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SENATE BILL DRS45263-MCf-112

Short Title: Angel Investment for Small Businesses.

(Public)

Sponsors: Senators Salvador and Garrett (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TAX INCENTIVE FOR ANGEL INVESTORS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 4 of Chapter 105 of the General Statutes is amended by adding
5 a new section to read:

6 "**§ 105-153.11. Angel investment tax credit.**

7 (a) Definitions. – The following definitions apply in this section:

- 8 (1) Angel investor. – An accredited investor as defined by the United States
9 Securities and Exchange Commission who is (i) an individual person who is
10 a resident of this State or a nonresident who is subject to taxes imposed by this
11 Chapter or (ii) a pass-through entity which is formed for investment purposes,
12 has no business operations, does not have committed capital under
13 management exceeding five million dollars (\$5,000,000), and is not
14 capitalized with funds raised or pooled through private placement memoranda
15 directed to institutional investors. A venture capital fund or commodity fund
16 with institutional investors or a hedge fund does not qualify as an angel
17 investor.
18 (2) Angel investor taxpayer. – A taxpayer who invested in a capital asset and as a
19 result of that investment was eligible to claim the tax credit allowed pursuant
20 to this section.
21 (3) Credit asset. – A capital asset acquired by an angel investor taxpayer who was
22 eligible to claim the tax credit allowed pursuant to this section with respect to
23 the acquisition.
24 (4) Headquarters. – The facility or portion of a facility where corporate staff
25 employees are physically employed and where the majority of the company's
26 or company business unit's financial, personnel, legal, planning, information
27 technology, or other headquarters-related functions are handled.
28 (5) Net capital gain. – Defined in section 1222 and related sections of the Code.
29 (6) Net capital loss. – Defined in section 1211(b), not including the limitation
30 imposed pursuant to section 1211(b)(1), of the Code.
31 (7) Net income tax liability. – State income tax liability reduced by all other
32 credits allowed under this Chapter.
33 (8) Pass-through entity. – A partnership, an S-corporation, or a limited liability
34 company taxed as a partnership.
35 (9) Qualified business. – A registered business that (i) is either a corporation,
36 limited liability company, or a general or limited partnership located in this



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1 State and has its headquarters located in this State at the time the investment
2 was made and has maintained these headquarters for the entire time the
3 qualified business benefitted from the tax credit provided for pursuant to this
4 section, (ii) was organized no more than five years before the qualified
5 investment was made, (iii) employs 25 or fewer people in this State at the time
6 it is registered as a qualified business, (iv) has had in any complete fiscal year
7 before registration gross income as determined in accordance with the Code
8 of two million dollars (\$2,000,000) or less on a consolidated basis, or (v) is
9 primarily engaged in manufacturing, processing, warehousing, wholesaling,
10 software development, information technology services, research and
11 development, or a business providing services set forth in subsectors 621, 622,
12 and 623 of NAICS; provided the business does not engage substantially in any
13 of the following:

- 14 a. Retail sales.
- 15 b. Real estate or construction.
- 16 c. Professional services.
- 17 d. Gambling.
- 18 e. Natural resource extraction.
- 19 f. Financial brokerage, investment activities, or insurance.
- 20 g. Entertainment, amusement, recreation, or athletic or fitness activity for
21 which an admission or fee is charged.

22 A business is substantially engaged in one of the activities defined in this
23 subdivision if its gross revenue from an activity exceeds twenty-five percent
24 (25%) of its gross revenues in a fiscal year or it is established pursuant to its
25 articles of incorporation, articles of organization, operating agreement, or
26 similar organizational documents to engage as one of its primary purposes
27 such activity.

28 (10) Qualified investment. – An investment by an angel investor of cash in a
29 qualified business for common or preferred stock or an equity interest or a
30 purchase for cash of subordinated debt in a qualified business. Investment of
31 common or preferred stock or an equity interest or purchase of subordinated
32 debt does not qualify as a qualified investment if a broker fee or commission
33 or a similar remuneration is paid or given directly or indirectly for soliciting
34 an investment or a purchase.

35 (11) Registered or registration. – A business has been certified by the Secretary as
36 a qualified business at the time of application to the Secretary.

37 (12) Secretary. – The Secretary of State.

38 (b) Credit. – An angel investor is entitled to a nonrefundable income tax credit of
39 thirty-five percent (35%) of its qualified investment made pursuant to this section. Fifty percent
40 (50%) of the allowed credit may be applied to the angel investor's net income tax liability in the
41 tax year during which the qualified investment is made, and the remainder may be applied to the
42 angel investor's net income tax liability in the tax years after the qualified investment is made
43 and may be carried forward for a period not to exceed 10 years.

44 (c) Pass-Through Entity. – For any pass-through entity making a qualified investment
45 directly in a qualified business, each individual who is a shareholder, partner, or member of the
46 entity must be allocated the credit allowed the pass-through entity in an amount determined in
47 the same manner as the proportionate shares of income or loss of such pass-through entity would
48 be determined. The pass-through entity must make an irrevocable election with the Department
49 of Revenue as to the manner in which the credit is allocated. If an individual's share of the
50 pass-through entity's credit is limited due to the maximum allowable credit under this Chapter

1 for a taxable year, the pass-through entity and its owners may not reallocate the unused credit
2 among the other owners.

3 (d) Limitations. – The credits allowed under this section are subject to the following
4 conditions and limitations:

5 (1) The total amount of credits allowed pursuant to this section may not exceed
6 in the aggregate five million dollars (\$5,000,000) for all taxpayers for any one
7 calendar year.

8 (2) The aggregate amount of credit allowed an individual for one or more
9 qualified investments in a single taxable year under this section, whether made
10 directly or by a pass-through entity and allocated to an individual, shall not
11 exceed one hundred thousand dollars (\$100,000), not including any carry
12 forward credits.

13 (3) The amount of the tax credit allowed an individual under this section for a
14 taxable year shall not exceed an individual's net income tax liability. An
15 unused credit amount is allowed to be carried forward for 10 years from the
16 close of the taxable year in which the qualified investment was made.

17 (4) The credit is transferrable by the angel investor to his or her heirs and legatees
18 upon his or her death and to his or her spouse or incident to divorce.

19 (5) The credit may be sold, exchanged, or otherwise transferred and may be
20 carried forward for a period of 10 taxable years following the taxable year in
21 which the credit originated until fully expended. A tax credit or increment of
22 a tax credit may be transferred only once. The credit may be transferred to any
23 taxpayer. A taxpayer to whom a credit has been transferred may use the credit
24 for the taxable year in which the transfer occurred and unused amounts may
25 be carried forward to succeeding taxable years, but the transferred credit may
26 not be used more than 10 years after it was originally issued. The Department
27 may develop procedures for the transfer of the credits.

28 (e) Registration. – A qualified business shall register with the Secretary for purposes of
29 this section. Approval of this registration constitutes certification by the Secretary for 12 months
30 after being issued. A business is permitted to renew its registration with the Secretary so long as,
31 at the time of renewal, the business remains a qualified business. If the Secretary finds that any
32 information contained in an application of a business for registration under this section is false,
33 the Secretary shall revoke the registration of the business. The Secretary shall not revoke the
34 registration of a business only because it ceases business operations for an indefinite period of
35 time, as long as the business renews its registration.

36 A registration as a qualified business may not be sold or otherwise transferred, except that, if
37 a qualified business enters into a merger, conversion, consolidation, or other similar transaction
38 with another business and the surviving company would otherwise meet the criteria for being a
39 qualified business, the surviving company retains the registration for remainder of the 12-month
40 registration period without further application to the Secretary. In this case, the qualified business
41 shall provide the Secretary with written notice of the merger, conversion, consolidation, or
42 similar transaction and other information as required by the Secretary.

43 By January 31 of each year, the Secretary shall report to the Joint Legislative Commission
44 on Governmental Operations a list of the businesses that have registered with the Secretary as a
45 qualified business. The report must include, by county, the name and address of each business;
46 the location of its headquarters; a description of the type of business in which it engages; the
47 amount of capital it has raised, including the amount of qualified investment as defined in this
48 section; the number of full-time, part-time, and temporary jobs created by the business during
49 the period covered by the report; and the average wages paid by these jobs. An aggregated
50 statewide report containing the number of businesses; the amount of capital raised by the
51 businesses, including the amount of qualified investment as defined by this section; the number

1 of full-time, part-time, and temporary jobs created by the businesses; and the average wages paid
2 by these jobs also must be made available in a conspicuous place on the Secretary's website.

3 (f) Capital Gain or Loss. – If an angel investor taxpayer recognized net capital gain on
4 the sale or exchange of credit assets in a taxable year, then the amount of net capital gain of that
5 taxpayer eligible for the deduction otherwise allowed pursuant to this Chapter must be reduced
6 by the net capital gain on the sale or exchange of credit assets by the angel investor taxpayer. In
7 a separate computation in each taxable year, the angel investor taxpayer shall attribute the net
8 capital gain on credit assets to each credit asset in the ratio that the long-term capital gain on each
9 separate credit asset as a proportion of all such long-term gain bears to the net capital gain
10 reduction required pursuant to this subsection. If cumulative net capital gain on a credit asset
11 multiplied by seven percent (7%) equals the total credit claimed on the credit asset, the excess of
12 the net capital gain attributable to this credit asset over that necessary to produce the total credit
13 amount in the computation is deducted from the reduction otherwise required pursuant to this
14 subsection.

15 If an angel investor taxpayer recognized net capital loss on the sale or exchange of credit
16 assets in a taxable year in an amount equal to or less than the total of tax credits claimed on those
17 credit assets, then there is added to the angel investor taxpayer's taxable income for that taxable
18 year the amount of the net capital loss on those credit assets not to exceed the tax credits claimed
19 on those credit assets. If an angel investor taxpayer recognized net capital loss on the sale or
20 exchange of credit assets in a taxable year in an amount greater than the amount of the tax credits
21 claimed on those credit assets, then there is added to the angel investor taxpayer's taxable income
22 for that taxable year the amount of the tax credit claimed on those credit assets.

23 (g) Application. – An angel investor seeking to claim a tax credit provided for under this
24 section shall submit an application to the Department of Revenue for tentative approval for the
25 tax credit in the year for which the tax credit is claimed or allowed. The Department of Revenue
26 shall provide for the manner in which the application is to be submitted. The Department of
27 Revenue shall review the application and tentatively shall approve the application upon
28 determining that it meets the requirements of this section by January 31 of the year after the
29 application was submitted. If the credit amounts on the tax credit applications filed with the
30 Department of Revenue exceed the maximum aggregate limit of tax credits, then the tax credit
31 must be allocated among the angel investors who filed a timely application on a pro rata basis
32 based upon the amounts otherwise allowed by this section. Once the tax credit application has
33 been approved and the amount has been communicated to the applicant, the angel investor then
34 may apply the amount of the approved tax credit to its tax liability for the tax year of which the
35 approved application applies.

36 (h) Report. – By March 31 of each year, the Department of Revenue shall report to the
37 Joint Legislative Committee on Governmental Operations by county, the number of angel
38 investor tax credit applications the Department has received, the number of tax credit applications
39 approved, and the tax credits approved. This report must be made available in a conspicuous
40 place on the Department's website.

41 (i) Credit Status. – Tax credits generated under this section are not securities under the
42 laws of this State."

43 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
44 2023.