

INSURANCE CODE

TITLE 3. DEPARTMENT FUNDS, FEES, AND TAXES

SUBTITLE B. INSURANCE PREMIUM TAXES

CHAPTER 228. PREMIUM TAX CREDIT FOR CERTAIN INVESTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 228.001. GENERAL DEFINITIONS. In this chapter:

(1) "Allocation date" means the date on which certified investors are allocated premium tax credits.

(2) "Certified capital" means cash invested by a certified investor that fully funds the purchase price of an equity interest in a certified capital company or a qualified debt instrument issued by the company.

(3) "Certified capital company" means a partnership, corporation, or trust or limited liability company, whether organized on a profit or nonprofit basis, that:

(A) has as the company's primary business activity the investment of cash in qualified businesses; and

(B) is certified as meeting the criteria of this chapter.

(4) "Certified investor" means an insurer or other person that has state premium tax liability and that contributes certified capital pursuant to a premium tax credit allocation under this chapter.

(5) "Early stage business" means a business described by Section [228.152\(a\)](#).

(5-a) "Low-income community" has the meaning assigned by Section 45D(e), Internal Revenue Code of 1986.

(6) "Person" means an individual or entity, including a corporation, general or limited partnership, or trust or limited liability company.

(7) "Premium tax credit allocation claim" means a claim for allocation of premium tax credits.

(7-a) "Program One" means the program for allocation and investment of certified capital under this chapter before January 1, 2007.

(7-b) "Program Two" means the program for allocation and investment of certified capital under this chapter on or after January 1, 2007.

(8) "Qualified business" means a business described by Section 228.201.

(9) "Qualified debt instrument" means a debt instrument issued by a certified capital company, at par value or a premium, that:

(A) has an original maturity date that is a date on or after the fifth anniversary of the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years; and

(C) does not have interest, distribution, or payment features that are related to:

(i) the profitability of the company; or

(ii) the performance of the company's investment portfolio.

(10) "Qualified investment" means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants.

(11) "State premium tax liability" means:

(A) any liability incurred by any person under Chapter 221, 222, 223, 223A, or 224; or

(B) if the tax liability imposed under Chapter 221, 222, 223, or 224 is eliminated or reduced, any tax liability imposed on an insurer or other person that had premium tax liability under Subchapter A, Chapter 4, or Article 9.59 as those laws existed on January 1, 2003.

(12) "Strategic investment business" means a business described by Section 228.153(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.001(a), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 4, eff. June 14, 2013.

Sec. 228.002. DEFINITION OF AFFILIATE. In this chapter, "affiliate" of another person means:

(1) a person that is an affiliate for purposes of Section 823.003;

(2) a person that directly or indirectly:

(A) beneficially owns 10 percent or more of the outstanding voting securities or other voting or management interests of the other person, whether through rights, options, convertible interests, or otherwise; or

(B) controls or holds power to vote 10 percent or more of the outstanding voting securities or other voting or management interests of the other person;

(3) a person 10 percent or more of the outstanding voting securities or other voting or management interests of which are directly or indirectly:

(A) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(B) controlled or held with power to vote by the other person;

(4) a partnership in which the other person is a general partner;

(5) an officer, director, employee, or agent of the other person; or

(6) an immediate family member of an officer, director, employee, or agent described by Subdivision (5).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER B. ADMINISTRATION AND PROMOTION

Sec. 228.051. ADMINISTRATION BY COMPTROLLER. The

comptroller shall administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.052. RULES; FORMS. The comptroller shall adopt rules and forms as necessary to implement this chapter, including rules that:

(1) establish the application procedures for certified capital companies; and

(2) facilitate the transfer or assignment of premium tax credits by certified investors.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.053. REPORT TO LEGISLATURE. (a) The comptroller shall prepare a biennial report concerning the results of the implementation of this chapter. The report must include:

(1) the number of certified capital companies holding certified capital;

(2) the amount of certified capital invested in each certified capital company;

(3) the amount of certified capital the certified capital company invested in qualified businesses as of January 1, 2006, and the cumulative total for each subsequent year;

(4) the total amount of tax credits granted under this chapter for each year that credits have been granted;

(5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this chapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result

of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

(b) The comptroller shall file the report with the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each even-numbered year.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.054. PROMOTION OF PROGRAM. The Texas Economic Development and Tourism Office shall promote the program established under this chapter in the Texas Business and Community Economic Development Clearinghouse.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER C. APPLICATION FOR AND GENERAL OPERATION OF CERTIFIED CAPITAL COMPANIES

Sec. 228.101. APPLICATION FOR CERTIFICATION. (a) An applicant for certification must file the application in the form prescribed by the comptroller. The application must be accompanied by a nonrefundable application fee of \$7,500.

(b) The application must include an audited balance sheet of the applicant, with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of the application.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.102. QUALIFICATION. To qualify as a certified capital company:

(1) the applicant must have, at the time of application for certification, an equity capitalization of at least \$500,000 in unencumbered cash or cash equivalents;

(2) at least two principals or persons employed to manage the funds of the applicant must have at least four years of experience in the venture capital industry; and

(3) the applicant must satisfy any additional requirement imposed by the comptroller by rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.103. MANAGEMENT BY AND CERTAIN OWNERSHIP INTERESTS OF INSURANCE ENTITIES PROHIBITED. (a) An insurer, group of insurers, or other persons who may have state premium tax liability or the insurer's or person's affiliates may not directly or indirectly:

(1) manage a certified capital company;

(2) beneficially own, whether through rights, options, convertible interests, or otherwise, more than 10 percent of the outstanding voting securities of a certified capital company; or

(3) control the direction of investments for a certified capital company.

(b) Subsection (a) applies without regard to whether the insurer or other person or the affiliate of the insurer or other person is authorized by or engages in business in this state.

(c) Subsections (a) and (b) do not preclude an insurer, certified investor, or any other party from exercising its legal rights and remedies, including interim management of a certified capital company, if authorized by law, with respect to a certified capital company that is in default of the company's statutory or contractual obligations to the insurer, certified investor, or other party.

(d) This chapter does not limit an insurer's ownership of nonvoting equity interests in a certified capital company.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.104. ACTION ON APPLICATION. (a) The comptroller shall:

(1) review the application, organizational documents, and business history of each applicant; and

(2) ensure that the applicant satisfies the requirements of this chapter.

(b) Not later than the 30th day after the date an application is filed, the comptroller shall:

(1) issue the certification; or

(2) refuse to issue the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.105. CONTINUATION OF CERTIFICATION. To continue to be certified, a certified capital company must make qualified investments according to the schedule established by Section 228.151.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.106. REPORTS TO COMPTROLLER; AUDITED FINANCIAL STATEMENT. (a) Each certified capital company shall report to the comptroller as soon as practicable after the receipt of certified capital:

(1) the name of each certified investor from whom the certified capital was received, including the certified investor's insurance premium tax identification number;

(2) the amount of each certified investor's investment of certified capital and premium tax credits; and

(3) the date on which the certified capital was received.

(b) Not later than January 31 of each year, each certified capital company shall report to the comptroller:

(1) the amount of the company's certified capital at the end of the preceding year;

(2) whether or not the company has invested more than 15 percent of the company's total certified capital in a single

business;

(3) each qualified investment that the company made during the preceding year and, with respect to each qualified investment, the number of employees of the qualified business at the time the qualified investment was made; and

(4) any other information required by the comptroller, including any information required by the comptroller to comply with Section [228.053](#).

(c) Not later than April 1 of each year, each certified capital company shall provide to the comptroller an annual audited financial statement that includes the opinion of an independent certified public accountant. The audit must address the methods of operation and conduct of the business of the company to determine whether:

(1) the company is complying with this chapter and the rules adopted under this chapter;

(2) the funds received by the company have been invested as required within the time provided by Section [228.151](#); and

(3) the company has invested the funds in qualified businesses.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.107. RENEWAL FEE; LATE FEE; EXCEPTION. (a) Not later than January 31 of each year, each certified capital company shall pay a nonrefundable renewal fee of \$5,000 to the comptroller.

(b) If a certified capital company fails to pay the renewal fee on or before the date specified by Subsection (a), the company must pay, in addition to the renewal fee, a late fee of \$5,000 to continue the company's certification.

(c) Notwithstanding Subsection (a), a renewal fee is not required within six months of the date on which a certified capital company's initial certification is issued under Section [228.104](#)(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.



Sec. 228.108. OFFERING MATERIAL USED BY CERTIFIED CAPITAL COMPANY. Any offering material involving the sale of securities of the certified capital company must include the following statement:

By authorizing the formation of a certified capital company, the State of Texas does not endorse the quality of management or the potential for earnings of the company and is not liable for damages or losses to a certified investor in the company. Use of the word "certified" in an offering does not constitute a recommendation or endorsement of the investment by the comptroller of public accounts. If applicable provisions of law are violated, the State of Texas may require forfeiture of unused premium tax credits and repayments of used premium tax credits.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER D. INVESTMENT BY CERTIFIED CAPITAL COMPANIES

Sec. 228.151. REQUIRED SCHEDULE OF INVESTMENT. (a) Before the third anniversary of a certified capital company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 30 percent of the company's certified capital, subject to Section [228.153](#)(b).

(b) Before the fifth anniversary of a certified capital company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 50 percent of the company's certified capital, subject to Sections [228.152](#)(b) and [228.153](#)(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.152. INVESTMENT IN EARLY STAGE BUSINESS REQUIRED.

(a) In this section, "early stage business" means a qualified business that:

(1) is involved, at the time of a certified capital

company's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(2) was initially organized less than two years before the date of the certified capital company's first investment; or

(3) during the fiscal year immediately preceding the year of the certified capital company's first investment had, on a consolidated basis with the business's affiliates, gross revenues of not more than \$2 million as determined in accordance with generally accepted accounting principles.

(b) A certified capital company must place at least 50 percent of the amount of qualified investments required by Section [228.151](#)(b) in early stage businesses.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.153. INVESTMENT IN STRATEGIC INVESTMENT BUSINESS REQUIRED. (a) In this section:

(1) "Strategic investment area" means an area of this state that qualifies as a strategic investment area under Subchapter O, Chapter [171](#), Tax Code, or, after the date that subchapter expires, an area that qualified as a strategic investment area under that subchapter immediately before that date.

(2) "Strategic investment business" means a qualified business that:

(A) has the business's principal business operations located in one or more strategic investment areas; and

(B) intends to maintain business operations in the strategic investment areas after receipt of the investment by the certified capital company.

(b) A certified capital company must place at least 30 percent of the amount of qualified investments required by Sections [228.151](#)(a) and (b) in a strategic investment business.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.154. CERTIFIED CAPITAL NOT INVESTED IN QUALIFIED INVESTMENTS. A certified capital company shall invest any certified capital not invested in qualified investments only in:

(1) cash deposited with a federally insured financial institution;

(2) certificates of deposit in a federally insured financial institution;

(3) investment securities that are:

(A) obligations of the United States or agencies or instrumentalities of the United States; or

(B) obligations that are guaranteed fully as to principal and interest by the United States;

(4) debt instruments rated at least "A" or the equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "A" or the equivalent by a nationally recognized credit rating organization, and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor;

(5) obligations of this state or a municipality or political subdivision of this state; or

(6) any other investment approved in advance in writing by the comptroller.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.155. COMPUTATION OF AMOUNT OF INVESTMENTS. (a) The aggregate cumulative amount of all qualified investments made by a certified capital company after the company's allocation date shall be considered in the computation of the percentage requirements under this subchapter.

(b) A certified capital company may invest proceeds received from a qualified investment in another qualified investment, and that investment counts toward any requirement of this chapter with respect to investments of certified capital.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.156. LIMIT ON QUALIFIED INVESTMENT. A certified capital company may not make a qualified investment at a cost to the company that is greater than 15 percent of the company's total certified capital at the time of investment.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.157. DISTRIBUTIONS BY CERTIFIED CAPITAL COMPANY.

(a) In this section, "qualified distribution" means any distribution or payment from certified capital by a certified capital company in connection with:

(1) the reasonable costs and expenses of forming, syndicating, managing, and operating the company, provided that the distribution or payment is not made directly or indirectly to a certified investor, including:

(A) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the company's formation and operation; and

(B) an annual management fee in an amount that does not exceed 2.5 percent of the company's certified capital; and

(2) a projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, of the company's equity owners resulting from the earnings or other tax liability of the company to the extent that the increase is related to the ownership, management, or operation of the company.

(b) A certified capital company may make a qualified distribution at any time. To make a distribution or payment other than a qualified distribution, a company must have made qualified investments in an amount cumulatively equal to 100 percent of the company's certified capital.

(c) If a business in which a qualified investment is made relocates the business's principal business operations to another state during the term of the certified capital company's investment in the business, the cumulative amount of qualified investments made by the certified capital company for purposes of satisfying

the requirements of Subsection (b) only is reduced by the amount of the certified capital company's qualified investments in the business that has relocated.

(d) Subsection (c) does not apply if the business demonstrates that the business has returned the business's principal business operations to this state not later than the 90th day after the date of the relocation.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.158. REPAYMENT OF DEBT. Notwithstanding Section 228.157(b), a certified capital company may make repayments of principal and interest on the company's indebtedness without any restriction, including repaying the company's indebtedness on which certified investors earned premium tax credits.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER E. QUALIFIED BUSINESS

Sec. 228.201. DEFINITION OF QUALIFIED BUSINESS. (a) In this chapter, "qualified business" means a business that complies with this section at the time of a certified capital company's first investment in the business.

(b) A qualified business must:

(1) be headquartered in this state and intend to remain in this state after receipt of the certified capital company's investment; and

(2) have the business's principal business operations located in this state and intend to maintain business operations in this state after receipt of the certified capital company's investment.

(c) A qualified business must agree to use the qualified investment primarily to:

(1) support business operations in this state, other than advertising, promotion, and sales operations which may be conducted outside of this state; or

(2) in the case of a start-up company, establish and support business operations in this state, other than advertising, promotion, and sales operations which may be conducted outside of this state.

(d) A qualified business may not have more than 100 employees and must:

(1) employ at least 80 percent of the business's employees in this state; or

(2) pay 80 percent of the business's payroll to employees in this state.

(e) A qualified business must be primarily engaged in:

(1) manufacturing, processing, or assembling products;

(2) conducting research and development; or

(3) providing services.

(f) A qualified business may not be primarily engaged in:

(1) retail sales;

(2) real estate development;

(3) the business of insurance, banking, or lending; or

(4) the provision of professional services provided by accountants, attorneys, or physicians.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

#### Sec. 228.202. RELOCATION OF PRINCIPAL BUSINESS OPERATIONS.

If, before the 90th day after the date a certified capital company makes an investment in a qualified business, the qualified business moves the business's principal business operations from this state, the investment may not be considered a qualified investment for purposes of the percentage requirements under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

#### Sec. 228.203. EVALUATION OF BUSINESS BY COMPTROLLER. (a) A

certified capital company may, before making an investment in a business, request a written opinion from the comptroller as to whether the business in which the company proposes to invest is a

qualified business, an early stage business, or a strategic investment or low-income community business.

(b) Not later than the 15th business day after the date of the receipt of a request under Subsection (a), the comptroller shall:

(1) determine whether the business meets the definition of a qualified business, an early stage business, or a strategic investment or low-income community business, as applicable, and notify the certified capital company of the determination and provide an explanation of the determination; or

(2) notify the company that an additional 15 days will be needed to review the request and make the determination.

(c) If the comptroller fails to notify the certified capital company with respect to the proposed investment within the period specified by Subsection (b), the business in which the company proposes to invest is considered to be a qualified business, an early stage business, or a strategic investment or low-income community business, as appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 14.003(a), eff. September 1, 2009.

Sec. 228.204. CONTINUATION OF CLASSIFICATION AS QUALIFIED BUSINESS; FOLLOW-ON INVESTMENTS AUTHORIZED. (a) A business that is classified as a qualified business at the time of the first investment in the business by a certified capital company:

(1) remains classified as a qualified business; and

(2) may receive follow-on investments from any certified capital company.

(b) Except as provided by Subsection (c), a follow-on investment made under Subsection (a) is a qualified investment even though the business may not meet the definition of a qualified business at the time of the follow-on investment.

(c) A follow-on investment does not qualify as a qualified investment if, at the time of the follow-on investment, the

qualified business no longer has the business's principal business operations in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER F. PREMIUM TAX CREDIT

Sec. 228.251. PREMIUM TAX CREDIT. (a) A certified investor who makes an investment of certified capital shall earn in the year of investment a vested credit against state premium tax liability equal to 100 percent of the certified investor's investment of certified capital, subject to the limits imposed by this chapter.

(b) With respect to credits earned as a result of investments made under Program One, beginning with the tax report due March 1, 2009, for the 2008 tax year, a certified investor may take up to 25 percent of the vested premium tax credit in any taxable year of the certified investor. The credit may not be applied to estimated payments due in 2008.

(c) With respect to credits earned as a result of investments made under Program Two, beginning with the tax report due March 1, 2013, for the 2012 tax year, a certified investor may take up to 25 percent of the vested premium tax credit in any taxable year of the certified investor. The credit may not be applied to estimated payments due in 2012.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 14.004(a), eff. September 1, 2009.

Sec. 228.252. LIMIT ON PREMIUM TAX CREDIT. (a) The credit to be applied against state premium tax liability of a certified investor in any one year may not exceed the state premium tax liability of the investor for the taxable year.

(b) A certified investor may carry forward any unused credit against state premium tax liability indefinitely until the premium tax credits are used.



Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.253. PREMIUM TAX CREDIT ALLOCATION CLAIM REQUIRED.

(a) A certified investor must prepare and execute a premium tax credit allocation claim on a form provided by the comptroller.

(b) The certified capital company must have filed the claim with the comptroller on the date on which the comptroller accepted premium tax credit allocation claims on behalf of certified investors with respect to Program One or Program Two, as applicable, under the comptroller's rules.

(c) The premium tax credit allocation claim form must include an affidavit of the certified investor under which the certified investor becomes legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under Section [228.255](#).

(d) A certified investor may not claim a premium tax credit under Section [228.251](#) for an investment that has not been funded, without regard to whether the certified investor has committed to fund the investment.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 14.005(a), eff. September 1, 2009.

Sec. 228.254. TOTAL LIMIT ON PREMIUM TAX CREDITS. (a) The total amount of certified capital for which premium tax credits may be allowed under this chapter for all years in which premium tax credits are allowed is:

- (1) \$200 million for Program One; and
- (2) \$200 million for Program Two.

(b) The total amount of certified capital for which premium tax credits may be allowed for all certified investors under this chapter may not exceed the amount that would entitle all certified

investors in certified capital companies to take total credits of \$50 million in a year with respect to Program One and \$50 million in a year with respect to Program Two.

(c) A certified capital company and the company's affiliates may not file premium tax credit allocation claims with respect to Program One or Program Two, as applicable, in excess of the maximum amount of certified capital for which premium tax credits may be allowed for that program as provided by this section. Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.006(a), eff. September 1, 2009.

Sec. 228.255. ALLOCATION OF PREMIUM TAX CREDIT. (a) If the total premium tax credits claimed by all certified investors with respect to Program One or Program Two, as applicable, exceeds the total limits on premium tax credits established for that program by Section 228.254(a), the comptroller shall allocate the total amount of premium tax credits allowed under this chapter to certified investors in certified capital companies on a pro rata basis in accordance with this section.

(b) The pro rata allocation for each certified investor shall be the product of:

(1) a fraction, the numerator of which is the amount of the premium tax credit allocation claim filed on behalf of the investor with respect to Program One or Program Two, as applicable, and the denominator of which is the total amount of all premium tax credit allocation claims filed on behalf of all certified investors with respect to that program; and

(2) the total amount of certified capital for which premium tax credits may be allowed with respect to that program under this chapter.

(c) The maximum amount of certified capital for which premium tax credit allocation may be allowed on behalf of a single certified investor and the investor's affiliates with respect to Program One or Program Two, as applicable, whether by one or more

certified capital companies, may not exceed the greater of:

(1) \$10 million; or

(2) 15 percent of the maximum aggregate amount available with respect to that program under Section [228.254\(a\)](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 14.007(a), eff. September 1, 2009.

Sec. 228.256. TREATMENT OF CREDITS AND CAPITAL. In any case under this code or another insurance law of this state in which the assets of a certified investor are examined or considered, the certified capital may be treated as an admitted asset, subject to the applicable statutory valuation procedures.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.257. TRANSFERABILITY OF CREDIT. (a) A certified investor may transfer or assign premium tax credits only in compliance with the rules adopted under Section [228.052](#).

(b) The transfer or assignment of a premium tax credit does not affect the schedule for taking the premium tax credit under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.258. IMPACT OF PREMIUM TAX CREDIT ON INSURANCE RATEMAKING. A certified investor is not required to reduce the amount of premium tax included by the investor in connection with ratemaking for an insurance contract written in this state because of a reduction in the investor's Texas premium tax derived from premium tax credits granted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.259. RETALIATORY TAX. A certified investor

claiming a credit against state premium tax liability earned through an investment in a company is not required to pay any additional retaliatory tax levied under Chapter 281 as a result of claiming that credit.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER G. ENFORCEMENT

Sec. 228.301. ANNUAL REVIEW BY COMPTROLLER. (a) The comptroller shall conduct an annual review of each certified capital company to:

(1) ensure that the company:

(A) continues to satisfy the requirements of this chapter; and

(B) has not made any investment in violation of this chapter; and

(2) determine the eligibility status of the company's qualified investments.

(b) Each certified capital company shall pay the cost of the annual review according to a reasonable fee schedule adopted by the comptroller.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.302. DECERTIFICATION OF CERTIFIED CAPITAL COMPANY.

(a) A material violation of Section 228.105, 228.106, 228.107, 228.151, 228.152, 228.153, 228.154, 228.155, 228.156, 228.202, or 228.204 is grounds for decertification of a certified capital company.

(b) If the comptroller determines that a certified capital company is not in compliance with a law listed in Subsection (a), the comptroller shall notify the company's officers in writing that the company may be subject to decertification after the 120th day after the date the notice is mailed unless the company:

(1) corrects the deficiencies; and

(2) returns to compliance with the law.

(c) The comptroller may decertify a certified capital company, after opportunity for hearing, if the comptroller finds that the company is not in compliance with a law listed in Subsection (a) at the end of the period established by Subsection (b).

(c-1) Notwithstanding any other provision of this section, the comptroller may decertify a certified capital company if the comptroller receives a request in writing from the certified capital company stating that the certified capital company has made qualified investments in an amount cumulatively equal to 100 percent of the company's certified capital.

(d) Decertification under this section is effective on receipt of notice of decertification by the certified capital company.

(e) The comptroller shall notify any appropriate state agency of a decertification of a certified capital company.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 53 (H.B. [3031](#)), Sec. 1, eff. May 21, 2015.

Sec. 228.303. ADMINISTRATIVE PENALTY. (a) The comptroller may impose an administrative penalty on a certified capital company that violates this chapter.

(b) The amount of the penalty may not exceed \$25,000. Each day a violation continues or occurs is a separate violation for the purpose of imposing the penalty. The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) A certified capital company assessed a penalty under

this chapter may request a redetermination as provided by Chapter [111](#), Tax Code.

(d) The attorney general may sue to collect the penalty.

(e) A proceeding to impose the penalty is a contested case under Chapter [2001](#), Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

#### SUBCHAPTER H. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS

Sec. 228.351. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDIT FOLLOWING DECERTIFICATION. (a) Decertification of a certified capital company may, in accordance with this section, cause:

(1) the recapture of premium tax credits previously claimed by the company's certified investors; and

(2) the forfeiture of future premium tax credits to be claimed by the investors.

(b) Decertification of a certified capital company on or before the third anniversary of the company's allocation date causes the recapture of any premium tax credits previously claimed and the forfeiture of any future premium tax credits to be claimed by a certified investor with respect to the company.

(c) For a certified capital company that meets the requirements for continued certification under Section [228.151](#)(a) and subsequently fails to meet the requirements for continued certification under Subsection (b) of that section:

(1) any premium tax credit that has been or will be taken by a certified investor on or before the third anniversary of the allocation date is not subject to recapture or forfeiture; and

(2) any premium tax credit that has been or will be taken by a certified investor after the third anniversary of the company's allocation date is subject to recapture or forfeiture.

(d) For a certified capital company that has met the requirements for continued certification under Section [228.151](#) and is subsequently decertified:

(1) any premium tax credit that has been or will be

taken by a certified investor on or before the fifth anniversary of the allocation date is not subject to recapture or forfeiture; and

(2) any premium tax credit to be taken after the fifth anniversary of the allocation date is subject to forfeiture only if the company is decertified on or before the fifth anniversary of the company's allocation date.

(e) For a certified capital company that has invested an amount cumulatively equal to 100 percent of the company's certified capital in qualified investments, any premium tax credit claimed or to be claimed by a certified investor is not subject to recapture or forfeiture under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.352. NOTICE OF RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDIT. The comptroller shall send written notice to the address of each certified investor whose premium tax credit is subject to recapture or forfeiture, using the address shown on the investor's last premium tax filing.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.353. INDEMNITY AGREEMENTS AND INSURANCE AUTHORIZED. (a) A certified capital company may agree to indemnify, or purchase insurance for the benefit of, a certified investor for losses resulting from the recapture or forfeiture of premium tax credits under Section [228.351](#).

(b) Any guaranty, indemnity, bond, insurance policy, or other payment undertaking made under this section may not be provided by more than one certified investor of the certified capital company or affiliate of the certified investor.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 1B.001, eff. April 1, 2009.