

1 HOUSE BILL 161

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

4 Jane E. Powdrell-Culbert and Linda Serrato and
5 Natalie Figueroa and Cathrynn N. Brown and Randal S. Crowder
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10 AN ACT

11 RELATING TO TAXATION; EXTENDING THE DATE TO MAKE A QUALIFIED
12 INVESTMENT TO BE ELIGIBLE FOR AN ANGEL INVESTMENT CREDIT;
13 INCREASING THE ANNUAL AGGREGATE CAP OF THE CREDIT.
14

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

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

18 "7-2-18.17. ANGEL INVESTMENT CREDIT.--

19 A. A taxpayer who files a New Mexico income tax
20 return, is not a dependent of another taxpayer, is an
21 accredited investor and makes a qualified investment may apply
22 for, and the department may allow, a claim for a credit in an
23 amount not to exceed twenty-five percent of the qualified
24 investment; provided that a credit for each qualified
25 investment shall not exceed sixty-two thousand five hundred

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1 dollars (\$62,500). The tax credit provided in this section
2 shall be known as the "angel investment credit".

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

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

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

9 (3) for a qualified investment made on or
10 before December 31, ~~[2025]~~ 2029.

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

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

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

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

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

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

25 I. Married individuals who file separate returns

1 for a taxable year in which they could have filed a joint
2 return may each claim one-half of the credit that would have
3 been allowed on a joint return.

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

9 K. As used in this section:

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

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

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

25 (4) "investment round" means an offer and sale

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

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

9 (a) construction;
10 (b) farming;
11 (c) processing natural resources,
12 including hydrocarbons; or

13 (d) preparing meals for immediate
14 consumption, on- or off-premises;

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

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

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

23 (c) is not primarily engaged in or is
24 not primarily organized as any of the following types of
25 businesses: credit or finance services, including banks,

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

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

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

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

25 (7) "qualified investment" means a cash

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

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

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