

1 SENATE BILL 402

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Martin Hickey and Meredith Dixon

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10 AN ACT

11 RELATING TO TAXATION; MAKING THE ANGEL INVESTMENT CREDIT  
12 REFUNDABLE, INCREASING THE AMOUNT OF THE CREDIT AND THE  
13 AGGREGATE CAP IN CREDITS PER CALENDAR YEAR; AMENDING THE  
14 DEFINITION OF "QUALIFIED BUSINESS".

15  
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 apply  
23 for, and the department may allow, a claim for a credit in an  
24 amount not to exceed [~~twenty-five~~] fifty percent of the  
25 qualified investment; provided that a credit for each qualified

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1 investment shall not exceed sixty-two thousand five hundred  
2 dollars (\$62,500). The tax credit provided in this section  
3 shall be known as the "angel investment credit".

4 B. A taxpayer may claim the angel investment  
5 credit:

6 (1) for not more than one qualified investment  
7 per investment round;

8 (2) for qualified investments in no more than  
9 five qualified businesses per taxable year; and

10 (3) for a qualified investment made on or  
11 before December 31, 2025.

12 C. A taxpayer may apply for an angel investment  
13 credit by submitting a completed application to the [~~taxation~~  
14 ~~and revenue~~] department on forms and in a manner required by  
15 the department no later than one year following the end of the  
16 calendar year in which the qualified investment is made. A  
17 taxpayer shall not apply for more than one credit for the same  
18 qualified investment in the same investment round.

19 D. Except as provided in Subsection J of this  
20 section, a taxpayer shall claim the angel investment credit no  
21 later than one year following the date the completed  
22 application for the credit is approved by the department.

23 E. Applications and all subsequent materials  
24 submitted to the [~~taxation and revenue~~] department related to  
25 the application shall also be submitted to the economic

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1 development department.

2 F. The [~~taxation and revenue~~] department shall  
3 allow a maximum annual aggregate of [~~two million dollars~~  
4 ~~(\$2,000,000)~~] ten million dollars (\$10,000,000) in angel  
5 investment credits per calendar year. Completed applications  
6 shall be considered in the order received. Applications for  
7 credits that would have been allowed but for the limit imposed  
8 by this subsection shall be allowed in subsequent calendar  
9 years.

10 G. The [~~taxation and revenue~~] department shall  
11 report annually to the revenue stabilization and tax policy  
12 committee and the legislative finance committee on the  
13 utilization and effectiveness of the angel investment credit.  
14 The report shall include, at a minimum: the number of  
15 accredited investors determined to be eligible for the credit  
16 in the previous year; the names of those investors; the amount  
17 of credit for which each investor was determined to be  
18 eligible; and the number and names of the businesses determined  
19 to be qualified businesses for purposes of an investment by an  
20 accredited investor.

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

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1 business association.

2 I. Married individuals who file separate returns  
3 for a taxable year in which they could have filed a joint  
4 return may each claim one-half of the credit that would have  
5 been allowed on a joint return.

6 J. The angel investment credit may only be deducted  
7 from the taxpayer's income tax liability. Any portion of the  
8 tax credit provided by this section that remains unused at the  
9 end of the taxpayer's taxable year ~~[may be carried forward for~~  
10 ~~five consecutive years]~~ shall be refunded to the taxpayer.

11 K. As used in this section:

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

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

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

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1 partnership interest or a membership interest;

2 (4) "investment round" means an offer and sale  
3 of securities and all other offers and sales of securities that  
4 would be integrated with such offer and sale of securities  
5 under Regulation D issued by the federal securities and  
6 exchange commission pursuant to the federal Securities Act of  
7 1933, as amended;

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

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

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

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

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

25 (c) is not primarily engaged in or is

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1 not primarily organized as any of the following types of  
2 businesses: credit or finance services, including banks,  
3 savings and loan associations, credit unions, small loan  
4 companies or title loan companies; financial brokering or  
5 investment; professional services, including accounting, legal  
6 services, engineering and any other service the practice of  
7 which requires a license; insurance; real estate; construction  
8 or construction contracting; consulting or brokering; mining;  
9 wholesale or retail trade; providing utility service, including  
10 water, sewerage, electricity, natural gas, propane or butane;  
11 publishing, including publishing newspapers or other  
12 periodicals; broadcasting; or providing internet operating  
13 services;

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

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

24 (f) has not had gross revenues in excess  
25 of [~~five million dollars (\$5,000,000)~~] ten million dollars

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1 (\$10,000,000) in any fiscal year ending on or before the date  
2 of the investment;

3 (7) "qualified investment" means a cash  
4 investment in a qualified business for equity, but does not  
5 include an investment by a taxpayer if the taxpayer, a member  
6 of the taxpayer's immediate family or an entity affiliated with  
7 the taxpayer receives compensation from the qualified business  
8 in exchange for services provided to the qualified business  
9 within one year of investment in the qualified business; and

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

13 SECTION 2. APPLICABILITY.--The provisions of this act  
14 apply to applications for an angel investment credit for  
15 qualified investments made on or after January 1, 2021.