



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB2946

by Rep. Carol Sente

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/220

Amends the Illinois Income Tax Act. Makes the following changes with respect to the angel investment credit: (1) reinstates the credit for taxable years beginning on or after December 31, 2016 and ending on or before December 31, 2021; (2) provides that the term "applicant" includes a corporation, partnership, or limited liability company formed for the purpose of facilitating an offer or sale of a security by an in-State issuer to resident of the State as provided under a particular provision of the Illinois Securities Law of 1953; (3) provides a definition of "investment"; (4) contains a requirement that the applicant must agree to remain in the State for a period of not less than 3 years; and (5) makes changes concerning the allocation of the credit awards. Effective immediately.

LRB100 11310 HLH 21673 b

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: (1) a corporation, partnership, or limited  
13 liability company (other than any such corporation,  
14 partnership, or limited liability company formed solely for the  
15 purpose of facilitating an offering conducted pursuant to, and  
16 in compliance with, paragraph T of Section 4 of the Illinois  
17 Securities Law of 1953, or a natural person, who has a direct  
18 or indirect ownership interest of at least 51% in the profits,  
19 capital, or value of the applicant; or (2) investment or a  
20 related member of the applicant.

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

23 "Department" means the Department of Commerce and Economic

1 Opportunity.

2 "Investment" means money (or its equivalent) given to a  
3 qualified new business venture in consideration for an equity  
4 interest of the qualified new business venture (without regard  
5 to the class, or the distribution or dividend, voting or other  
6 rights, of such equity interest), an agreement for receipt of a  
7 future equity interest of the qualified new business venture  
8 (with warrants or a defined means of equity conversion),  
9 convertible debt made by the qualified new business venture  
10 (with a defined means of equity conversion) or some combination  
11 thereof.

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

14 "Related member" means a person that, with respect to the  
15 subject applicant investment, is any one of the following:

16 (1) An individual, if the individual and the members of  
17 the individual's family (as defined in Section 318 of the  
18 Internal Revenue Code) own directly, indirectly,  
19 beneficially, or constructively, in the aggregate, at  
20 least 50% of the value of the outstanding profits, capital,  
21 stock, or other ownership interest in the applicant.

22 (2) A partnership, estate, or trust and any partner or  
23 beneficiary, if the partnership, estate, or trust and its  
24 partners or beneficiaries own directly, indirectly,  
25 beneficially, or constructively, in the aggregate, at  
26 least 50% of the profits, capital, stock, or other

1 ownership interest in the applicant.

2 (3) A corporation, and any party related to the  
3 corporation in a manner that would require an attribution  
4 of stock from the corporation under the attribution rules  
5 of Section 318 of the Internal Revenue Code, if the  
6 applicant and any other related member own, in the  
7 aggregate, directly, indirectly, beneficially, or  
8 constructively, at least 50% of the value of the  
9 corporation's outstanding stock.

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

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

25 (b) For taxable years beginning after December 31, 2016  
26 ~~2010~~, and ending on or before December 31, 2021 ~~2016~~, subject

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

1 Sections 702 and 704 and Subchapter S of the Internal Revenue  
2 Code.

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

7 (d) The Department shall implement a program to certify an  
8 applicant for an angel investment credit. Upon satisfactory  
9 review, the Department shall issue a tax credit certificate  
10 stating the amount of the tax credit to which the applicant is  
11 entitled. The Department shall annually certify that (i) each  
12 approved applicant remains in the State of Illinois (and  
13 continues to remain in the State for a period of no less than 3  
14 years from the issue date of the last tax credit certificate  
15 issued by the Department with respect to such business); and  
16 (ii) the claimant's investment has been made and remains 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 such  
21 investment to person which is not a related member ~~or, if~~  
22 ~~within that period of time the qualified new business venture~~  
23 ~~is moved from the State of Illinois,~~ the claimant shall pay to  
24 the Department of Revenue, in the manner prescribed by the  
25 Department of Revenue, the aggregate amount of the disqualified  
26 credits ~~credit~~ that the claimant received related to the

1 subject investment.

2 If the Department determines that a previously approved  
3 applicant has moved from the State of Illinois prior to the  
4 date which is 3 years from the issue date of the last tax  
5 credit certificate issued by the Department with respect to the  
6 subject business, such business shall pay to the Department of  
7 Revenue, in the manner prescribed by the Department of Revenue,  
8 the aggregate amount of the disqualified credits that claimants  
9 received related to investments in such business.

10 (e) The Department shall implement a program to register  
11 qualified new business ventures for purposes of this Section. A  
12 business desiring registration shall submit an application to  
13 the Department in each taxable year for which the business  
14 desires registration. The Department may register the business  
15 only if the business satisfies all of the following conditions:

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

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

19 (3) it has the potential for increasing jobs in this  
20 State, increasing capital investment in this State, or  
21 both, as determined by the Department, and either of the  
22 following apply:

23 (A) the business ~~it~~ is:

24 (i) principally engaged in innovation in any  
25 of the following: manufacturing; biotechnology;  
26 nanotechnology; communications; agricultural

1 sciences; clean energy creation or storage  
2 technology; processing or assembling products,  
3 including medical devices, pharmaceuticals,  
4 computer software, computer hardware,  
5 semiconductors, other innovative technology  
6 products, or other products that are produced  
7 using manufacturing methods that are enabled by  
8 applying proprietary technology; or providing  
9 services that are enabled by applying proprietary  
10 technology; or

11 (ii) ~~(B) it is~~ undertaking  
12 pre-commercialization activity related to  
13 proprietary technology that includes conducting  
14 research, developing a new product or business  
15 process, or developing a service that is  
16 principally reliant on applying proprietary  
17 technology; or

18 (B) the funding transaction of the qualified new  
19 business venture giving rise to the subject  
20 investment:

21 (i) is an offering:

22 (1) where the available investment  
23 interests have been publicly offered for sale  
24 solely to residents of the State;

25 (2) where at least 25% of the offered  
26 investment interests have been reserved for



1 sale to non-accredited investors (whether or  
2 not the same are resultantly sold to such  
3 investors);

4 (3) which is held open for sale a period of  
5 at least 5 months (or until fully funded, if  
6 sooner); and

7 (4) which is conducted pursuant to, and in  
8 full compliance with, paragraph T of Section 4  
9 of the Illinois Securities Law of 1953, and all  
10 other applicable federal and state laws and  
11 regulations; or

12 (ii) is an offering:

13 (1) which is made in conjunction with,  
14 within one month from the commencement of, and  
15 as part of a single plan of financing which  
16 includes, an offering of the type described in  
17 item (i) above;

18 (2) where the aggregate amount of  
19 available investment interests being sold as  
20 part of such offering does not exceed ten times  
21 the aggregate amount of investment interests  
22 being sold in the related offering of the type  
23 described in item (i) above;

24 (3) where the rights, with respect to  
25 distributions and payments only, of the  
26 available investment interests being sold are

1           equal, or junior, in terms of priority to the  
2           respective rights of the investment interests  
3           being sold in the related offering of the type  
4           described in item (i) above; and

5                   (4) which is conducted pursuant to, and in  
6                   full compliance with, all applicable federal  
7                   and State laws and regulations;

8           (4) it is not principally engaged in real estate  
9           development (except for development projects anticipated  
10           to take more than 3 years to complete), insurance, banking,  
11           lending, lobbying, political consulting, ~~professional~~  
12           ~~services provided by attorneys, accountants, business~~  
13           ~~consultants, physicians, or health care consultants,~~  
14           ~~wholesale or retail trade, leisure, hospitality,~~  
15           ~~transportation,~~ or construction, (except for construction  
16           projects anticipated to take more than 3 years to complete  
17           or with respect to the construction of power production  
18           plants that derive energy from a renewable energy resource,  
19           as defined in Section 1 of the Illinois Power Agency Act;

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

21                   (A) it has fewer than 100 employees;

22                   (B) it has been in operation in Illinois for more  
23                   than one year but not more than 10 ~~consecutive~~ years  
24                   prior to the year of certification; and

25                   (C) it has received not more than \$10,000,000 in  
26                   aggregate ~~private equity~~ investment in cash;

1           (6) it agrees not to move its operations from the State  
2           of Illinois prior to the date which is 3 years from the  
3           issue date of the last tax credit certificate issued by the  
4           Department with respect to such business ~~(blank)~~; and

5           (7) it has received not more than \$4,000,000 in  
6           investments that qualified for tax credits under this  
7           Section.

8           (f) The Department, in consultation with the Department of  
9           Revenue, shall adopt rules to administer this Section. The  
10          aggregate amount of the tax credits that may be claimed under  
11          this Section for investments made in qualified new business  
12          ventures shall be limited at \$20,000,000 ~~\$10,000,000~~ per  
13          calendar year. The \$20,000,000 annual allowable amount shall be  
14          allocated by the Department, on a per calendar quarter basis  
15          and prior to the commencement of each calendar year, in such  
16          proportion as determined by the Department, provided that: (i)  
17          the amount initially allocated by the Department for any one  
18          calendar quarter shall not exceed 35% of the total allowable  
19          amount; and (ii) any portion of the allocated allowable amount  
20          remaining unused as of the end of any of the first 3 calendar  
21          quarters of a given calendar year shall be rolled into, and  
22          added to, the total allocated amount for the next available  
23          calendar quarter.

24          (g) A claimant may ~~not~~ sell or otherwise transfer a credit  
25          awarded under this Section to any ~~another~~ person (or entity  
26          other than a related member).

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

5 (1) This report must include, for each tax credit  
6 certificate awarded:

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

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

13 (C) the date of approval by the Department of the  
14 applications for the tax credit certificate.

15 (2) The report must also include:

16 (A) the total number of applicants and amount for  
17 tax credit certificates awarded under this Section in  
18 the prior calendar year;

19 (B) the total number of applications and amount for  
20 which tax credit certificates were issued in the prior  
21 calendar year; and

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

24 (Source: P.A. 96-939, eff. 1-1-11; 97-507, eff. 8-23-11;  
25 97-1097, eff. 8-24-12.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.