



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3706

by Rep. Mark L. Walker

SYNOPSIS AS INTRODUCED:

35 ILCS 5/220

Amends the Illinois Income Tax Act. In a Section concerning the angel investment credit, provides that: (1) the Department of Commerce and Economic Opportunity may charge an application fee of \$500; (2) increases the maximum credit amount that may be awarded from \$10,000,000 to \$20,000,000; (3) provides that, of the maximum credit amount that may be awarded, \$10,000,000 shall be reserved for priority industries; (4) provides that the term "priority industry" means an industry determined by the Department to have high potential for growth; (5) provides that a person may be considered a "related member" if the person has at least a 33% ownership interest in the qualified new business venture (currently, 50%); and (6) provides that an investment that is part of a refinancing of a prior investment in a qualified new business venture is not eligible for the credit; and (7) provides that, if the investment is made in a disenfranchised community business, the amount of the credit shall be equal to 40% (currently, 25%) of the claimant's investment.

LRB101 10263 HLH 55368 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 "Disenfranchised community" means an area of severe
22 economic distress, which includes, but is not limited to,
23 census tracts with poverty rates greater than 30%. Additional

1 criteria may be established by the Department by rule.

2 "Disenfranchised community business" means a qualified new
3 business venture that is located in a disenfranchised
4 community. Procedures for determining whether a qualified new
5 business venture is located within a disenfranchised community
6 shall be established by rule.

7 "Investment" means money (or its equivalent) given to a
8 qualified new business venture, at a risk of loss, in
9 consideration for an equity interest of the qualified new
10 business venture, the proceeds of which are used for legitimate
11 business purposes. An investment that is part of a refinancing
12 of a prior investment in a qualified new business venture is
13 not considered an investment under this Section. The Department
14 may adopt rules to permit certain forms of contingent equity
15 investments to be considered eligible for a tax credit under
16 this Section.

17 "Legitimate business purposes" means that the investment
18 proceeds are used for normal operations of the business and are
19 not used for activities including refinancing any prior
20 investments, paying dividends to shareholders, or other cash
21 distributions to investors, stock repurchases, or other uses as
22 determined by Department by rule.

23 "Priority industries" means industries determined by the
24 Department to have high potential for growth.

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

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

3 (1) An individual, if the individual and the members of
4 the individual's family (as defined in Section 318 of the
5 Internal Revenue Code) own directly, indirectly,
6 beneficially, or constructively, in the aggregate, at
7 least 33% ~~50%~~ of the value of the outstanding profits,
8 capital, stock, or other ownership interest in the
9 qualified new business venture that is the recipient of the
10 applicant's investment.

11 (2) A partnership, estate, or trust and any partner or
12 beneficiary, if the partnership, estate, or trust and its
13 partners or beneficiaries own directly, indirectly,
14 beneficially, or constructively, in the aggregate, at
15 least 33% ~~50%~~ of the profits, capital, stock, or other
16 ownership interest in the qualified new business venture
17 that is the recipient of the applicant's investment.

18 (3) A corporation, and any party related to the
19 corporation in a manner that would require an attribution
20 of stock from the corporation under the attribution rules
21 of Section 318 of the Internal Revenue Code, if the
22 applicant and any other related member own, in the
23 aggregate, directly, indirectly, beneficially, or
24 constructively, at least 33% ~~50%~~ of the value of the
25 outstanding stock of the qualified new business venture
26 that is the recipient of the applicant's investment.

1 (4) A corporation and any party related to that
2 corporation in a manner that would require an attribution
3 of stock from the corporation to the party or from the
4 party to the corporation under the attribution rules of
5 Section 318 of the Internal Revenue Code, if the
6 corporation and all such related parties own, in the
7 aggregate, at least 33% ~~50%~~ of the profits, capital, stock,
8 or other ownership interest in the qualified new business
9 venture that is the recipient of the applicant's
10 investment.

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

19 (6) A person who receives or has received compensation
20 from the applicant in exchange for services provided to the
21 applicant as an employee, officer, director, manager, or
22 independent contractor within one year before the date of
23 the investment or whose family member (as defined in
24 Section 318 of the Internal Revenue Code) or an entity
25 affiliated with the person has received such compensation.

26 (b) For taxable years beginning after December 31, 2010,

1 and ending on or before December 31, 2021, subject to the
2 limitations provided in this Section, a claimant may claim, as
3 a credit against the tax imposed under subsections (a) and (b)
4 of Section 201 of this Act, an amount equal to 25% of the
5 claimant's investment made directly in a qualified new business
6 venture. However, if the investment is made in a
7 disenfranchised community business, the amount of the credit
8 shall be equal to 40% of the claimant's investment for an
9 investment made directly in a business that registers as a
10 disenfranchised community business. In order for an investment
11 in a qualified new business venture to be eligible for tax
12 credits, the business must have applied for and received
13 certification under subsection (e) for the taxable year in
14 which the investment was made prior to the date on which the
15 investment was made. The credit under this Section may not
16 exceed the taxpayer's Illinois income tax liability for the
17 taxable year. If the amount of the credit exceeds the tax
18 liability for the year, the excess may be carried forward and
19 applied to the tax liability of the 5 taxable years following
20 the excess credit year. The credit shall be applied to the
21 earliest year for which there is a tax liability. If there are
22 credits from more than one tax year that are available to
23 offset a liability, the earlier credit shall be applied first.
24 In the case of a partnership or Subchapter S Corporation, the
25 credit is allowed to the partners or shareholders in accordance
26 with the determination of income and distributive share of

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

3 (c) The minimum amount an applicant must invest in any
4 single qualified new business venture in order to be eligible
5 for a credit under this Section is \$10,000. The maximum amount
6 of an applicant's total investment made in any single qualified
7 new business venture that may be used as the basis for a credit
8 under this Section is \$2,000,000.

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

24 If an investment for which a claimant is allowed a credit
25 under subsection (b) is held by the claimant for less than 3
26 years, other than as a result of a permitted sale of the

1 investment to person who is not a related member, the claimant
2 shall pay to the Department of Revenue, in the manner
3 prescribed by the Department of Revenue, the aggregate amount
4 of the disqualified credits that the claimant received related
5 to the subject investment.

6 If the Department determines that a qualified new business
7 venture failed to maintain a minimum employment threshold in
8 the State through the date which is 3 years from the issue date
9 of the last tax credit certificate issued by the Department
10 with respect to the subject business pursuant to this Section,
11 the claimant or claimants shall pay to the Department of
12 Revenue, in the manner prescribed by the Department of Revenue,
13 the aggregate amount of the disqualified credits that claimant
14 or claimants received related to investments in that business.
15 If the Department determines that a disenfranchised community
16 business has relocated within the State of Illinois but outside
17 of a disenfranchised community within 3 years of the
18 investment, the claimant shall pay to the Department of
19 Revenue, in the manner prescribed by the Department of Revenue,
20 the amount by which aggregate amount of the disqualified
21 credits that claimant or claimants received related to the
22 investment in that business exceed 25% of the of the
23 investment.

24 (e) The Department shall implement a program to register
25 qualified new business ventures for purposes of this Section. A
26 business desiring registration under this Section shall be

1 required to submit a full and complete application to the
2 Department. A submitted application shall be effective only for
3 the taxable year in which it is submitted, and a business
4 desiring registration under this Section shall be required to
5 submit a separate application in and for each taxable year for
6 which the business desires registration. Further, if at any
7 time prior to the acceptance of an application for registration
8 under this Section by the Department one or more events occurs
9 which makes the information provided in that application
10 materially false or incomplete (in whole or in part), the
11 business shall promptly notify the Department of the same. Any
12 failure of a business to promptly provide the foregoing
13 information to the Department may, at the discretion of the
14 Department, result in a revocation of a previously approved
15 application for that business, or disqualification of the
16 business from future registration under this Section, or both.
17 The Department may register the business only if all of the
18 following conditions are satisfied:

19 (1) it has its principal place of business in this
20 State;

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

23 (3) the business has the potential for increasing jobs
24 in this State, increasing capital investment in this State,
25 or both, as determined by the Department, and either of the
26 following apply:

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

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

18 (4) it is not principally engaged in real estate
19 development, insurance, banking, lending, speculative
20 investing or property trading, lobbying, political
21 consulting, professional services provided by attorneys,
22 accountants, business consultants, physicians, or health
23 care consultants, wholesale or retail trade, leisure,
24 hospitality, transportation, or construction, except
25 construction of power production plants that derive energy
26 from a renewable energy resource, as defined in Section 1

1 of the Illinois Power Agency Act;

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

3 (A) it has fewer than 100 employees;

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

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

9 (5.1) it agrees to maintain a minimum employment
10 threshold in the State of Illinois prior to the date which
11 is 3 years from the issue date of the last tax credit
12 certificate issued by the Department with respect to that
13 business pursuant to this Section;

14 (6) (blank); and

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

18 (f) The Department, in consultation with the Department of
19 Revenue, shall adopt rules to administer this Section. The
20 Department may charge an applicant an application fee of \$500.

21 The aggregate amount of the tax credits that may be claimed
22 under this Section for investments made in qualified new
23 business ventures shall be limited at \$20,000,000 ~~\$10,000,000~~
24 per calendar year, of which \$10,000,000 shall be reserved for
25 priority industries, \$500,000 shall be reserved for
26 investments made in qualified new business ventures which are

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

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

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 (including the county) of
10 the qualified new business venture that received the
11 investment giving rise to the credit, the North
12 American Industry Classification System (NAICS) code
13 applicable to that qualified new business venture, and
14 the number of employees of the qualified new business
15 venture; and

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

18 (2) The report must also include:

19 (A) the total number of applicants and the total
20 number of claimants, including the amount of each tax
21 credit certificate awarded to a claimant under this
22 Section in the prior calendar year;

23 (B) the total number of applications from
24 businesses seeking registration under this Section,
25 the total number of new qualified business ventures
26 registered by the Department, and the aggregate amount

1 of investment upon which tax credit certificates were
2 issued in the prior calendar year; and

3 (C) the total amount of tax credit certificates
4 sought by applicants, the amount of each tax credit
5 certificate issued to a claimant, the aggregate amount
6 of all tax credit certificates issued in the prior
7 calendar year and the aggregate amount of tax credit
8 certificates issued as authorized under this Section
9 for all calendar years.

10 (i) For each business seeking registration under this
11 Section after December 31, 2016, the Department shall require
12 the business to include in its application the North American
13 Industry Classification System (NAICS) code applicable to the
14 business and the number of employees of the business at the
15 time of application. Each business registered by the Department
16 as a qualified new business venture that receives an investment
17 giving rise to the issuance of a tax credit certificate
18 pursuant to this Section shall, for each of the 3 years
19 following the issue date of the last tax credit certificate
20 issued by the Department with respect to such business pursuant
21 to this Section, report to the Department the following:

22 (1) the number of employees and the location at which
23 those employees are employed, both as of the end of each
24 year;

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

1 (3) the terms of any liquidity event occurring during
2 such year; for the purposes of this Section, a "liquidity
3 event" means any event that would be considered an exit for
4 an illiquid investment, including any event that allows the
5 equity holders of the business (or any material portion
6 thereof) to cash out some or all of their respective equity
7 interests.

8 (Source: P.A. 100-328, eff. 1-1-18; 100-686, eff. 1-1-19;
9 100-863, eff. 8-14-18; revised 10-5-18.)