

**870-RICR-30-00-7**

## **TITLE 870 – COMMERCE CORPORATION**

### **CHAPTER 30 – TAX CREDITS AND EXEMPTIONS**

#### **SUBCHAPTER 00 – N/A**

PART 7 – Rules and Regulations for Certification as a “Qualified Business Entity” or a “Certified Venture Capital Partnership”

## **7.1 Authority and Purpose**

### **7.1.1 Statutory Basis**

R.I. Gen. Laws Chapter 44-43 authorizes tax incentives for certain small businesses and investors in small businesses. The Rhode Island Commerce Corporation must certify and recertify a “Qualified Business Entity” and a “Certified Venture Capital Partnership” for tax incentive eligibility.

### **7.1.2 Purpose**

This rule establishes the procedures by which the Rhode Island Commerce Corporation will certify business entities for tax incentive eligibility under R.I. Gen. Laws Chapter 44-43.

## **7.2 Definitions**

- A. For the purposes of these regulations, the following terms shall have the following meanings:
1. “Taxable year” means the year used by the taxpayer for federal tax purposes.
  2. “Department” means the Rhode Island Commerce Corporation.
  3. “Date business commenced” means the date the business started operations regardless of type of business entity.
  4. “Investment” means the amount expended or to be expended in a qualifying business entity in the form of equity contributions which are neither secured nor guaranteed.
  5. “Expended” means actual expenditure of funds; not future expenditure of borrowed funds.

### **7.3 Application for Certification and Recertification**

- A. Application to the Rhode Island Commerce Corporation shall be made on forms prescribed by the Corporation. Applications shall be accepted for review only if completed and signed.
- B. Eligibility for certification or re-certification shall be based only on information provided in the application and its attachments.

### **7.4 Decision on Eligibility**

- A. The Director of the Rhode Island Commerce Corporation shall make a finding of eligibility.
- B. Appeals from a decision on eligibility shall be made to a three-person Board composed of one representative of the Rhode Island Commerce Corporation and two representatives of the Department of Administration, one of whom shall be from the Division of Taxation. An appeal shall be made to the Director of the Rhode Island Commerce Corporation within 10 days of receiving notification of denial of eligibility. The request for appeal should state specifically the reasons the denial of eligibility was in error and provide evidence to that effect. Within 20 days of receipt of the request for appeal, the Director of the Rhode Island Commerce Corporation shall convene the Appeals Board to hear the appeal. The Chairman of the Appeals Board shall notify the appellant of the Board's decision within 10 days. A majority decision of the board shall prevail. Appeals from the decision of the Board shall be in accordance with R.I. Gen. Laws § 42-35-15.

### **7.5 Qualifying Business Entity (QBE)**

- A. As defined by R.I. Gen. Laws Chapter 44-43, the following criteria will determine eligibility under the provisions of the Chapter.

- 1. Eligibility

Any corporation, partnership or other business entity or predecessor and successors of any such corporation, partnership or other business entity which meets all of the following criteria:

- a. Average Annual Gross Revenue of less than two million five hundred thousand dollars (\$2,500,000). Average gross revenue shall mean the simple average of the amounts received or accrued by a qualifying business entity determined on an annualized basis from the sale of goods or services prior to diminution by the cost of such sale or services; provided, however, that such determination shall be limited to amounts, if any, received or accrued during the four (4) taxable years of such business entity or such lesser period as may be applicable, for the period immediately preceding the

taxable year during which entity applied to the RI Commerce Corporation for certification or recertification.

b. Evidence of Revenue

The business entity will submit certified, audited financial statements, or fully signed copies of Internal Revenue Service forms: 1040 and attachments, 1065 and attachments, Form 1120 or 1120-A or 1120S and attachments for the applicable years. Gross revenue and average annual gross revenue are defined under § 7.5(A)(2) of this Part.

c. Operation of Business

Such entity, predecessor successor shall have been in operation for less than four years prior to the time of application for certification or recertification.

d. Investments

The business investment will be the amount expended to establish, expand or increase its operation at a regular place of business in Rhode Island, or to purchase the interest of one or more prior owners of such entity; provided, however, that in the case of a purchase of the interest, such entity shall have entered into binding commitments to expend an amount not less than the amount paid to establish, expand or increase such entity's operations at a regular place of business in Rhode Island. The amounts expended by the business entity will be amounts which are not less than the amounts allowed as a deduction as a qualifying investments for the following purposes:

- (1) A deduction for purposes of computing net income or net worth in accordance with R.I. Gen. Laws Chapter 44-11.
- (2) A deduction from gross earnings for purposes of computing the public service corporation tax in accordance with R.I. Gen. Laws Chapter 44-13.
- (3) A deduction for the purpose of computing net income in accordance with R.I. Gen. Laws Chapter 44-14.
- (4) A deduction for the purpose of computing gross premiums in accordance with R.I. Gen. Laws Chapter 44-17.
- (5) A modification reducing federal adjusted gross income in accordance with R.I. Gen. Laws Chapter 44-30.

e. Certification/Recertification

The business entity has received certification or recertification from Rhode Island Commerce Corporation. The initial certification by the RI Commerce Corporation shall expire on the date which is the end of the entity's business year for tax purposes. Recertification shall be for a period of 12 months commencing with the prior certification's expiration date.

## 7.6 Certified Venture Capital Partnership

A. Eligibility

1. Any partnership formed under the laws of Rhode Island meets the following criteria:
  - a. has at least three (3) partnerships each of whom has contributed at least five thousand dollars (\$5,000) and who have contributed in the aggregate at least two hundred fifty thousand dollars (\$250,000) to the partnership,
  - b. employs a professional manager who is an individual with prior experience managing venture capital funds,
  - c. is organized and operated to invest at least ninety percent (90%) of the amounts contributed to its capital in qualifying activities and is registered or exempt from registration under the securities laws of Rhode Island and
  - d. has bonded its employees to fully cover all funds received from partners.

B. Certification/Recertification

1. The partnership has filed with the Corporation such information as may be requested describing its organization, operation and programs and has received certification and annual recertification from the Corporation.

C. Qualifying Activities

1. "Qualifying activities" shall mean to provide capital:
  - a. to invest in one or more qualifying business entities whose principal office and the majority of whose assets are located in Rhode Island, or
  - b. to invest a portion of its funds, as set forth herein, in one or more qualifying business entities whose principal office is located outside

of Rhode Island and who have entered into binding commitments to establish, expand or increase its operations at a regular place of business in Rhode Island, or

- c. to invest a portion of its funds, as set forth herein, in research and experimental expenditures (as defined in 26 U.S.C. § 174.) conducted in Rhode Island to assist those qualifying business entities in which such partnership has or would be able to invest.

D. Limits of Investment

- 1. A certified venture capital partnership commencing with its first years of operation, or after there has been a forty percent (40%) change in ownership or the admission of new partners whose contributions have increased the capital of the partnership by at least sixty-five percent (65%), may invest in the aggregate up to the following total portion of its investments made during each year in the types of investments described in §§ 7.6 (C)(1)(b) and (c) of this Part.

Year	Portion
1	50%
2	40%
3	30%
4	30%
5	30%
6 and subsequent years	20%