

HOUSE BILL 69

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; HCEDC → ~~MAKING THE ANGEL INVESTMENT CREDIT REFUNDABLE;~~ ← HCEDC INCREASING THE AMOUNT OF THE AGGREGATE CAP IN HCEDC → ANGEL INVESTMENT ← HCEDC CREDITS PER CALENDAR YEAR; EXTENDING THE AMOUNT OF TIME TO MAKE A QUALIFIED INVESTMENT AND BE ELIGIBLE FOR THE CREDIT.

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

SECTION 1. Section 7-2-18.17 NMSA 1978 (being Laws 2007,

.223511.1AIC February 1, 2023 (10:21am)

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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 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".

B. A taxpayer may claim the angel investment credit:

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

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

(3) for a qualified investment made on or before December 31, [~~2025~~] 2030.

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

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qualified investment in the same investment round.

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

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

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

G. The [~~taxation and revenue~~] department shall report annually to the revenue stabilization and tax policy committee and the legislative finance committee on the utilization and effectiveness of the angel investment credit. The report shall include, at a minimum: the number of accredited investors determined to be eligible for the credit in the previous year; the names of those investors; the amount of credit for which each investor was determined to be

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eligible; and the number and names of the businesses determined to be qualified businesses for purposes of an investment by an accredited investor.

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

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

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

K. As used in this section:

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

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

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

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

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

- (a) construction;
- (b) farming;
- (c) processing natural resources, including hydrocarbons; or
- (d) preparing meals for immediate

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consumption, on- or off-premises;

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

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

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

(c) is not primarily engaged in or is not primarily organized as any of the following types of businesses: credit or finance services, including banks, savings and loan associations, credit unions, small loan companies or title loan companies; financial brokering or investment; professional services, including accounting, legal services, engineering and any other service the practice of which requires a license; insurance; real estate; construction or construction contracting; consulting or brokering; mining; wholesale or retail trade; providing utility service, including water, sewerage, electricity, natural gas, propane or butane; publishing, including publishing newspapers or other periodicals; broadcasting; or providing internet operating services;

(d) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as

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amended; has not issued securities traded on a national securities exchange; is not subject to reporting requirements of the federal Securities Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company Act of 1940, as amended, at the time of the investment;

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

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

(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."

SECTION 2. APPLICABILITY.--The provisions of this act apply to applications for an angel investment credit for qualified investments made on or after January 1, 2023.