HB3129

LRB10214735HLH20088b

102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3129

Introduced 2/19/2021, by Rep. Margaret Croke

SYNOPSIS AS INTRODUCED:

35 ILCS 5/220

Amends the Illinois Income Tax Act. Provides that a corporation, partnership, limited liability company, or a natural person with an ownership interest of at least 33% (currently, 51%) in the profits, capital, or value of a qualified new business venture may not receive angel investment credits with respect to that qualified business venture. Provides that, if an investment is made in: (i) a qualified new business venture that is minority-owned, women-owned, or a business owned by a person with a disability; or (ii) a qualified new business venture located in a county with a population of not more than 250,000, the amount of the angel investment credit is 35% of the claimant's investment made directly in a qualified new business venture (currently, 25%). Makes changes concerning the maximum amount of the investment under the angel investment credit. Makes other changes.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning revenue.

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

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

(35 ILCS 5/220)

Sec. 220. Angel investment credit.

(a) As used in this Section:

"Applicant" means a corporation, partnership, limited liability company, or a natural person that makes an investment in a qualified new business venture. The term "applicant" does not include (i) a corporation, partnership, limited liability company, or a natural person who has a direct or indirect ownership interest of at least 33% ~~51%~~ in the profits, capital, or value of the qualified new business venture receiving the investment or (ii) a related member.

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

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

"Investment" means money (or its equivalent) given to a qualified new business venture, at a risk of loss, in consideration for an equity interest of the qualified new business venture. The Department may adopt rules to permit certain forms of contingent equity investments to be considered eligible for a tax credit under this Section.

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

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

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

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

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

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

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

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

(b) For taxable years beginning after December 31, 2010, and ending on or before December 31, 2021, subject to the limitations provided in this Section, a claimant may claim, as a credit against the tax imposed under subsections (a) and (b) of Section 201 of this Act, an amount equal to 25% of the claimant's investment made directly in a qualified new business venture. However, if the investment is made in: (i) a qualified new business venture that is minority-owned, women-owned, or a business owned by a person with a disability, as those terms are used and defined in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; or (ii) a qualified new business venture in which the principal place of business is located in a county with a population of not more than 250,000, the amount of the credit is 35% of the claimant's investment made directly in a qualified new business venture. In order for an investment in a qualified new business venture to be eligible for tax credits, the business must have applied for and received certification under subsection (e) for the taxable year in which the investment was made prior to the date on which the investment was made. The credit under this Section may not exceed the taxpayer's Illinois income tax liability for the taxable year. If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first.

In the case of a partnership or Subchapter S Corporation, the credit is allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code.

(c) The minimum amount an applicant must invest in any single qualified new business venture in order to be eligible for a credit under this Section is $10,000. The maximum amount of an applicant's total investment made in any single qualified new business venture that may be used as the basis for a credit under this Section is $1,000,000 ~~$2,000,000~~.

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

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

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

(e) The Department shall implement a program to register qualified new business ventures for purposes of this Section. A business desiring registration under this Section shall be required to submit a full and complete application to the Department. A submitted application shall be effective only for the taxable year in which it is submitted, and a business desiring registration under this Section shall be required to submit a separate application in and for each taxable year for which the business desires registration. Further, if at any time prior to the acceptance of an application for registration under this Section by the Department one or more events occurs which makes the information provided in that application materially false or incomplete (in whole or in part), the business shall promptly notify the Department of the same. Any failure of a business to promptly provide the foregoing information to the Department may, at the discretion of the Department, result in a revocation of a previously approved application for that business, or disqualification of the business from future registration under this Section, or both. The Department may register the business only if all of the following conditions are satisfied:

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

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

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

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

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

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

(5) at the time it is first certified:

(A) it has fewer than 100 employees;

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

(C) it has received not more than $5,000,000 ~~$10,000,000~~ in aggregate investments;

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

(6) (blank); and

(7) it has received not more than $2,000,000 ~~$4,000,000~~ in investments that qualified for tax credits under this Section.

(e-1) The Department shall encourage investments to be made by industries identified as industries with a high potential for growth as identified by the Department in its most recent Economic Development Plan, as required by Section 605-300 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois.

(f) The Department, in consultation with the Department of Revenue, shall adopt rules to administer this Section. The aggregate amount of the tax credits that may be claimed under this Section for investments made in qualified new business ventures shall be limited at $10,000,000 per calendar year, of which $1,500,000 ~~$500,000~~ shall be reserved for investments made in qualified new business ventures which are minority-owned businesses, women-owned businesses, or businesses owned by a person with a disability (as those terms are used and defined in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act), and an additional $1,500,000 ~~$500,000~~ shall be reserved for investments made in qualified new business ventures with their principal place of business in counties with a population of not more than 250,000. The foregoing annual allowable amounts shall be allocated by the Department, on a per calendar quarter basis and prior to the commencement of each calendar year, in such proportion as determined by the Department, provided that: (i) the amount initially allocated by the Department for any one calendar quarter shall not exceed 35% of the total allowable amount; (ii) any portion of the allocated allowable amount remaining unused as of the end of any of the first 3 calendar quarters of a given calendar year shall be rolled into, and added to, the total allocated amount for the next available calendar quarter; and (iii) the reservation of tax credits for investments in minority-owned businesses, women-owned businesses, businesses owned by a person with a disability, and in businesses in counties with a population of not more than 250,000 is limited to the first 3 calendar quarters of a given calendar year, after which they may be claimed by investors in any qualified new business venture.

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

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

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

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

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

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

(2) The report must also include:

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

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

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

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

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

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

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

(Source: P.A. 100-328, eff. 1-1-18; 100-686, eff. 1-1-19; 100-863, eff. 8-14-18; 101-81, eff. 7-12-19.)