the total requests seventy (70) million dollars exceed the 1997 limit of fifty (50) million dollars in tax credits. Therefore, CAPCO A's investors would be provided \$14,286,000 in tax credits (over ten years), CAPCO B's investors would be provided \$17,857,000 in tax credits, and CAPCO C's investors would be provided \$17,857,000 in tax credits. For the purpose of calculating allocations, the amount of tax credits requested by an investor (and its affiliates) shall not exceed the limitations described in subsection (1)(N) of this rule;

(C) The department shall notify each CAPCO of the aggregate amount of credits allocated to its investors within five (5) days after the official tax credit allocation date. Once the CAPCO is allocated tax credits the CAPCO must submit the name of each investor, the amount of the investment of certified capital and amount of tax credits to the department for issuance of tax credits. Such information must be submitted on Form 135-5, Part B to the department, along with evidence that the investment was made within thirty (30) days of the allocation. Such evidence is a copy of the check from the investor to the CAPCO, or in the case of a wire transfer, a certification from the financial institution that administered the transfer certifying that such transfer was completed.

(D) Any investments from an insurance company (equity, debt, or other cash investment) received by a CAPCO or CAPCO affiliate prior to the department's approval of a CAPCO's certification will not be deemed to be certified capital, therefore, no tax credits will be issued. Prospective investments by an insurance company in a CAPCO may be placed in an escrow account with the intent of being invested in a CAPCO upon the approval of certification, however, such prospective investments placed in the escrow account must be returned if the CAPCO does not receive certification;

(E) Investments made by an insurance company in a CAPCO prior to January 1 in the calendar year in which additional tax credits become effective, as provided for in section 135.503.3, RSMo, are not eligible for tax credits;

(F) Within thirty (30) days after the transfer or sale of tax credits, the original holder

of the tax credits ("transferor") shall notify the department in writing of the name of the new holder of the tax credits ("transferee"), the amount of tax credits transferred, the sale price of such credits, the date the transfer occurred, the tax identification number of the transferee, and the remaining balance of tax credits held by the transferor. In the event such notice is not received by the department within the thirty (30)-day limit, the transfer shall be void;

(G) There is no limitation on the value of tax credits that may be sold, except that tax credits may be sold only to insurance companies;

(H) If the transferor has an A.M. Best rating less than "A," the department may require such transferor to post or provide acceptable security to the department for the full amount of the tax credits received prior to any transfer. In the event the department requires security to be posted or provided, such security may be in the form of bonds, a bank letter of credit, or low risk marketable securities acceptable to the department. Such securities will be held by the department until the CAPCO has invested one hundred percent (100%) of its certified capital in qualified Missouri businesses and the annual review of the CAPCO is completed. If the CAPCO is decertified, the department may immediately draw on that security for the amount, which is required to be repaid as a result of the decertification. There is no requirement for the transferee to provide security for the amount of tax credits received;

(I) A CAPCO or its investors may not receive state tax credits from the Capital (Small Business Investment) Tax Credit Program, the Community Bank Tax Credit Program, the Development Tax Credit Program, or the Seed Capital Tax Credit Program for qualified investments made by the CAPCO;

(J) Investments made by an insurance company in a prospective CAPCO (an entity that submits an application to the department requesting to be certified as a CAPCO), prior to the time such certification is granted, are not eligible for tax credits;

(K) The maximum amount of new earned and vested tax credits (those above the amounts available from previous years) that will be provided in any calendar year to investors in any one CAPCO (or CAPCO affiliate, if such CAPCO affiliate has an interest in more than one CAPCO) will be limited to twenty-five (25) million dollars. If the entire amount of tax credits is not allocated within sixty (60) days after the official tax credit allocation date, such per CAPCO limitation shall not apply.

(L) In the event certified capital is invested by an investor in a certified CAPCO, and such certified capital is not eligible for tax

credits due to the limitations of section 135.503.3, RSMo, or the limitations imposed by subsection (1)(J), the investor may withdraw such certified capital at any time without restriction;

(M) In the event the department receives a notification of receipt of certified capital (on Form 135-5, Part A) from a CAPCO and limitation with respect to tax credits apply, the department shall notify the CAPCO of the total amount of credits which are available within fifteen (15) days. Upon receiving such notice, the investors and/or the CAPCO may rebalance the amounts actually invested by each investor in a manner which will fully utilize the tax credits allocated to the CAPCO. The CAPCO shall have forty-five (45) days in which to use all of the allocated credits. If the CAPCO does not receive investments in certified capital equaling the aggregate amount of tax credits allocated within the forty-five (45)-day time period, that portion of the tax credits will be forfeited and the department will reallocate the unfunded portion of the tax credits to the investors in other CAPCO's *pro rata* based on the amount of credits requested by each.

(N) The maximum amount of new earned and vested tax credits (those above the amounts available from previous years) that will be provided prior to any calendar year to any one investor (or its affiliates) in one or more CAPCOs will be limited to ten (10) million dollars. If the entire amount of tax credits is not allocated within sixty (60) days after the official tax credit allocation date, such per investor limitation shall not apply. For the purpose of calculating this limitation, tax credits which have been acquired by or transferred to the investor (or its affiliates) which were earned by another investor in that calendar year will be included.

(O) Once the department has made an allocation of tax credits under section 135.503(3) and 135.503(4), RSMo, which equals in the aggregate the maximum amount of credits that may be allowed and allocated to investors in any calendar year, the department will not accept and will not consider additional requests for allocation of tax credits for that year.

(2) The following describes how CAPCOs may retain their certification and procedures to be followed if decertification occurs:

(A) To continue to be certified, a CAPCO shall make investments according to the following schedule:

1. Within two (2) years after the date on which a CAPCO is certified, at least twenty-five percent (25%) of its certified capital shall be, or have been, placed in qualified investments;



2. Within three (3) years after the date on which a CAPCO is certified, at least forty percent (40%) of its certified capital shall be, or have been, placed in qualified investments; and

3. Within four (4) years after the date on which a CAPCO is certified, at least fifty percent (50%) of its certified capital shall be, or have been, placed in qualified investments;

(B) For the purposes of this rule, the dates of required qualified investments shall be referred to as milestone dates. The term "placed," in this context, means the date funds are received by the qualified Missouri business from the CAPCO, as evidenced by the date of a check or other means of funds transfer. The CAPCO must submit the following information to the department within thirty (30) days of the milestone dates:

1. The amount of certified capital placed in qualified investments as of the milestone date; and

2. The amount of total certified capital provided by investors to the CAPCO as of the milestone date;

(C) In the event that the CAPCO fails to meet the milestone dates, or in the event the CAPCO fails to submit the information required in paragraphs (2)(B)1. and 2. of this rule within the time period specified, the CAPCO shall be notified and allowed to resolve the deficiency within one hundred twenty (120) days. In the event the deficiency is not resolved within the time limit, the CAPCO may be decertified by the department;

(D) In the event that all the milestones are achieved, but the CAPCO is subsequently decertified, the department may not recapture tax credits claimed in the years prior to the tax year which the decertification occurred. In the event that the CAPCO willfully provides materially false or incorrect information with respect to the milestones that would have resulted in the decertification of the CAPCO, full recapture of all tax credits may be required by the department; and

(E) In the event that decertification occurs, the investor(s) into the CAPCO shall, within thirty (30) days of receipt of notice sent by the department, submit funds in the amount of all premium tax credits previously claimed by the investor and subject to recapture, if any, with respect to its investment in the CAPCO. In the event an investor fails to provide the department with such funds within the thirty (30)-day time period, a penalty based on .0003 per day of the amount owed shall be added until paid. In addition, the investor shall pay any legal or other costs relating to the collection of such payment. Payment shall be in the form of cashier's check made payable to the department, or a wire transfer to the department.

(3) The following describes the information which a CAPCO must submit to the department certifying that a company in which it proposes to invest is a qualified Missouri small business, and outlines the procedures for required communications between a CAPCO and the department:

(A) The information the CAPCO must submit to the department prior to the initial investment in a qualified Missouri business must include the following:

1. Name and address of the business (including headquarters and primary business operations), and type of primary business operations;

2. Amount and type (debt, equity, other) of capital the CAPCO intends to invest in the business;

3. If the business is a service business, documentation from the business that at least one-third (1/3) of sales after three (3) years will be derived from out of the state of Missouri. Such documentation shall include the typical in-state/out-state sales of other similar service companies and the marketing plan of the business;

4. Certification from the CAPCO attesting to the accuracy and completeness of the information supplied by it;

5. Certification from the business (signed and notarized by the president or chief officer) that—

A. Annual revenues in the business last fiscal year were less than the limits established for a qualified Missouri business (four (4) million dollars if the business has been in existence less than three (3) years, or three (3) million dollars if the business has been in existence longer than three (3) years);

B. The business was unable to obtain a loan for the entire project from a bank or other conventional financing sources and is in need of funds for expansion and/or modernization, or to retain current operations;

C. The primary operation of the business is as an eligible qualified Missouri business and not retail sales, real estate sales or development, or insurance or professional services provided by accountants, lawyers or physicians;

D. The business will not use the CAPCO's investment for operations or capital improvements outside the state of Missouri, except for marketing costs;

E. The business is headquartered and its primary business operations are located in the state of Missouri, it has no more than two hundred (200) employees, and at least eighty percent (80%) of its employees are located in the state of Missouri;

F. The business will not use the CAPCO's investment to relocate to another site within Missouri more than thirty (30) miles

from its current location without the prior approval of the department; and

G. The business has no more than two hundred (200) employees and certification of the total number of employees, and the number of employees located in Missouri;

(B) Any notices required to be sent by the department to a CAPCO or an investor shall be sent by certified mail to the contact person and address of the CAPCO listed in the CAPCO's application, or, in the case of an investor, to the contact person and address listed in the application for tax credits. Such contact persons may submit a revision of their addresses to the department by certified mail. Notwithstanding the above, a CAPCO or investor which receives any written notice in person at the department will be deemed to have been notified; and

(C) Any notices or other required communications with the department or director (except the submission of an application for certification by a CAPCO) shall be sent by facsimile, e-mail, regular mail, express mail, or overnight courier to the: Missouri Department of Economic Development, Office of Business Finance, P.O. Box 118, Jefferson City, MO 65102, street address of Truman Building, 301 W. High St., Room 720, facsimile at (573) 751-7384, or e-mail at msorth@mail.state.mo.us. In the case where receipt cannot be verified (e-mail and facsimile), the CAPCO may telephone the department at (573) 751-0717 to verify receipt with a verification code.

(4) The following provides the procedures for the determination of the amount and payment by CAPCOs to the Missouri Development Finance Board (MDFB) as mandated by section 135.512, RSMo:

(A) Additional capital contributions are additional investments of certified capital in the CAPCO by investors subsequent to the investors' original investments, or capital contributions from any party on which no tax credits are earned;

(B) Internal rate of return (IRR) is the annualized monthly discount rate that equates the present value the sum of i) the actual periodic cash flows (other than qualified distributions but including payments of principal and interest on CAPCO debt) distributed from the CAPCO and ii) the economic benefit of the tax credits as realized (i.e., received as periodic offsets to tax payment liability) by investors to the present value of any capital contributions to the CAPCO. An example calculation would be as follows:

1. Initial capital contribution of \$500,000 from a CAPCO affiliate in the form of equity upon which no tax credits are earned, made on January 1, 1997, certification date of the CAPCO. (The January 1 date

is for illustrative purposes only; no investments in a CAPCO can occur until after the initial application date of February 10, 1997);

2. Initial certified capital investment from an insurance company of nine (9) million dollars in proceeds from the issuance of a debenture and an additional one (1) million dollars in proceeds from the issuance of equity, (a total of ten (10) million dollars in certified capital), both placed on March 1, 1997, therefore, tax credits would be one (1) million dollars per year for ten (10) years;

3. Repayment of the nine (9) million dollars debenture on January 1, 2007;

4. Repayment of the \$1.5 million in total equity on January 1, 2008 (which is only permitted if the CAPCO has placed an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments); and

5. Distribution of \$39.5 million from investment returns on January 1, 2008 (which is only permitted if the CAPCO has placed an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments). The internal rate of return would therefore be 21.36%, which is greater than the statutory milestone of fifteen percent (15%) IRR. The distribution amount that equates to a fifteen percent (15%) IRR would be \$14,075,000. The amount of distributions in excess of a fifteen percent (15%) IRR (hereafter termed as “participating distributions”) would be \$26,925,000. Therefore, the CAPCO would provide the MDFB twenty-five percent (25%) of the \$26,925,000 participating distribution, or \$6,731,250. For simplicity of illustration, in this example, qualified distributions (which are permitted, but are not to be included in the IRR calculations) have been omitted. The debentures in this example do not include payments for interest or amortization of principal which are permitted but are to be included in the computation of the IRR; and

(C) Payments to the MDFB shall be made by the CAPCO within thirty (30) days after the completion of the audit described in section 135.516.2, RSMo, but prior to or simultaneous to liquidating distributions made to investors or CAPCO affiliates. Liquidating distributions may not be made until the completion of an audit. Payments to the MDFB must be made in the form of a cashier’s check made to the order of the Missouri Development Finance Board and sent to the address of the department, or by wire transfer to the MDFB. In the event payment is not received by the thirty (30)-day deadline, or in the event the CAPCO distributes funds to investors or a CAPCO affiliate prior to the MDFB, there shall be a penalty added to such payment based on .0003 per day of the amount owed or the number of days

elapsed from the time funds were distributed to investors or a CAPCO affiliate. In the event a CAPCO fails to provide funds owed to the MDFB (due to participating distributions) within sixty days from the completion of the audit, such funds must be paid by the CAPCO affiliate and the CAPCO’s investors on a pro rated basis according to the amount of liquidating distributions received by the respective parties. The party that owes the funds shall also pay any legal or other costs associated with collection.

(5) The following describes records which are deemed to be open under Chapter 610, RSMo, potential conflicts of interest, and audit requirements relating to certified capital companies:

(A) Firms, which are approved by the department to audit CAPCOs, and their principals and employees, may not be affiliated with the audited CAPCOs or their investors. A nationally recognized accounting firm means a firm that is generally recognized to be among the top six (6) certified accounting firms in the country;

(B) At no time during the period when the department regulates a CAPCO shall an employee, board member, or agent (or an immediate family member of such persons) of the department or the MDFB, who has direct administrative or policy involvement with the CAPCO program, be an employee, owner, or agent of a CAPCO, a CAPCO affiliate, or an investor of a CAPCO. A CAPCO, a CAPCO affiliate, owners, employees, agents, or subsidiaries of a CAPCO, or investors of a CAPCO shall not provide any compensation, gifts, or contributions (which are in violation of sections 105.450, 105.452, or 105.454, RSMo) to any employee, board member or agent of the department or the MDFB (or immediate family member);

(C) A person who is an affiliate of an insurance company investor in a CAPCO may not be in a position with the CAPCO to direct the investments of such CAPCO. This prohibition shall not preclude an insurance company from exercising its legal rights and remedies (which may include interim management of the CAPCO) in the event that a CAPCO is in default of its statutory obligations or its contractual obligations to its investors;

(D) At no time during the period when the department regulates a CAPCO shall a person who is affiliated (employee or elected official) with the general assembly, the governor’s office, the Office of Administration or the Department of Economic Development, be an employee, owner, or agent with a CAPCO, a CAPCO affiliate involved in managing the CAPCO, or an investor into a CAPCO; and

(E) Open records under the Certified Capital Company Law shall include:

1. The names and addresses of principals of entities (and their affiliates) that have submitted applications to become CAPCOs, the dates such applications were submitted; the names and addresses of principals of certified CAPCOs (and their affiliates); the dates CAPCOs were certified, and the amount of tax credits provided to investors into each CAPCO;

2. The names of investors who have been provided tax credits, the amount of tax credits provided, and the dates the tax credits were provided;

3. The names and addresses of qualified Missouri businesses which have received investments from CAPCOs, the amount and date of such investments, and the types and locations of the businesses; and

4. The names of all CAPCOs that have been decertified and the reasons for such decertifications.

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**Original authority 1996.*