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SENATE BILL 114

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; AMENDING PROVISIONS OF THE ANGEL INVESTMENT CREDIT; CLARIFYING THE NUMBER OF INVESTMENTS THAT MAY QUALIFY FOR THE CREDIT; ELIMINATING THE SUNSET DATE; INCREASING THE TOTAL AMOUNT OF ANNUAL CREDITS THAT MAY BE ISSUED TO TWO MILLION DOLLARS (\$2,000,000); INCREASING THE CARRY FORWARD TO FIVE YEARS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-2-18.17 NMSA 1978 (being Laws 2007, Chapter 172, Section 1, as amended) is amended to read:

"7-2-18.17. ANGEL INVESTMENT CREDIT.--

A. A taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer, is an accredited investor and makes a qualified investment may claim a credit in an amount not to exceed twenty-five percent of [not

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1 ~~more than one hundred thousand dollars (\$100,000)]~~ two hundred
2 fifty thousand dollars (\$250,000) of the qualified investment.
3 The tax credit provided in this section shall be known as the
4 "angel investment credit".

5 B. A taxpayer may claim the angel investment credit
6 for not more than [~~two~~] one qualified [~~investments in a taxable~~
7 ~~year; provided that each investment is in a different qualified~~
8 ~~business]~~ investment per investment round. A taxpayer may
9 claim the angel investment credit for qualified investments
10 [~~made in the same qualified business or successor of that~~
11 ~~business for not more than three taxable years. The angel~~
12 ~~investment credit shall not exceed twenty-five thousand dollars~~
13 ~~(\$25,000) for each qualified investment by the taxpayer]~~ in no
14 more than five qualified businesses per taxable year.

15 C. A taxpayer may claim the angel investment credit
16 no later than one year following the end of the calendar year
17 in which the qualified investment was made [~~provided that a~~
18 ~~claim for the credit may not be made or allowed with respect to~~
19 ~~any investment made after December 31, 2016]~~.

20 D. A taxpayer shall apply for certification of
21 eligibility for the angel investment credit from the economic
22 development department. Completed applications shall be
23 considered in the order received. If the economic development
24 department determines that the taxpayer is an accredited
25 investor and the investment is a qualified investment, it shall

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1 issue a certificate of eligibility to the taxpayer, subject to
2 the limitation in Subsection E of this section. The
3 certificate shall be dated and shall include a calculation of
4 the amount of the angel investment credit for which the
5 taxpayer is eligible. The economic development department may
6 issue rules governing the procedure for administering the
7 provisions of this subsection.

8 E. The economic development department may issue a
9 certificate of eligibility pursuant to Subsection D of this
10 section only if the total amount of angel investment credits
11 represented by certificates of eligibility issued by the
12 economic development department in any calendar year will not
13 exceed [~~seven hundred fifty thousand dollars (\$750,000)~~] two
14 million dollars (\$2,000,000). If the applications for
15 certificates of eligibility for angel investment credits
16 represent an aggregate amount exceeding [~~seven hundred fifty~~
17 ~~thousand dollars (\$750,000)~~] two million dollars (\$2,000,000)
18 for any calendar year, certificates shall be issued in the
19 order that [~~the~~] completed applications were received. The
20 excess applications that would have been certified, but for the
21 limit imposed by this subsection, shall be certified, subject
22 to the same limit, in subsequent calendar years.

23 F. The economic development department shall report
24 annually to the legislative finance committee on the
25 utilization and effectiveness of the angel investment credit.

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1 The report shall include, at a minimum: the number of
2 accredited investors to whom certificates of eligibility were
3 issued by the department in the previous year; the names of
4 those investors; the amount of angel investment credit for
5 which each investor was certified eligible; and the number and
6 names of the businesses that the department has determined are
7 qualified businesses for purposes of an investment by an
8 accredited investor. The report shall also include an
9 evaluation of the success of the angel investment credit as an
10 incubator of new businesses in New Mexico and of the continued
11 viability and operation in New Mexico of businesses in which
12 investments eligible for the angel investment credit have been
13 made.

14 G. To claim the angel investment credit, the
15 taxpayer must provide to the taxation and revenue department a
16 certificate of eligibility issued by the economic development
17 department pursuant to Subsection D of this section and any
18 other information the taxation and revenue department may
19 require to determine the amount of the tax credit due the
20 taxpayer. If the requirements of this section have been
21 complied with, the taxation and revenue department shall
22 approve the claim for the credit.

23 H. A taxpayer who otherwise qualifies for and
24 claims a credit pursuant to this section for a qualified
25 investment made by a partnership or other business association

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1 of which the taxpayer is a member may claim a credit only in
2 proportion to the taxpayer's interest in the partnership or
3 business association. [~~The total credit claimed in the~~
4 ~~aggregate by all members of the partnership or business~~
5 ~~association in a taxable year with respect to a qualified~~
6 ~~investment shall not exceed twenty-five thousand dollars~~
7 ~~(\$25,000).~~]

8 I. A husband and wife who file separate returns for
9 a taxable year in which they could have filed a joint return
10 may each claim one-half of the credit that would have been
11 allowed on a joint return.

12 J. The angel investment credit may only be deducted
13 from the taxpayer's income tax liability. Any portion of the
14 tax credit provided by this section that remains unused at the
15 end of the taxpayer's taxable year may be carried forward for
16 [~~three~~] five consecutive years.

17 K. As used in this section:

18 (1) "accredited investor" means a person who
19 is an accredited investor within the meaning of Rule 501 issued
20 by the federal securities and exchange commission pursuant to
21 the federal Securities Act of 1933, as amended;

22 (2) "business" means a corporation, general
23 partnership, limited partnership, limited liability company or
24 other similar entity, but excludes an entity that is a
25 government or a nonprofit organization designated as such by

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1 the federal government or any state;

2 (3) "equity" means common or preferred stock
3 of a corporation, a partnership interest in a limited
4 partnership or a membership interest in a limited liability
5 company, including debt subject to an option in favor of the
6 creditor to convert the debt into common or preferred stock, a
7 partnership interest or a membership interest;

8 [~~(4) "high-technology research" means~~
9 ~~research:~~

10 ~~(a) that is undertaken for the purpose~~
11 ~~of discovering information that is technological in nature and~~
12 ~~the application of which is intended to be useful in the~~
13 ~~development of a new or improved business component of the~~
14 ~~qualified business; and~~

15 ~~(b) substantially all of the activities~~
16 ~~of which constitute elements of a process or experimentation~~
17 ~~related to a new or improved function, performance, reliability~~
18 ~~or quality, but not related to style, taste or cosmetic or~~
19 ~~seasonal design factors;]~~

20 (4) "investment round" means an offer and sale
21 of securities and all other offers and sales of securities that
22 would be integrated with such offer and sale of securities
23 under Regulation D issued by the federal securities and
24 exchange commission pursuant to the federal Securities Act of
25 1933, as amended;

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1 (5) "manufacturing" means combining or
2 processing components or materials to increase their value for
3 sale in the ordinary course of business, but does not include:

- 4 (a) construction;
5 (b) farming;
6 (c) processing natural resources,
7 including hydrocarbons; or
8 (d) preparing meals for immediate
9 consumption, on- or off-premises;

10 (6) "qualified business" means a business
11 that:

12 (a) maintains its principal place of
13 business and employs a majority of its full-time employees, if
14 any, in New Mexico and a majority of its tangible assets, if
15 any, are located in New Mexico;

16 (b) engages in [~~high-technology~~]
17 qualified research or manufacturing activities in New Mexico;

18 (c) is not primarily engaged in or is
19 not primarily organized as any of the following types of
20 businesses: credit or finance services, including banks,
21 savings and loan associations, credit unions, small loan
22 companies or title loan companies; financial brokering or
23 investment; professional services, including accounting, legal
24 services, engineering and any other service the practice of
25 which requires a license; insurance; real estate; construction

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1 or construction contracting; consulting or brokering; mining;
2 wholesale or retail trade; providing utility service, including
3 water, sewerage, electricity, natural gas, propane or butane;
4 publishing, including publishing newspapers or other
5 periodicals; broadcasting; or providing internet operating
6 services;

7 (d) has not issued securities registered
8 pursuant to Section 6 of the federal Securities Act of 1933, as
9 amended; has not issued securities traded on a national
10 securities exchange; is not subject to reporting requirements
11 of the federal Securities Exchange Act of 1934, as amended; and
12 is not registered pursuant to the federal Investment Company
13 Act of 1940, as amended, at the time of the investment;

14 (e) has one hundred or fewer employees
15 calculated on a full-time-equivalent basis [~~at the time of the~~
16 ~~investment~~] in the taxable year in which the investment was
17 made; and

18 (f) has not had gross revenues in excess
19 of five million dollars (\$5,000,000) in any fiscal year ending
20 on or before the date of the investment; [~~and~~]

21 (7) "qualified investment" means a cash
22 investment in a qualified business for equity, but does not
23 include an investment by a taxpayer if the taxpayer, a member
24 of the taxpayer's immediate family or an entity affiliated with
25 the taxpayer receives compensation from the qualified business

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1 in exchange for services provided to the qualified business
2 within one year of investment in the qualified business; and

3 (8) "qualified research" means "qualified
4 research" as defined by Section 41 of the Internal Revenue
5 Code."

6 SECTION 2. APPLICABILITY.--The provisions of this act
7 apply to taxable years beginning on or after January 1, 2014.

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