

HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 80

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO TAXATION; MAKING THE ANGEL INVESTMENT CREDIT
REFUNDABLE; INCREASING THE AMOUNT OF THE CREDIT; PROVIDING A
HIGHER AMOUNT OF CREDIT FOR INVESTMENTS IN MAJORITY WOMEN- OR
PERSON-OF-COLOR-OWNED BUSINESSES; INCREASING THE AGGREGATE CAP;
AMENDING THE DEFINITION OF "QUALIFIED BUSINESS".

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 apply
for, and the department may allow, a claim for a credit [~~in an~~
~~amount not to exceed twenty-five percent of the qualified~~

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1 ~~investment; provided that a credit for each qualified~~
2 ~~investment shall not exceed sixty-two thousand five hundred~~
3 ~~dollars (\$62,500)]~~ against the taxpayer's tax liabilities
4 pursuant to the Income Tax Act. The tax credit provided in
5 this section shall be known as the "angel investment credit".

6 B. The amount of an angel investment credit shall
7 be in an amount equal to the following amounts; provided that a
8 credit for each qualified investment shall not exceed sixty-two
9 thousand five hundred dollars (\$62,500):

10 (1) for a qualified investment in a majority
11 women- or person-of-color-owned business, fifty percent of the
12 qualified investment; and

13 (2) for a qualified investment in all other
14 businesses, forty percent of the qualified investment.

15 ~~[B.]~~ C. A taxpayer may claim the angel investment
16 credit:

17 (1) for not more than one qualified investment
18 per investment round;

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

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

23 ~~[C.]~~ D. A taxpayer may apply for an angel
24 investment credit by submitting a completed application to the
25 ~~[taxation and revenue]~~ department on forms and in a manner

1 required by the department no later than one year following the
 2 end of the calendar year in which the qualified investment is
 3 made. A taxpayer shall not apply for more than one credit for
 4 the same qualified investment in the same investment round.

5 ~~[D. Except as provided in Subsection J of this~~
 6 ~~section]~~

7 E. A taxpayer shall claim the angel investment
 8 credit no later than one year following the date the completed
 9 application for the credit is approved by the department.

10 ~~[E.]~~ F. Applications and all subsequent materials
 11 submitted to the ~~[taxation and revenue]~~ department related to
 12 the application shall also be submitted to the economic
 13 development department.

14 ~~[F.]~~ G. The ~~[taxation and revenue]~~ department shall
 15 allow a maximum annual aggregate of ~~[two million dollars~~
 16 ~~(\$2,000,000)]~~ ten million dollars (\$10,000,000) in angel
 17 investment credits per calendar year. Completed applications
 18 shall be considered in the order received. Applications for
 19 credits that would have been allowed but for the limit imposed
 20 by this subsection shall be allowed in subsequent calendar
 21 years.

22 ~~[G.]~~ H. The ~~[taxation and revenue]~~ department shall
 23 report annually to the revenue stabilization and tax policy
 24 committee and the legislative finance committee on the
 25 utilization and effectiveness of the angel investment credit.

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1 The report shall include, at a minimum: the number of
2 accredited investors determined to be eligible for the credit
3 in the previous year; the names of those investors; the amount
4 of credit for which each investor was determined to be
5 eligible; and the number and names of the businesses determined
6 to be qualified businesses for purposes of an investment by an
7 accredited investor.

8 ~~[H.]~~ I. A taxpayer who otherwise qualifies for and
9 claims a credit pursuant to this section for a qualified
10 investment made by a partnership or other business association
11 of which the taxpayer is a member may claim a credit only in
12 proportion to the taxpayer's interest in the partnership or
13 business association.

14 ~~[I.]~~ J. Married individuals who file separate
15 returns for a taxable year in which they could have filed a
16 joint return may each claim one-half of the credit that would
17 have been allowed on a joint return.

18 ~~[J.]~~ K. The angel investment credit may only be
19 deducted from the taxpayer's income tax liability. Any portion
20 of the tax credit provided by this section that remains unused
21 at the end of the taxpayer's taxable year ~~[may be carried~~
22 ~~forward for five consecutive years]~~ shall be refunded to the
23 taxpayer.

24 L. The department shall adopt rules to establish
25 the procedures for determining if a business is majority women-

1 or person-of-color-owned. The department may rely on federal
 2 or state certifications and information that relate to the
 3 ownership of a business.

4 [~~K.~~] M. 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)~~] ten million dollars
 19 (\$10,000,000) in any fiscal year ending on or before the date
 20 of the investment;

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

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1 in exchange for services provided to the qualified business
2 within one year of investment in the qualified business; and

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

6 SECTION 2. APPLICABILITY.--The provisions of this act
7 apply to taxable years beginning on or after January 1, 2022.