F I S C A L   I M P A C T   R E P O R T

SPONSOR Campos
ORIGINAL DATE 02/06/14
LAST UPDATED 02/12/14
HB

SHORT TITLE Small Business Investment Tax Credit
SB 323

ANALYST Dorbecker

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16	FY17	FY18		
	($2,000.0)	($2,000.0)	($2,000.0)	($2,000.0)	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	Tax and Revenue Department

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 323 enacts a new section of the Income Tax Act to create the “small business investment income tax credit.” The bill would allow a taxpayer who is an accredited investor, as defined by SEC Rule 501, to submit a claim for a credit up to 25 percent of not more than $250 thousand of a qualified investment.

The bill limits the claim of the tax credit by a taxpayer to a maximum of five qualified investments in a taxable year, provided that each investment is in a different qualified business. In the case of qualified investments made in the same qualified business or successor of that business, the bill establishes a maximum of three taxable years. Also, the portion of the tax credit that exceeds a taxpayer’s tax liability in the taxable year in which the credit is claimed may be carried forward for a maximum of five consecutive taxable years.

The bill requires taxpayers applying for the credit to provide information to the Economic Development Department (EDD) concerning the taxpayer's investment accreditation requirements.

SB 323 further requires the EDD to promulgate rules establishing procedures to certify qualified accredited investors for purposes of obtaining the credit. EDD must issue a dated and sequentially-numbered certificate of eligibility containing a list of the qualified small business investors claiming the credit that includes personal identifiable information.

The bill includes reporting requirements. EDD is required to periodically audit the records of the credit to ensure the credit's effective administration. EDD must also compile an annual report that includes the number of accredited investors to whom certificates of eligibility were issued by the department in the previous year and the number and names of the businesses that the department has determined are qualified for the purpose of the investment. The bill requires the appropriate legislative committees to review the effectiveness and cost of the tax credit to evaluate the success of the credit as an incubator of new businesses in New Mexico.

The bill adds definitions for "accredited investor", "business", "equity", "qualified business", and "qualified investment."

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends. The bill is applicable for taxable years beginning on or after January 1, 2014.

FISCAL IMPLICATIONS

The Small Business Investment Tax Credit on this bill is very similar to the Angel Investment Credit, except the new credit has a broader definition for "qualified business." LFC believes this credit will have a larger taxpayer application than the Angel Investment Tax Credit. Hence, the $2 million cap was used for the fiscal effect.

EDD anticipates the total amount of credits would meet the $2 million per year cap and likely exceed it, forcing taxpayers to carry their credits forward. EDD notes the Angel Investment Tax Credit has never met its cap of $750,000 in total credits per year because the types of businesses in which an investor is allowed to invest and claim the credit from is far more limited.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

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.

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 deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD estimates a moderate administrative impact from the bill. A claim form will need to be developed. Modifications to the forms, instructions, publications, GenTax and web applications can be performed at minimal cost as part of the annual tax program revision efforts. According to TRD, the new credit functions similarly to the Angel Investment Tax Credit and coordination with EDD will be necessary to ensure it functions adequately.

There would also be a moderate impact on TRD's Information Technology (IT) division. It involves adding a new line item on personal income tax return document, changes on EDCR and data extracting process, which can be done with year-end changes, and new configurations on their business credit manager.

According to EDD, there is minimal administrative impact from this bill. EDD could perform the tasks required to issue the certificate of eligibility only if the total amount of small business investment income tax credits represented by the certificates issued in any calendar year do not exceed $2 million dollars.

TECHNICAL ISSUES

The bill also provides that a taxpayer claiming the tax credit may not apply for and be granted tax credits according to the Investment Credit Act, the Technology Jobs Tax Credit or the Research and Development Small Business Tax Credit Act.

Although the bill does not specifically state a sunset date, it does mention on page 2 lines 17-18 the claim for the credit may not be made or allowed with respect to any investment made after December 31, 2021. The LFC recommends adding the language to clarify if this date refers to a sunset date.

OTHER SUBSTANTIVE ISSUES

TRD is concerned with limiting the credit with respect to "reporting periods" as seen on page 2, section E of the bill. TRD believes the intent is to limit the credit for expenditures made pursuant to the other credits mentioned, not the credits claimed in the same report period. TRD was quoted as saying "There is the possibility, with this language, that a taxpayer could claim both the angel investment credit and this credit for the same expenditure."

Does the bill meet the Legislative Finance Committee tax policy principles?

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

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