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HOUSE BILL 304

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Jane E. Powdrell-Culbert

AN ACT

RELATING TO TAXATION; EXTENDING THE ANGEL INVESTMENT CREDIT FOR FIVE YEARS.

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) 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 claim a credit in an amount not to exceed twenty-five percent of not more than one hundred thousand dollars (\$100,000) of the qualified investment. The tax credit provided in this section shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit

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1 for not more than two qualified investments in a taxable year;
2 provided that each investment is in a different qualified
3 business. A taxpayer may claim the angel investment credit for
4 qualified investments made in the same qualified business or
5 successor of that business for not more than three taxable
6 years. The angel investment credit shall not exceed twenty-
7 five thousand dollars (\$25,000) for each qualified investment
8 by the taxpayer.

9 C. A taxpayer may claim the angel investment credit
10 no later than one year following the end of the calendar year
11 in which the qualified investment was made; provided that a
12 claim for the credit may not be made or allowed with respect to
13 any investment made after December 31, [~~2011~~] 2015.

14 D. A taxpayer shall apply for certification of
15 eligibility for the angel investment credit from the economic
16 development department. Applications shall be considered in
17 the order received. If the economic development department
18 determines that the taxpayer is an accredited investor and the
19 investment is a qualified investment, it shall issue a
20 certificate of eligibility to the taxpayer, subject to the
21 limitation in Subsection E of this section. The certificate
22 shall be dated and shall include a calculation of the amount of
23 the angel investment credit for which the taxpayer is eligible.
24 The economic development department may issue rules governing
25 the procedure for administering the provisions of this

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1 subsection.

2 E. The economic development department may issue a
3 certificate of eligibility pursuant to Subsection D of this
4 section only if the total amount of angel investment credits
5 represented by certificates of eligibility issued by the
6 economic development department in any calendar year will not
7 exceed seven hundred fifty thousand dollars (\$750,000). If the
8 applications for certificates of eligibility for angel
9 investment credits represent an aggregate amount exceeding
10 seven hundred fifty thousand dollars (\$750,000) for any
11 calendar year, certificates shall be issued in the order that
12 the applications were received. The excess applications that
13 would have been certified, but for the limit imposed by this
14 subsection, shall be certified, subject to the same limit, in
15 subsequent calendar years.

16 F. The economic development department shall report
17 annually to the legislative finance committee on the
18 utilization and effectiveness of the angel investment credit.
19 The report shall include, at a minimum: the number of
20 accredited investors to whom certificates of eligibility were
21 issued by the department in the previous year; the names of
22 those investors; the amount of angel investment credit for
23 which each investor was certified eligible; and the number and
24 names of the businesses that the department has determined are
25 qualified businesses for purposes of an investment by an

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1 accredited investor. The report shall also include an
2 evaluation of the success of the angel investment credit as an
3 incubator of new businesses in New Mexico and of the continued
4 viability and operation in New Mexico of businesses in which
5 investments eligible for the angel investment credit have been
6 made.

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

16 H. A taxpayer who otherwise qualifies for and
17 claims a credit pursuant to this section for a qualified
18 investment made by a partnership or other business association
19 of which the taxpayer is a member may claim a credit only in
20 proportion to the taxpayer's interest in the partnership or
21 business association. The total credit claimed in the
22 aggregate by all members of the partnership or business
23 association in a taxable year with respect to a qualified
24 investment shall not exceed twenty-five thousand dollars
25 (\$25,000).

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1 I. A husband and wife who file separate returns for
2 a taxable year in which they could have filed a joint return
3 may each claim one-half of the credit that would have been
4 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 three 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) "high-technology research" means research:

2 (a) that is undertaken for the purpose
3 of discovering information that is technological in nature and
4 the application of which is intended to be useful in the
5 development of a new or improved business component of the
6 qualified business; and

7 (b) substantially all of the activities
8 of which constitute elements of a process or experimentation
9 related to a new or improved function, performance, reliability
10 or quality, but not related to style, taste or cosmetic or
11 seasonal design factors;

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

15 (a) construction;

16 (b) farming;

17 (c) processing natural resources,
18 including hydrocarbons; or

19 (d) preparing meals for immediate
20 consumption, on- or off-premises;

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

23 (a) maintains its principal place of
24 business in New Mexico;

25 (b) engages in high-technology research

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1 or manufacturing activities in New Mexico;

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

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

23 (e) has one hundred or fewer employees
24 calculated on a full-time-equivalent basis at the time of the
25 investment; and

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

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

11 SECTION 2. REPEAL.--Laws 2007, Chapter 172, Section 24 is
12 repealed.

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