

HB5793



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5793

Introduced 2/16/2012, by Rep. Richard Morthland

SYNOPSIS AS INTRODUCED:

35 ILCS 5/220

Amends the Illinois Income Tax Act. Raises the limit on angel investment tax credits from \$10 million to \$20 million in total income tax credits per year. Raises the limit on an applicant's eligible investment from \$2 million to \$4 million. Effective immediately.

LRB097 18179 HLH 63403 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 220 as follows:

6 (35 ILCS 5/220)

7 Sec. 220. Angel investment credit.

8 (a) As used in this Section:

9 "Applicant" means a corporation, partnership, limited
10 liability company, or a natural person that makes an investment
11 in a qualified new business venture. The term "applicant" does
12 not include a corporation, partnership, limited liability
13 company, or a natural person who has a direct or indirect
14 ownership interest of at least 51% in the profits, capital, or
15 value of the investment or a related member.

16 "Claimant" means an applicant certified by the Department
17 who files a claim for a credit under this Section.

18 "Department" means the Department of Commerce and Economic
19 Opportunity.

20 "Qualified new business venture" means a business that is
21 registered with the Department under this Section.

22 "Related member" means a person that, with respect to the
23 investment, is any one of the following:

1 (1) An individual, if the individual and the members of
2 the individual's family (as defined in Section 318 of the
3 Internal Revenue Code) own directly, indirectly,
4 beneficially, or constructively, in the aggregate, at
5 least 50% of the value of the outstanding profits, capital,
6 stock, or other ownership interest in the applicant.

7 (2) A partnership, estate, or trust and any partner or
8 beneficiary, if the partnership, estate, or trust and its
9 partners or beneficiaries own directly, indirectly,
10 beneficially, or constructively, in the aggregate, at
11 least 50% of the profits, capital, stock, or other
12 ownership interest in the applicant.

13 (3) A corporation, and any party related to the
14 corporation in a manner that would require an attribution
15 of stock from the corporation under the attribution rules
16 of Section 318 of the Internal Revenue Code, if the
17 applicant and any other related member own, in the
18 aggregate, directly, indirectly, beneficially, or
19 constructively, at least 50% of the value of the
20 corporation's outstanding stock.

21 (4) A corporation and any party related to that
22 corporation in a manner that would require an attribution
23 of stock from the corporation to the party or from the
24 party to the corporation under the attribution rules of
25 Section 318 of the Internal Revenue Code, if the
26 corporation and all such related parties own, in the

1 aggregate, at least 50% of the profits, capital, stock, or
2 other ownership interest in the applicant.

3 (5) A person to or from whom there is attribution of
4 stock ownership in accordance with Section 1563(e) of the
5 Internal Revenue Code, except that for purposes of
6 determining whether a person is a related member under this
7 paragraph, "20%" shall be substituted for "5%" whenever
8 "5%" appears in Section 1563(e) of the Internal Revenue
9 Code.

10 (b) For taxable years beginning after December 31, 2010,
11 and ending on or before December 31, 2016, subject to the
12 limitations provided in this Section, a claimant may claim, as
13 a credit against the tax imposed under subsections (a) and (b)
14 of Section 201 of this Act, an amount equal to 25% of the
15 claimant's investment made directly in a qualified new business
16 venture. The credit under this Section may not exceed the
17 taxpayer's Illinois income tax liability for the taxable year.
18 If the amount of the credit exceeds the tax liability for the
19 year, the excess may be carried forward and applied to the tax
20 liability of the 5 taxable years following the excess credit
21 year. The credit shall be applied to the earliest year for
22 which there is a tax liability. If there are credits from more
23 than one tax year that are available to offset a liability, the
24 earlier credit shall be applied first. In the case of a
25 partnership or Subchapter S Corporation, the credit is allowed
26 to the partners or shareholders in accordance with the

1 determination of income and distributive share of income under
2 Sections 702 and 704 and Subchapter S of the Internal Revenue
3 Code.

4 (c) The maximum amount of an applicant's investment that
5 may be used as the basis for a credit under this Section is
6 \$4,000,000 ~~\$2,000,000~~ for each investment made directly in a
7 qualified new business venture.

8 (d) The Department shall implement a program to certify an
9 applicant for an angel investment credit. Upon satisfactory
10 review, the Department shall issue a tax credit certificate
11 stating the amount of the tax credit to which the applicant is
12 entitled. The Department shall annually certify that the
13 claimant's investment has been made and remains in the
14 qualified new business venture for no less than 3 years. If an
15 investment for which a claimant is allowed a credit under
16 subsection (b) is held by the claimant for less than 3 years,
17 or, if within that period of time the qualified new business
18 venture is moved from the State of Illinois, the claimant shall
19 pay to the Department of Revenue, in the manner prescribed by
20 the Department of Revenue, the amount of the credit that the
21 claimant received related to the investment.

22 (e) The Department shall implement a program to register
23 qualified new business ventures for purposes of this Section. A
24 business desiring registration shall submit an application to
25 the Department in each taxable year for which the business
26 desires registration. The Department may register the business

1 only if the business satisfies all of the following conditions:

2 (1) it has its headquarters in this State;

3 (2) at least 51% of the employees employed by the
4 business are employed in this State;

5 (3) it has the potential for increasing jobs in this
6 State, increasing capital investment in this State, or
7 both, and either of the following apply:

8 (A) it is principally engaged in innovation in any
9 of the following: manufacturing; biotechnology;
10 nanotechnology; communications; agricultural sciences;
11 clean energy creation or storage technology;
12 processing or assembling products, including medical
13 devices, pharmaceuticals, computer software, computer
14 hardware, semiconductors, other innovative technology
15 products, or other products that are produced using
16 manufacturing methods that are enabled by applying
17 proprietary technology; or providing services that are
18 enabled by applying proprietary technology; or

19 (B) it is undertaking pre-commercialization
20 activity related to proprietary technology that
21 includes conducting research, developing a new product
22 or business process, or developing a service that is
23 principally reliant on applying proprietary
24 technology;

25 (4) it is not principally engaged in real estate
26 development, insurance, banking, lending, lobbying,

1 political consulting, professional services provided by
2 attorneys, accountants, business consultants, physicians,
3 or health care consultants, wholesale or retail trade,
4 leisure, hospitality, transportation, or construction,
5 except construction of power production plants that derive
6 energy from a renewable energy resource, as defined in
7 Section 1 of the Illinois Power Agency Act;

8 (5) it has fewer than 100 employees;

9 (6) it has been in operation in Illinois for not more
10 than 10 consecutive years prior to the year of
11 certification; and

12 (7) it has received not more than (i) \$10,000,000 in
13 aggregate private equity investment in cash or (ii)
14 \$4,000,000 in investments that qualified for tax credits
15 under this Section.

16 (f) The Department, in consultation with the Department of
17 Revenue, shall adopt rules to administer this Section. The
18 aggregate amount of the tax credits that may be claimed under
19 this Section for investments made in qualified new business
20 ventures shall be limited at \$20,000,000 ~~\$10,000,000~~ per
21 calendar year.

22 (g) A claimant may not sell or otherwise transfer a credit
23 awarded under this Section to another person.

24 (h) On or before March 1 of each year, the Department shall
25 report to the Governor and to the General Assembly on the tax
26 credit certificates awarded under this Section for the prior

1 calendar year.

2 (1) This report must include, for each tax credit
3 certificate awarded:

4 (A) the name of the claimant and the amount of
5 credit awarded or allocated to that claimant;

6 (B) the name and address of the qualified new
7 business venture that received the investment giving
8 rise to the credit and the county in which the
9 qualified new business venture is located; and

10 (C) the date of approval by the Department of the
11 applications for the tax credit certificate.

12 (2) The report must also include:

13 (A) the total number of applicants and amount for
14 tax credit certificates awarded under this Section in
15 the prior calendar year;

16 (B) the total number of applications and amount for
17 which tax credit certificates were issued in the prior
18 calendar year; and

19 (C) the total tax credit certificates and amount
20 authorized under this Section for all calendar years.

21 (Source: P.A. 96-939, eff. 1-1-11; 97-507, eff. 8-23-11.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.