

1 HOUSE BILL 158

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; TRANSFERRING REVIEW AND APPROVAL OF ANGEL  
12 INVESTMENT CREDITS FROM THE ECONOMIC DEVELOPMENT DEPARTMENT TO  
13 THE TAXATION AND REVENUE DEPARTMENT; REQUIRING APPLICATION  
14 MATERIALS FOR THE TAX CREDIT TO CONTINUE TO BE SENT TO THE  
15 ECONOMIC DEVELOPMENT DEPARTMENT.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 7-2-18.17 NMSA 1978 (being Laws 2007,  
19 Chapter 172, Section 1, as amended) is amended to read:

20 "7-2-18.17. ANGEL INVESTMENT CREDIT.--

21 A. A taxpayer who files a New Mexico income tax  
22 return, is not a dependent of another taxpayer, is an  
23 accredited investor and makes a qualified investment may apply  
24 for, and the department may allow, a claim for a credit in an  
25 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). The tax credit provided in this section  
4 shall be known as the "angel investment credit".

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

7 (1) for not more than one qualified investment  
8 per investment round; [~~A taxpayer may claim the angel~~  
9 ~~investment credit~~]

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

12 [~~G. A taxpayer may claim the angel investment~~  
13 ~~credit no later than one year following the end of the calendar~~  
14 ~~year in which the qualified investment was made; provided that~~  
15 ~~a claim for the credit may not be made or allowed with respect~~  
16 ~~to any~~] and

17 (3) for a qualified investment made [after] on  
18 or before December 31, 2025.

19 [~~D. A taxpayer shall apply for certification of~~  
20 ~~eligibility for the angel investment credit from the economic~~  
21 ~~development department. Completed applications shall be~~  
22 ~~considered in the order received. If the economic development~~  
23 ~~department determines that the taxpayer is an accredited~~  
24 ~~investor and the investment is a qualified investment, it shall~~  
25 ~~issue a certificate of eligibility to the taxpayer, subject to~~

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1 ~~the limitation in Subsection E of this section. The~~  
2 ~~certificate shall be dated and shall include a calculation of~~  
3 ~~the amount of the angel investment credit for which the~~  
4 ~~taxpayer is eligible. The economic development department may~~  
5 ~~issue rules governing the procedure for administering the~~  
6 ~~provisions of this subsection.~~

7 ~~E. The economic development department may issue a~~  
8 ~~certificate of eligibility pursuant to Subsection D of this~~  
9 ~~section only if the total amount of angel investment credits~~  
10 ~~represented by certificates of eligibility issued by the~~  
11 ~~economic development department in any calendar year will not~~  
12 ~~exceed two million dollars (\$2,000,000). If the applications~~  
13 ~~for certificates of eligibility for angel investment credits~~  
14 ~~represent an aggregate amount exceeding two million dollars~~  
15 ~~(\$2,000,000) for any calendar year, certificates shall be~~  
16 ~~issued in the order that completed applications were received.~~  
17 ~~The excess applications that would have been certified but for~~  
18 ~~the limit imposed by this subsection shall be certified subject~~  
19 ~~to the same limit in subsequent calendar years.]~~

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

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1 qualified investment in the same investment round.

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

6 E. Applications and all subsequent materials  
7 submitted to the taxation and revenue department related to the  
8 application shall also be submitted to the economic development  
9 department.

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

17 ~~[F.]~~ G. The ~~[economic development]~~ taxation and  
18 revenue department shall report annually to the revenue  
19 stabilization and tax policy committee and the legislative  
20 finance committee on the utilization and effectiveness of the  
21 angel investment credit. The report shall include, at a  
22 minimum: the number of accredited investors ~~[to whom~~  
23 ~~certificates of eligibility were issued by the economic~~  
24 ~~development department]~~ determined to be eligible for the  
25 credit in the previous year; the names of those investors; the

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1 amount of [~~angel investment~~] credit for which each investor was  
2 [~~certified~~] determined to be eligible; and the number and names  
3 of the businesses [~~that the economic development department~~  
4 ~~has~~] determined [~~are~~] to be qualified businesses for purposes  
5 of an investment by an accredited investor. [~~The report shall~~  
6 ~~also include an evaluation of the success of the angel~~  
7 ~~investment credit as an incubator of new businesses in New~~  
8 ~~Mexico and of the continued viability and operation in New~~  
9 ~~Mexico of businesses in which investments eligible for the~~  
10 ~~angel investment credit have been made.~~

11 G. ~~To claim the angel investment credit, the~~  
12 ~~taxpayer must provide to the taxation and revenue department a~~  
13 ~~certificate of eligibility issued by the economic development~~  
14 ~~department pursuant to Subsection D of this section and any~~  
15 ~~other information the taxation and revenue department may~~  
16 ~~require to determine the amount of the tax credit due the~~  
17 ~~taxpayer. If the requirements of this section have been~~  
18 ~~complied with, the taxation and revenue department shall~~  
19 ~~approve the claim for the credit.]~~

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

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

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

10 K. As used in this section:

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

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

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

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

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

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

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

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

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

24 (c) is not primarily engaged in or is  
25 not primarily organized as any of the following types of

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1 businesses: credit or finance services, including banks,  
2 savings and loan associations, credit unions, small loan  
3 companies or title loan companies; financial brokering or  
4 investment; professional services, including accounting, legal  
5 services, engineering and any other service the practice of  
6 which requires a license; insurance; real estate; construction  
7 or construction contracting; consulting or brokering; mining;  
8 wholesale or retail trade; providing utility service, including  
9 water, sewerage, electricity, natural gas, propane or butane;  
10 publishing, including publishing newspapers or other  
11 periodicals; broadcasting; or providing internet operating  
12 services;

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

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

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

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

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

11 SECTION 2. APPLICABILITY.--The provisions of this act  
12 apply to applications for an angel investment credit for  
13 qualified investments made on or after January 1, 2019.