

**SB3302**



**100TH GENERAL ASSEMBLY**

**State of Illinois**

**2017 and 2018**

**SB3302**

Introduced 2/16/2018, by Sen. Chuck Weaver

**SYNOPSIS AS INTRODUCED:**

35 ILCS 5/220

Amends the Illinois Income Tax Act. Changes the definition of "applicant" and "related member". Provides that the annual allowable amounts shall be allocated by the Department of Commerce and Economic Opportunity if any portion of the unused allocated amount at the end of the first 3 calendar quarters of a calendar year (rather than 2 calendar quarters) are rolled into the total allocated amount for the next calendar quarter. Provides that the annual allowable amounts shall be allocated by the Department if tax credits for investments in minority-owned businesses, women-owned businesses, businesses owned by a person with a disability, or a business in a county with a population of 250,000 or less are limited to the first 3 calendar quarters of a calendar year and after which investors may claim the tax credits of any qualified new business venture.

LRB100 20816 HLH 36307 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 (i) 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 qualified new business venture receiving the  
16 investment or (ii) a related member.

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

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

21 "Investment" means money (or its equivalent) given to a  
22 qualified new business venture, at a risk of loss, in  
23 consideration for an equity interest of the qualified new

1 business venture. The Department may adopt rules to permit  
2 certain forms of contingent equity investments to be considered  
3 eligible for a tax credit under this Section.

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

6 "Related member" means a person that, with respect to the  
7 applicant, is any one of the following:

8 (1) An individual, if the individual and the members of  
9 the individual's family (as defined in Section 318 of the  
10 Internal Revenue Code) own directly, indirectly,  
11 beneficially, or constructively, in the aggregate, at  
12 least 50% of the value of the outstanding profits, capital,  
13 stock, or other ownership interest in the qualified new  
14 business venture that is the recipient of the applicant's  
15 investment.

16 (2) A partnership, estate, or trust and any partner or  
17 beneficiary, if the partnership, estate, or trust and its  
18 partners or beneficiaries own directly, indirectly,  
19 beneficially, or constructively, in the aggregate, at  
20 least 50% of the profits, capital, stock, or other  
21 ownership interest in the qualified new business venture  
22 that is the recipient of the applicant's investment.

23 (3) A corporation, and any party related to the  
24 corporation in a manner that would require an attribution  
25 of stock from the corporation under the attribution rules  
26 of Section 318 of the Internal Revenue Code, if the

1 applicant and any other related member own, in the  
2 aggregate, directly, indirectly, beneficially, or  
3 constructively, at least 50% of the value of the  
4 ~~corporation's~~ outstanding stock of the qualified new  
5 business venture that is the recipient of the applicant's  
6 investment.

7 (4) A corporation and any party related to that  
8 corporation in a manner that would require an attribution  
9 of stock from the corporation to the party or from the  
10 party to the corporation under the attribution rules of  
11 Section 318 of the Internal Revenue Code, if the  
12 corporation and all such related parties own, in the  
13 aggregate, at least 50% of the profits, capital, stock, or  
14 other ownership interest in the qualified new business  
15 venture that is the recipient of the applicant's  
16 investment.

17 (5) A person to or from whom there is attribution of  
18 ~~stock~~ ownership of stock in the qualified new business  
19 venture that is the recipient of the applicant's investment  
20 in accordance with Section 1563(e) of the Internal Revenue  
21 Code, except that for purposes of determining whether a  
22 person is a related member under this paragraph, "20%"  
23 shall be substituted for "5%" whenever "5%" appears in  
24 Section 1563(e) of the Internal Revenue Code.

25 (b) For taxable years beginning after December 31, 2010,  
26 and ending on or before December 31, 2021, subject to the

1 limitations provided in this Section, a claimant may claim, as  
2 a credit against the tax imposed under subsections (a) and (b)  
3 of Section 201 of this Act, an amount equal to 25% of the  
4 claimant's investment made directly in a qualified new business  
5 venture. In order for an investment in a qualified new business  
6 venture to be eligible for tax credits, the business must have  
7 applied for and received certification under subsection (e) for  
8 the taxable year in which the investment was made prior to the  
9 date on which the investment was made. The credit under this  
10 Section may not exceed the taxpayer's Illinois income tax  
11 liability for the taxable year. If the amount of the credit  
12 exceeds the tax liability for the year, the excess may be  
13 carried forward and applied to the tax liability of the 5  
14 taxable years following the excess credit year. The credit  
15 shall be applied to the earliest year for which there is a tax  
16 liability. If there are credits from more than one tax year  
17 that are available to offset a liability, the earlier credit  
18 shall be applied first. In the case of a partnership or  
19 Subchapter S Corporation, the credit is allowed to the partners  
20 or shareholders in accordance with the determination of income  
21 and distributive share of income under Sections 702 and 704 and  
22 Subchapter S of the Internal Revenue Code.

23 (c) The minimum amount an applicant must invest in any  
24 single qualified new business venture in order to be eligible  
25 for a credit under this Section is \$10,000. The maximum amount  
26 of an applicant's total investment made in any single qualified

1 new business venture that may be used as the basis for a credit  
2 under this Section is \$2,000,000.

3 (d) The Department shall implement a program to certify an  
4 applicant for an angel investment credit. Upon satisfactory  
5 review, the Department shall issue a tax credit certificate  
6 stating the amount of the tax credit to which the applicant is  
7 entitled. The Department shall annually certify that: (i) each  
8 qualified new business venture that receives an angel  
9 investment under this Section has maintained a minimum  
10 employment threshold, as defined by rule, in the State (and  
11 continues to maintain a minimum employment threshold in the  
12 State for a period of no less than 3 years from the issue date  
13 of the last tax credit certificate issued by the Department  
14 with respect to such business pursuant to this Section); and  
15 (ii) the claimant's investment has been made and remains,  
16 except in the event of a qualifying liquidity event, in the  
17 qualified new business venture for no less than 3 years.

18 If an investment for which a claimant is allowed a credit  
19 under subsection (b) is held by the claimant for less than 3  
20 years, other than as a result of a permitted sale of the  
21 investment to person who is not a related member, the claimant  
22 shall pay to the Department of Revenue, in the manner  
23 prescribed by the Department of Revenue, the aggregate amount  
24 of the disqualified credits that the claimant received related  
25 to the subject investment.

26 If the Department determines that a qualified new business

1 venture failed to maintain a minimum employment threshold in  
2 the State through the date which is 3 years from the issue date  
3 of the last tax credit certificate issued by the Department  
4 with respect to the subject business pursuant to this Section,  
5 the claimant or claimants shall pay to the Department of  
6 Revenue, in the manner prescribed by the Department of Revenue,  
7 the aggregate amount of the disqualified credits that claimant  
8 or claimants received related to investments in that business.

9 (e) The Department shall implement a program to register  
10 qualified new business ventures for purposes of this Section. A  
11 business desiring registration under this Section shall be  
12 required to submit a full and complete application to the  
13 Department. A submitted application shall be effective only for  
14 the taxable year in which it is submitted, and a business  
15 desiring registration under this Section shall be required to  
16 submit a separate application in and for each taxable year for  
17 which the business desires registration. Further, if at any  
18 time prior to the acceptance of an application for registration  
19 under this Section by the Department one or more events occurs  
20 which makes the information provided in that application  
21 materially false or incomplete (in whole or in part), the  
22 business shall promptly notify the Department of the same. Any  
23 failure of a business to promptly provide the foregoing  
24 information to the Department may, at the discretion of the  
25 Department, result in a revocation of a previously approved  
26 application for that business, or disqualification of the

1 business from future registration under this Section, or both.  
2 The Department may register the business only if all of the  
3 following conditions are satisfied:

4 (1) it has its principal place of business in this  
5 State;

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

8 (3) the business has the potential for increasing jobs  
9 in this State, increasing capital investment in this State,  
10 or both, as determined by the Department, and either of the  
11 following apply:

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

23 (B) it is undertaking pre-commercialization  
24 activity related to proprietary technology that  
25 includes conducting research, developing a new product  
26 or business process, or developing a service that is



1           principally   reliant   on   applying   proprietary  
2           technology;

3           (4) it is not principally engaged in real estate  
4           development, insurance, banking, lending, lobbying,  
5           political consulting, professional services provided by  
6           attorneys, accountants, business consultants, physicians,  
7           or health care consultants, wholesale or retail trade,  
8           leisure, hospitality, transportation, or construction,  
9           except construction of power production plants that derive  
10          energy from a renewable energy resource, as defined in  
11          Section 1 of the Illinois Power Agency Act;

12          (5) at the time it is first certified:

13                 (A) it has fewer than 100 employees;

14                 (B) it has been in operation in Illinois for not  
15                 more than 10 consecutive years prior to the year of  
16                 certification; and

17                 (C) it has received not more than \$10,000,000 in  
18                 aggregate investments;

19           (5.1) it agrees to maintain a minimum employment  
20           threshold in the State of Illinois prior to the date which  
21           is 3 years from the issue date of the last tax credit  
22           certificate issued by the Department with respect to that  
23           business pursuant to this Section;

24          (6) (blank); and

25          (7) it has received not more than \$4,000,000 in  
26          investments that qualified for tax credits under this

1 Section.

2 (f) The Department, in consultation with the Department of  
3 Revenue, shall adopt rules to administer this Section. The  
4 aggregate amount of the tax credits that may be claimed under  
5 this Section for investments made in qualified new business  
6 ventures shall be limited at \$10,000,000 per calendar year, of  
7 which \$500,000 shall be reserved for investments made in  
8 qualified new business ventures which are "minority-owned  
9 ~~minority-owned~~ businesses", "women-owned ~~female-owned~~  
10 businesses", or "businesses owned by a person with a  
11 disability" (as those terms are used and defined in the  
12 Business Enterprise for Minorities, Women ~~Females~~, and Persons  
13 with Disabilities Act), and an additional \$500,000 shall be  
14 reserved for investments made in qualified new business  
15 ventures with their principal place of business in counties  
16 with a population of not more than 250,000. The foregoing  
17 annual allowable amounts shall be allocated by the Department,  
18 on a per calendar quarter basis and prior to the commencement  
19 of each calendar year, in such proportion as determined by the  
20 Department, provided that: (i) the amount initially allocated  
21 by the Department for any one calendar quarter shall not exceed  
22 35% of the total allowable amount; ~~and~~ (ii) any portion of the  
23 allocated allowable amount remaining unused as of the end of  
24 any of the first 3 ~~2~~ calendar quarters of a given calendar year  
25 shall be rolled into, and added to, the total allocated amount  
26 for the next available calendar quarter; and (iii) the

1 reservation of tax credits for investments in minority-owned  
2 businesses, women-owned businesses, businesses owned by a  
3 person with a disability, and in businesses in counties with a  
4 population of not more than 250,000 is limited to the first 3  
5 calendar quarters of a given calendar year, after which they  
6 may be claimed by investors in any qualified new business  
7 venture.

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

10 (h) On or before March 1 of each year, the Department shall  
11 report to the Governor and to the General Assembly on the tax  
12 credit certificates awarded under this Section for the prior  
13 calendar year.

14 (1) This report must include, for each tax credit  
15 certificate awarded:

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

18 (B) the name and address (including the county) of  
19 the qualified new business venture that received the  
20 investment giving rise to the credit, the North  
21 American Industry Classification System (NAICS) code  
22 applicable to that qualified new business venture, and  
23 the number of employees of the qualified new business  
24 venture; and

25 (C) the date of approval by the Department of each  
26 claimant's tax credit certificate.

1 (2) The report must also include:

2 (A) the total number of applicants and the total  
3 number of claimants, including the amount of each tax  
4 credit certificate awarded to a claimant under this  
5 Section in the prior calendar year;

6 (B) the total number of applications from  
7 businesses seeking registration under this Section,  
8 the total number of new qualified business ventures  
9 registered by the Department, and the aggregate amount  
10 of investment upon which tax credit certificates were  
11 issued in the prior calendar year; and

12 (C) the total amount of tax credit certificates  
13 sought by applicants, the amount of each tax credit  
14 certificate issued to a claimant, the aggregate amount  
15 of all tax credit certificates issued in the prior  
16 calendar year and the aggregate amount of tax credit  
17 certificates issued as authorized under this Section  
18 for all calendar years.

19 (i) For each business seeking registration under this  
20 Section after December 31, 2016, the Department shall require  
21 the business to include in its application the North American  
22 Industry Classification System (NAICS) code applicable to the  
23 business and the number of employees of the business at the  
24 time of application. Each business registered by the Department  
25 as a qualified new business venture that receives an investment  
26 giving rise to the issuance of a tax credit certificate

1 pursuant to this Section shall, for each of the 3 years  
2 following the issue date of the last tax credit certificate  
3 issued by the Department with respect to such business pursuant  
4 to this Section, report to the Department the following:

5 (1) the number of employees and the location at which  
6 those employees are employed, both as of the end of each  
7 year;

8 (2) the amount of additional new capital investment  
9 raised as of the end of each year, if any; and

10 (3) the terms of any liquidity event occurring during  
11 such year; for the purposes of this Section, a "liquidity  
12 event" means any event that would be considered an exit for  
13 an illiquid investment, including any event that allows the  
14 equity holders of the business (or any material portion  
15 thereof) to cash out some or all of their respective equity  
16 interests.

17 (Source: P.A. 100-328, eff. 1-1-18; revised 12-14-17.)