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HOUSE BILL 201

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Carl Trujillo and Nathan P. Small

AN ACT

RELATING TO TAXATION; MAKING THE ANGEL INVESTMENT CREDIT  
REFUNDABLE.

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 the  
qualified investment; provided that a credit for each qualified  
investment shall not exceed sixty-two thousand five hundred  
dollars (\$62,500). The tax credit provided in this section  
shall be known as the "angel investment credit".

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

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

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

24           E. The economic development department may issue a  
25 certificate of eligibility pursuant to Subsection D of this

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

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

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1 operation in New Mexico of businesses in which investments  
2 eligible for the angel investment credit have been made.

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

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

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

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

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1 ~~forward for five consecutive years]~~ If the credit exceeds the  
2 income tax liability for the taxable year, the excess shall be  
3 refunded to the taxpayer.

4 K. As used in this section:

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

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

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

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 qualified research or  
17 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 in the taxable year  
16 in which the investment was made; and

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

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

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1 within one year of investment in the qualified business; and

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

5 SECTION 2. APPLICABILITY.--The provisions of this act  
6 apply to taxable years beginning on or after January 1, 2018.

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