

1 HOUSE BILL 419

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; ALLOWING UNUSED PORTIONS OF AN ANGEL
12 INVESTMENT CREDIT TO BE SOLD, EXCHANGED OR OTHERWISE
13 TRANSFERRED TO ANOTHER TAXPAYER; INCREASING THE ANNUAL
14 AGGREGATE CAP.

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

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

19 "7-2-18.17. ANGEL INVESTMENT CREDIT.--

20 A. A taxpayer who files a New Mexico income tax
21 return, is not a dependent of another taxpayer, is an
22 accredited investor and makes a qualified investment may claim
23 a credit in an amount not to exceed twenty-five percent of the
24 qualified investment; provided that a credit for each qualified
25 investment shall not exceed sixty-two thousand five hundred

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1 dollars (\$62,500). The tax credit provided in this section
2 shall be known as the "angel investment credit".

3 B. A taxpayer may claim the angel investment credit
4 for not more than one qualified investment per investment
5 round. A taxpayer may claim the angel investment credit for
6 qualified investments in no more than five qualified businesses
7 per taxable year.

8 C. A taxpayer may claim the angel investment credit
9 no later than one year following the end of the calendar year
10 in which the qualified investment was made; provided that a
11 claim for the credit may not be made or allowed with respect to
12 any investment made after December 31, 2025.

13 D. A taxpayer shall apply for certification of
14 eligibility for the angel investment credit from the economic
15 development department. Completed applications shall be
16 considered in the order received. If the economic development
17 department determines that the taxpayer is an accredited
18 investor and the investment is a qualified investment, it shall
19 issue a certificate of eligibility to the taxpayer, subject to
20 the limitation in Subsection E of this section. The
21 certificate shall be dated and shall include a calculation of
22 the amount of the angel investment credit for which the
23 taxpayer is eligible. The economic development department may
24 issue rules governing the procedure for administering the
25 provisions of this subsection.

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1 E. The economic development department may issue a
2 certificate of eligibility pursuant to Subsection D of this
3 section only if the total amount of angel investment credits
4 represented by certificates of eligibility issued by the
5 economic development department in any calendar year will not
6 exceed [~~two million dollars (\$2,000,000)~~] five million dollars
7 (\$5,000,000). If the applications for certificates of
8 eligibility for angel investment credits represent an aggregate
9 amount exceeding [~~two million dollars (\$2,000,000)~~] five
10 million dollars (\$5,000,000) for any calendar year,
11 certificates shall be issued in the order that completed
12 applications were received. The excess applications that would
13 have been certified, but for the limit imposed by this
14 subsection, shall be certified, subject to the same limit, in
15 subsequent calendar years.

16 F. The economic development department shall report
17 annually to the legislative finance committee on the
18 utilization and effectiveness of the angel investment credit.
19 The report shall include, at a minimum: the number of
20 accredited investors to whom certificates of eligibility were
21 issued by the economic development department in the previous
22 year; the names of those investors; the amount of angel
23 investment credit for which each investor was certified
24 eligible; and the number and names of the businesses that the
25 economic development department has determined are qualified

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1 businesses for purposes of an investment by an accredited
2 investor. The report shall also include an evaluation of the
3 success of the angel investment credit as an incubator of new
4 businesses in New Mexico and of the continued viability and
5 operation in New Mexico of businesses in which investments
6 eligible for the angel investment credit have been made.

7 G. To claim the angel investment credit, the
8 taxpayer must provide to the taxation and revenue department a
9 certificate of eligibility issued by the economic development
10 department pursuant to Subsection D of this section and any
11 other information the taxation and revenue department may
12 require to determine the amount of the tax credit due the
13 taxpayer. If the requirements of this section have been
14 complied with, the taxation and revenue department shall
15 approve the claim for the credit.

16 H. A taxpayer who otherwise qualifies for and
17 claims a credit pursuant to this section for a qualified
18 investment made by a partnership or other business association
19 of which the taxpayer is a member may claim a credit only in
20 proportion to the taxpayer's interest in the partnership or
21 business association.

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

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1 J. The angel investment credit may only be deducted
2 from the taxpayer's income tax liability. Any portion of the
3 tax credit provided by this section that remains unused at the
4 end of the taxpayer's taxable year may be carried forward for
5 five consecutive years or may be sold, exchanged or otherwise
6 transferred to another taxpayer. The parties to such a
7 transaction shall notify the taxation and revenue department of
8 the sale, exchange or transfer within ten days of the sale,
9 exchange or transfer.

10 K. As used in this section:

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

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

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

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1 (4) "investment round" means an offer and sale
2 of securities and all other offers and sales of securities that
3 would be integrated with such offer and sale of securities
4 under Regulation D issued by the federal securities and
5 exchange commission pursuant to the federal Securities Act of
6 1933, as amended;

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

- 10 (a) construction;
- 11 (b) farming;
- 12 (c) processing natural resources,
13 including hydrocarbons; or
- 14 (d) preparing meals for immediate
15 consumption, on- or off-premises;

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

18 (a) maintains its principal place of
19 business and employs a majority of its full-time employees, if
20 any, in New Mexico and a majority of its tangible assets, if
21 any, are located in New Mexico;

22 (b) engages in qualified research or
23 manufacturing activities in New Mexico;

24 (c) is not primarily engaged in or is
25 not primarily organized as any of the following types of

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1 businesses: credit or finance services, including banks,
2 savings and loan associations, credit unions, small loan
3 companies or title loan companies; financial brokering or
4 investment; professional services, including accounting, legal
5 services, engineering and any other service the practice of
6 which requires a license; insurance; real estate; construction
7 or construction contracting; consulting or brokering; mining;
8 wholesale or retail trade; providing utility service, including
9 water, sewerage, electricity, natural gas, propane or butane;
10 publishing, including publishing newspapers or other
11 periodicals; broadcasting; or providing internet operating
12 services;

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

20 (e) has one hundred or fewer employees
21 calculated on a full-time-equivalent basis in the taxable year
22 in which the investment was made; and

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

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(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; and

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