Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Serrato\Gallegos\Hochman-Vigil\Dixon\Hernandez	**ORIGINAL DATE**	1/23/24
SHORT TITLE	Angel Investment Credit Eligibility	**BILL NUMBER**	House Bill 83
		ANALYST	Faubion

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
PIT	$0	$0	$0	Up to ($2,000.0)	Up to ($2,000.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD		$2.9		$2.9	Nonrecurring	General Fund
Total		$2.9		$2.9	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
TRD's 2023 Taxation and Revenue Report

Agency Analysis Received From
State Ethics Commission (SEC)
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 83

House Bill 83 (HB83) allows a taxpayer to claim the angel investment credit for a qualified investment made after January 1, 2024, and before December 31, 2030, extending the period for five years beyond the current expiration of December 31, 2025.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Extending the angel investment tax credit sunset to December 31, 2030, will cost the general fund up to $2 million each additional year. The Taxation and Revenue Department's (TRD) *New Mexico 2023 Tax Expenditure Report,* reports the following utilization and cost of the tax credit the last three years:

Fiscal Impact:

	Tax Year (Calendar)	2020	2021	2022
Angel Investment Credit against PIT	**Claims**	149	137	49
	Expenditure (thousands)	$814	$1,054	$283
	Fiscal Year	2021	2022	2023
	Claims	143	127	161
	Expenditure (thousands)	$885	$787	$1,135

TRD reports a slightly lower fiscal impact, assuming utilization of the credit remains around FY23 levels. TRD notes the following:

> The Taxation and Revenue Department reviewed the historical claims and credit amounts of the Angel Investment Credit. The average aggregate amount applied towards Personal Income Tax (PIT) liability in the last five fiscal year years is $900 thousand with a weighted average growth rate of 4.3 percent. TRD assumes that the Angel Investment Credit aggregate amount from FY24 to FY28 will be claimed at the same historical average rate.

This bill creates or expands a tax expenditure. Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

SIGNIFICANT ISSUES

The Economic Development Department said extending the sunset date for the angel investment tax credit will enable the continuation of an incentive for New Mexico taxpayers to invest in New Mexico businesses.

TRD notes the following:

Personal income tax (PIT) represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 25 percent of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT (New Hampshire and Washington do not tax wage and salary income). Like several states, New Mexico computes its income tax based on the federal definition of taxable income and ties to other statues in the federal tax code. This is referred to as "conformity" to the federal tax code. The PIT is an important tax policy tool that has the potential to further both horizontal equity, by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay.

This credit is meant to encourage taxpayers to invest in the state with an assumed benefit to the economy of the state. While any taxpayer may apply for this credit, most of the financial benefit of this credit will be realized by high earning individuals. The broader economic benefit to the state of these investments, which may include additional jobs, wages, and economic development, is hard to measure though and it is unclear if it exceeds the loss of PIT revenue.

The bill extends the sunset date to December 31, 2030, applicable to the date by which the investment must be made. TRD supports sunset dates for policymakers to review the impact of a credit before extending it.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD will make information system changes and update forms, instructions, publications. These changes will be included in annual tax year changes. TRD's Administrative Services Division (ASD) will test credit sourcing and perform other systems testing. It is anticipated this work will take approximately 40 hours split between 2 Full-Time Equivalent (FTE) of a pay band 70 and a pay band 80 at a cost of approximately $2,900.

OTHER SUBSTANTIVE ISSUES

The State Ethics Commission made the following remarks regarding the anti-donation clause (edited for clarity):

> In the 2023 Regular Session, HB69 (2023) proposed amending the angel investment tax credit from *non-refundable* (but able to be carried forward for 5 consecutive years) to *refundable*. State Ethics Commission staff commented that this change would likely violate Article IX, Section 14 of the New Mexico Constitution, commonly known as the Anti-Donation Clause.
>
> In contrast to HB69 (2023), HB83 (2024) maintains the current, *non-refundable* status of the angel investment tax credit. State Ethics Commission staff contend that, as is, the angel

investment tax credit likely does not run afoul of the Anti-Donation Clause, because *non-refundable* tax credits do not necessarily violate the Anti-Donation Clause. The New Mexico Supreme Court has long held that a tax exemption, so long as it operates prospectively, is not an unconstitutional remission of tax liability because it occurs during the calculation of a tax liability, before the tax liability accrues. A *non-refundable* tax credit operates similarly to a tax exemption, just at a later stage in the calculation of the tax liability: once the *ex ante* tax liability is determined, a non-refundable tax credit is applied and the tax liability reduced thereby—perhaps all the way to zero. If, as has been long-established, the Constitution does not prohibit a tax exemption (which is part of the calculation leading to a determination of tax liability), it is unlikely that the Constitution prohibits a *non-refundable* tax credit (which is also part of the calculation leading to a determination of tax liability, just occurring at a later stage of the calculation).

Nevertheless, the New Mexico Supreme Court has held that even a *non-refundable* tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. HB83 does not target its non-refundable tax credit to a discrete industry or a particular set of persons other than persons who invest in New Mexico businesses engaged in qualified research and manufacturing, broadly defined. HB83's extension of the period by which taxpayers may apply for the angel investment credit does not alter this analysis and, therefore, likely does not implicate the Anti-Donation Clause.

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✘	**This bill was not heard at an interim committee.**
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	✘	There are no stated purposes, goals, or targets.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✔	This bill does require reporting.
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date. Public analysis	✔	This bill does require reporting and includes a sunset.

Expiration date		
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure. Fulfills stated purpose Passes "but for" test	?	There is no stated purpose by which to evaluate effectiveness or efficiency.
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met ✗ Not Met ? Unclear		

JF/al/ne