

AN ACT

RELATING TO TAXATION; EXTENDING THE ANGEL INVESTMENT CREDIT
FOR 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) 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 more than one hundred thousand dollars (\$100,000) of the qualified investment. The tax credit provided in this section shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit for not more than two qualified investments in a taxable year; provided that each investment is in a different qualified business. A taxpayer may claim the angel investment credit for qualified investments made in the same qualified business or successor of that business for not more than three taxable years. The angel investment credit shall not exceed twenty-five thousand dollars (\$25,000) for each qualified investment by the taxpayer.

C. A taxpayer may claim the angel investment

credit no later than one year following the end of the calendar year in which the qualified investment was made; provided that a claim for the credit may not be made or allowed with respect to any investment made after December 31, 2016.

D. A taxpayer shall apply for certification of eligibility for the angel investment credit from the economic development department. Applications shall be considered in the order received. If the economic development department determines that the taxpayer is an accredited investor and the investment is a qualified investment, it shall issue a certificate of eligibility to the taxpayer, subject to the limitation in Subsection E of this section. The certificate shall be dated and shall include a calculation of the amount of the angel investment credit for which the taxpayer is eligible. The economic development department may issue rules governing the procedure for administering the provisions of this subsection.

E. The economic development department may issue a certificate of eligibility pursuant to Subsection D of this section only if the total amount of angel investment credits represented by certificates of eligibility issued by the economic development department in any calendar year will not exceed seven hundred fifty thousand dollars (\$750,000). If the applications for certificates of eligibility for angel

investment credits represent an aggregate amount exceeding seven hundred fifty thousand dollars (\$750,000) for any calendar year, certificates shall be issued in the order that the applications were received. The excess applications that would have been certified, but for the limit imposed by this subsection, shall be certified, subject to the same limit, in subsequent calendar years.

F. The economic development department shall report annually to the legislative finance committee on the utilization and effectiveness of the angel investment credit. The report shall include, at a minimum: the number of accredited investors to whom certificates of eligibility were issued by the department in the previous year; the names of those investors; the amount of angel investment credit for which each investor was certified eligible; and the number and names of the businesses that the department has determined are qualified businesses for purposes of an investment by an accredited investor. The report shall also include an evaluation of the success of the angel investment credit as an incubator of new businesses in New Mexico and of the continued viability and operation in New Mexico of businesses in which investments eligible for the angel investment credit have been made.

G. To claim the angel investment credit, the taxpayer must provide to the taxation and revenue department a

certificate of eligibility issued by the economic development department pursuant to Subsection D of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer. If the requirements of this section have been complied with, the taxation and revenue department shall approve the claim for the credit.

H. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for a qualified investment made by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association in a taxable year with respect to a qualified investment shall not exceed twenty-five thousand dollars (\$25,000).

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

J. The angel investment credit may only be deducted from the taxpayer's income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may

be carried forward for three consecutive years.

K. As used in this section:

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

(2) "business" means a corporation, general partnership, limited partnership, limited liability company or other similar entity, but excludes an entity that is a government or a nonprofit organization designated as such by the federal government or any state;

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

(4) "high-technology research" means research:

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

(b) substantially all of the activities

of which constitute elements of a process or experimentation related to a new or improved function, performance, reliability or quality, but not related to style, taste or cosmetic or seasonal design factors;

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

(a) construction;

(b) farming;

(c) processing natural resources, including hydrocarbons; or

(d) preparing meals for immediate consumption, on- or off-premises;

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

(a) maintains its principal place of business in New Mexico;

(b) engages in high-technology research or manufacturing activities in New Mexico;

(c) is not primarily engaged in or is not primarily organized as any of the following types of businesses: credit or finance services, including banks, savings and loan associations, credit unions, small loan companies or title loan companies; financial brokering or investment; professional services, including accounting, legal

services, engineering and any other service the practice of which requires a license; insurance; real estate; construction or construction contracting; consulting or brokering; mining; wholesale or retail trade; providing utility service, including water, sewerage, electricity, natural gas, propane or butane; publishing, including publishing newspapers or other periodicals; broadcasting; or providing internet operating services;

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

(e) has one hundred or fewer employees calculated on a full-time-equivalent basis at the time of the investment; and

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

(7) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member

of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business."

SECTION 2. REPEAL.--Laws 2007, Chapter 172, Section 24 is repealed.
