

## **TNInvestco Reporting Documents required by TNInvestco Law**

### **What: Qualified TNInvestco Letter from ECD**

**When: By December 31, 2009 – One-Time Only**

**Details:** The TNInvestco will receive, no later than December 31, 2009, a written notice from the department of economic and community development stating whether or not it has been approved as a qualified TNInvestco and, if applicable, stating the amount of its investment tax credit allocation.

**Responsible:** ECD to provide to TNInvestcos

**Where:** 4-28-105 (e)

### **What: TNInvestco's Report on Designated Capital to ECD**

**When: Within 30 Days of Receipt of Designated Capital –Upon Occurrence**

**Details:** The report should include: (A) The name of each participating investor from which the designated capital was received, including such participating investor's insurance tax identification number; (B) The amount of each participating investor's investment of designated capital; and (C) The date on which the designated capital was received.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-110 (a)(1) (A)-(C)

### **What: Key Person Letter**

**When: On or before July 1, 2010 – One-Time Only**

**Details:** A TNInvestco's success shall be deemed to depend, in particular, on the TNInvestco's key person or persons. On or before July 1, 2010, each qualified TNInvestco shall provide to the department of economic and community development a description of the TNInvestco's procedure for choosing a successor should any key person die, become legally incapacitated, or cease to be involved in the management of the TNInvestco for more than ninety (90) consecutive days. In the event that a majority of key persons do die, become legally incapacitated, or cease to be involved in the management of the TNInvestco for more than ninety (90) consecutive days for any reason, the commissioner of economic and community development, in consultation with the commissioner of revenue, the Tennessee Technology Development Corporation, or any other appropriate professional advisors, shall determine whether a new individual or individuals will be able to assume the role of key person so that the TNInvestco's performance will remain unimpaired. If the commissioner of economic and community development determines, in the commissioner's sole discretion, that the key person cannot be adequately replaced and the TNInvestco's performance therefore will be impaired, then any funds not already invested by the TNInvestco shall be deposited into the general fund unless the department of finance and administration has certified, pursuant to § [4-28-109](#), that the total amount of payments deposited in the general fund under this chapter equals or exceeds the total amount of revenue forgone pursuant to the credits used as provided in § [4-28-103](#). If the department of finance and administration has made such a determination, then any funds not already invested by the TNInvestco shall be deposited into the Tennessee rural opportunity fund to further support the state's economic development efforts.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-110 (d))

**What: TNInvestco's Report on Remaining Designated Capital**

**When: By January 31 of each year –Annual**

**Details:** The report will include: (A) The amount of the qualified TNInvestco's remaining un-invested designated capital at the end of the immediately preceding taxable year; (B) Whether or not the qualified TNInvestco has invested more than fifteen percent (15%) of its total designated capital in any one business; (C) All qualified investments that the qualified TNInvestco has made in the previous taxable year, including the number of employees of each qualified business in which it has made investments at the time of such investment and as of December 1 of the preceding taxable year; and (D) For any qualified business where the qualified TNInvestco no longer has an investment, the qualified TNInvestco must provide employment figures for that company as of the last day before the investment was terminated. Other information that the department may reasonably request that will help the department ascertain the impact of the TNInvestco program both directly and indirectly on the economy of the state of Tennessee.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-110 (a)(2) (A)-(D)

\*Section 4-28-110 (a) (3) may require additional reporting requirements

**What: Annual Review by ECD**

**When: 1<sup>st</sup> Quarter- ECD To Provide Notice to the TNInvestcos-Annual**

**Details:** The department of economic and community development shall conduct an annual review of each qualified TNInvestco to determine if the qualified TNInvestco is abiding by the requirements of the program and to ensure that no investments have been made in violation of this chapter. The cost of the annual review shall be paid by each qualified TNInvestco according to a reasonable fee schedule adopted by the department. (b) The department shall provide the qualified TNInvestco a summary of findings including any areas of noncompliance. The qualified TNInvestco shall have sixty (60) days to cure any areas of noncompliance. Failure to cure the areas of noncompliance within sixty (60) days shall result in a penalty of ten thousand dollars (\$10,000) per day until the noncompliance is cured. The proceeds from any such penalty shall be deposited into the Tennessee Rural Opportunity Fund to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty imposed under this section.

**Possible Additional things to Include in Annual Review:** "Qualified Distributions" of each TNInvestco per definition in Section 3 (11) on pg. 3 in PC 610.

**Responsible:** ECD to conduct on each TNInvestco

**Where:** 4-28-111

**What: Annual Certification Fee**

**When: On or before April 1 (\*Begins in 2011)-Annual**

**Details:** A qualified TNInvestco must pay to the department of economic and community development an annual, nonrefundable certification fee of five thousand dollars (\$5,000) on or before April 1, or ten thousand dollars (\$10,000) if later. No annual certification fee is required if the payment date for such fee is within six (6) months of the date a qualified TNInvestco is first certified by the department.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-110 (b)

**What: Annual Report to the Governor and Legislature**

**When: March 15<sup>th</sup>- Annual**

**Details:** The report should include: (a) The number of qualified TNInvestcos holding designated capital; (b) The amount of designated capital invested in each qualified TNInvestco; (c) The cumulative amount that each qualified TNInvestco has invested as of January 1, 2011, and the cumulative total each year thereafter; (d) The cumulative amount of follow-on capital that the investments of each qualified TNInvestco have created in terms of capital invested in qualified businesses at the same time or subsequent to investments made by a qualified TNInvestco in such businesses by sources other than qualified TNInvestcos; (e) The total amount of investment tax credits applied under this section for each year; (f) The performance of each qualified TNInvestco with regard to the requirements for continued certification; (g) The classification of the companies in which each qualified TNInvestco has invested according to industrial sector and size of company; (h) The gross number of jobs created by investments made by each qualified TNInvestco and the number of jobs retained; (i) The location of the companies in which each qualified TNInvestco has invested; (j) Those qualified TNInvestcos that have been decertified, including the reasons for decertification; and (k) Other related information as necessary to evaluate the effect of this section on economic development.

**Responsible:** TNInvestcos to provide required and requested info. to ECD. ECD to compile the final report for public release.

**Where:** 4-28-112

**What: TNInvestco Scorecard**

**When: March 15<sup>th</sup>-Annual (\*90 Days after receiving notice from ECD)**

**Details:** Within ninety (90) days after the department of economic and community development provides notice to a TNInvestco, the commissioner of economic and community development and the commissioner of revenue, in consultation with the state treasurer, working with the TNInvestco, shall cause to be created an investment strategy "scorecard" for the TNInvestco. Said "scorecard" shall contain not more than six (6) objective metrics or measures that will be used to reflect the investment strategy approved by the state, which strategy may, in the sole discretion of the commissioner of economic and community development, be modified from time to time upon written request of the TNInvestco to the commissioner of economic and community development. The commissioner of economic and community development, in consultation with the commissioner of revenue and the state treasurer or any other appropriate professional advisors, shall conduct an annual review of each qualified TNInvestco, at the conclusion of each fiscal year, to determine whether the investment strategy used by the TNInvestco is in substantial compliance with the TNInvestco's scorecard. If the commissioner of economic and community development reasonably determines that the investment strategy actually used by the TNInvestco is not in substantial compliance with the scorecard, then the commissioner of economic and community development shall provide the qualified TNInvestco a summary of findings including the areas of noncompliance. Within sixty (60) days of receiving the commissioner's findings, the TNInvestco shall provide to the commissioner of economic and community development a written statement that shall describe in detail the TNInvestco's plan for curing all areas of noncompliance before the next annual review. Said plan may include a request for modification of the strategy with corresponding changes in the scorecard which, if approved, shall become the scorecard against which future compliance will be measured. If the commissioner of economic and community development reasonably determines, at the next annual review conducted pursuant to this section, that the TNInvestco has failed to cure such areas of noncompliance, a penalty in the amount of two hundred fifty thousand dollars (\$250,000) shall be imposed,

and an additional penalty of two hundred fifty thousand dollars (\$250,000) shall be imposed for each year in which such noncompliance remains uncured.

**Responsible:** TNInvestcos to provide required and requested info. to ECD from scorecard that will be given by ECD. ECD to review and report back to TNInvestco after receiving TNInvestco scorecard response.

**Where:** 4-28-113

**What: Agreed upon Procedures Report**

**When: Within 180 days of the close of the TNInvestco's fiscal year- Annual**

**Details:** An "agreed upon procedures report" or equivalent regarding the operations of the qualified TNInvestco.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-110 (a)(5)

**What: Audited Financial Statements**

**When: Within 180 days of the close of the TNInvestco's fiscal year- Annual**

**Details:** Within one hundred eighty (180) days of the close of its fiscal year, annual audited financial statements of the qualified TNInvestco, which must include the opinion of an independent certified public accountant.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-110 (a)(4)

**What: Qualified Investment Benchmark Compliance Letter to ECD**

**When: Upon satisfying requirements of subdivision [4-28-106\(a\)\(1\)](#)**

**Details:** Upon satisfying each of the requirements of § [4-28-106\(a\)\(1\)](#), a qualified TNInvestco shall provide notice to the department of economic and community development and the department shall, within sixty (60) days of receipt of such notice, either confirm that the qualified TNInvestco has satisfied such requirement of § [4-28-106\(a\)\(1\)](#) as of such date or provide notice of noncompliance and an explanation of any existing deficiencies. If the department does not provide such notification within sixty (60) days, the qualified TNInvestco shall be deemed to have met such requirement of § [4-28-106\(a\)\(1\)](#). **NOTE:** *4-28-106 (a)(1) is the qualified investment funding benchmarks section of the law.*

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-106 (a) (1) & 4-28-111(c)

**What: Qualified Investment Benchmark Compliance Letter from ECD**

**When: Within 60 days of receipt of [4-28-106 \(a\)\(1\)](#) Compliance letter from TNInvestcos**

**Details:** Upon satisfying each of the requirements of § [4-28-106\(a\)\(1\)](#), a qualified TNInvestco shall provide notice to the department of economic and community development and the department shall, within sixty (60) days of receipt of such notice, either confirm that the qualified TNInvestco has satisfied such requirement of § [4-28-106\(a\)\(1\)](#) as of such date or provide notice of noncompliance and an explanation of any existing deficiencies. If the department does not provide such notification within sixty (60) days, the qualified TNInvestco shall be deemed to have met such requirement of § [4-28-106\(a\)\(1\)](#). **NOTE:** *4-28-106 (a)(1) is the funding benchmarks section of the law*

**Responsible:** ECD to provide to TNInvestcos

**Where:** 4-28-106 (a) (1) & 4-28-111(c)

**What: Qualified Business Form**

**When: Before a TNInvestco Invests in a Business**

**Details:** Prior to making a proposed qualified investment in a specific business, a qualified TNInvestco must request from the department of economic and community development a written determination that the proposed investment will qualify as a qualified investment in a qualified business or, if applicable, a seed or early stage investment. The department shall notify a qualified TNInvestco within ten (10) business days from the receipt of a request of its determination. If the department fails to notify the qualified TNInvestco of its determination within ten (10) business days, the proposed investment will be deemed to be a qualified investment in a qualified business and, if applicable, a seed or early stage investment. If the department determines that the proposed investment does not meet the definition of a qualified investment, qualified business, or seed or early stage investment, the department may nevertheless consider the proposed investment a qualified investment, or a seed or early stage investment, and if necessary, the business a qualified business, if the department determines that the proposed investment will further state economic development.

**Responsible:** TNInvestcos to provide to ECD

**Where:** 4-28-106 (b) – Qualified Business Definitions in 4-28-102 (11)

**What: Qualified Business Letter from ECD**

**When: Within 10 days of receipt of a Qualified Business Form from TNInvestcos**

**Details:** Prior to making a proposed qualified investment in a specific business, a qualified TNInvestco must request from the department of economic and community development a written determination that the proposed investment will qualify as a qualified investment in a qualified business or, if applicable, a seed or early stage investment. The department shall notify a qualified TNInvestco within ten (10) business days from the receipt of a request of its determination. If the department fails to notify the qualified TNInvestco of its determination within ten (10) business days, the proposed investment will be deemed to be a qualified investment in a qualified business and, if applicable, a seed or early stage investment. If the department determines that the proposed investment does not meet the definition of a qualified investment, qualified business, or seed or early stage investment, the department may nevertheless consider the proposed investment a qualified investment, or a seed or early stage investment, and if necessary, the business a qualified business, if the department determines that the proposed investment will further state economic development.

**Responsible:** ECD to provide to TNInvestcos

**Where:** 4-28-106 (b) – Qualified Business Definitions in 4-28-102 (11)