

SB3155



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3155

Introduced 2/6/2024, by Sen. Bill Cunningham

SYNOPSIS AS INTRODUCED:

35 ILCS 5/220

Amends the Illinois Income Tax Act. In provisions requiring a qualified new business venture to repay certain amounts received under the angel investment tax credit if the qualified new business venture fails to maintain its minimum employment threshold, provides that, during the 3-year reporting period that includes March 13, 2020 to January 1, 2024, the repayment of any tax credits issued under those provisions shall be determined at the discretion of the Department of Commerce and Economic Opportunity. Effective immediately.

LRB103 37139 HLH 67258 b

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
11 investment in a qualified new business venture. The term
12 "applicant" does not include (i) a corporation, partnership,
13 limited liability company, or a natural person who has a
14 direct or indirect ownership interest of at least 51% in the
15 profits, capital, or value of the qualified new business
16 venture receiving the 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
3 considered 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
9 of the individual's family (as defined in Section 318 of
10 the Internal Revenue Code) own directly, indirectly,
11 beneficially, or constructively, in the aggregate, at
12 least 50% of the value of the outstanding profits,
13 capital, stock, or other ownership interest in the
14 qualified new business venture that is the recipient of
15 the applicant's 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 outstanding stock of the qualified new business venture
5 that is the recipient of the applicant's investment.

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

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

24 (b) For taxable years beginning after December 31, 2010,
25 and ending on or before December 31, 2026, subject to the
26 limitations provided in this Section, a claimant may claim, as

1 a credit against the tax imposed under subsections (a) and (b)
2 of Section 201 of this Act, an amount equal to 25% of the
3 claimant's investment made directly in a qualified new
4 business venture. However, the amount of the credit is 35% of
5 the claimant's investment made directly in the qualified new
6 business venture if the investment is made in: (1) a qualified
7 new business venture that is a minority-owned business, a
8 women-owned business, or a business owned a person with a
9 disability (as those terms are used and defined in the
10 Business Enterprise for Minorities, Women, and Persons with
11 Disabilities Act); or (2) a qualified new business venture in
12 which the principal place of business is located in a county
13 with a population of not more than 250,000. In order for an
14 investment in a qualified new business venture to be eligible
15 for tax credits, the business must have applied for and
16 received certification under subsection (e) for the taxable
17 year in which the investment was made prior to the date on
18 which the investment was made. The credit under this Section
19 may not exceed the taxpayer's Illinois income tax liability
20 for the taxable year. If the amount of the credit exceeds the
21 tax liability for the year, the excess may be carried forward
22 and applied to the tax liability of the 5 taxable years
23 following the excess credit year. The credit shall be applied
24 to the earliest year for which there is a tax liability. If
25 there are credits from more than one tax year that are
26 available to offset a liability, the earlier credit shall be

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

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

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

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

9 If the Department determines that a qualified new business
10 venture failed to maintain a minimum employment threshold in
11 the State through the date which is 3 years from the issue date
12 of the last tax credit certificate issued by the Department
13 with respect to the subject business pursuant to this Section,
14 except for any 3-year reporting period that includes March 13,
15 2020 to January 1, 2024, the claimant or claimants shall pay to
16 the Department of Revenue, in the manner prescribed by the
17 Department of Revenue, the aggregate amount of the
18 disqualified credits that claimant or claimants received
19 related to investments in that business. For tax credits under
20 this Section involving a 3-year reporting period that includes
21 March 13, 2020 to January 1, 2024, the repayment of any tax
22 credits issued shall be determined at the discretion of the
23 Department.

24 (e) The Department shall implement a program to register
25 qualified new business ventures for purposes of this Section.
26 A 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
3 for 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
8 registration under this Section by the Department one or more
9 events occurs which makes the information provided in that
10 application materially false or incomplete (in whole or in
11 part), the business shall promptly notify the Department of
12 the same. Any failure of a business to promptly provide the
13 foregoing information to the Department may, at the discretion
14 of the Department, result in a revocation of a previously
15 approved application for that business, or disqualification of
16 the business from future registration under this Section, or
17 both. The Department may register the business only if all of
18 the 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
25 State, or both, as determined by the Department, and
26 either of the following apply:

1 (A) it is principally engaged in innovation in any
2 of the following: manufacturing; biotechnology;
3 nanotechnology; communications; agricultural
4 sciences; 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, lobbying,
20 political consulting, professional services provided by
21 attorneys, accountants, business consultants, physicians,
22 or health care consultants, wholesale or retail trade,
23 leisure, hospitality, transportation, or construction,
24 except construction of power production plants that derive
25 energy from a renewable energy resource, as defined in
26 Section 1 of the Illinois Power Agency Act;

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

2 (A) it has fewer than 100 employees;

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

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

8 (5.1) it agrees to maintain a minimum employment
9 threshold in the State of Illinois prior to the date which
10 is 3 years from the issue date of the last tax credit
11 certificate issued by the Department with respect to that
12 business pursuant to this Section;

13 (6) (blank); and

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

17 (f) The Department, in consultation with the Department of
18 Revenue, shall adopt rules to administer this Section. For
19 taxable years beginning before January 1, 2024, the aggregate
20 amount of the tax credits that may be claimed under this
21 Section for investments made in qualified new business
22 ventures shall be limited to \$10,000,000 per calendar year, of
23 which \$500,000 shall be reserved for investments made in
24 qualified new business ventures which are minority-owned
25 businesses, women-owned businesses, or businesses owned by a
26 person with a disability (as those terms are used and defined

1 in the Business Enterprise for Minorities, Women, and Persons
2 with Disabilities Act), and an additional \$500,000 shall be
3 reserved for investments made in qualified new business
4 ventures with their principal place of business in counties
5 with a population of not more than 250,000. For taxable years
6 beginning on or after January 1, 2024, the aggregate amount of
7 the tax credits that may be claimed under this Section for
8 investments made in qualified new business ventures shall be
9 limited to \$15,000,000 per calendar year, of which \$2,500,000
10 shall be reserved for investments made in qualified new
11 business ventures that are minority-owned businesses (as the
12 term is defined in the Business Enterprise for Minorities,
13 Women, and Persons with Disabilities Act), \$1,250,000 shall be
14 reserved for investments made in qualified new business
15 ventures that are women-owned businesses or businesses owned
16 by a person with a disability (as those terms are defined in
17 the Business Enterprise for Minorities, Women, and Persons
18 with Disabilities Act), and \$1,250,000 shall be reserved for
19 investments made in qualified new business ventures with their
20 principal place of business in a county with a population of
21 not more than 250,000. The annual allowable amounts set forth
22 in this Section shall be allocated by the Department, on a per
23 calendar quarter basis and prior to the commencement of each
24 calendar year, in such proportion as determined by the
25 Department, provided that: (i) the amount initially allocated
26 by the Department for any one calendar quarter shall not

1 exceed 35% of the total allowable amount; (ii) any portion of
2 the allocated allowable amount remaining unused as of the end
3 of any of the first 3 calendar quarters of a given calendar
4 year shall be rolled into, and added to, the total allocated
5 amount for the next available calendar quarter; and (iii) the
6 reservation of tax credits for investments in minority-owned
7 businesses, women-owned businesses, businesses owned by a
8 person with a disability, and in businesses in counties with a
9 population of not more than 250,000 is limited to the first 3
10 calendar quarters of a given calendar year, after which they
11 may be claimed by investors in any qualified new business
12 venture.

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

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

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

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

23 (B) the name and address (including the county) of
24 the qualified new business venture that received the
25 investment giving rise to the credit, the North
26 American Industry Classification System (NAICS) code

1 applicable to that qualified new business venture, and
2 the number of employees of the qualified new business
3 venture; and

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

6 (2) The report must also include:

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

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

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

24 (i) For each business seeking registration under this
25 Section after December 31, 2016, the Department shall require
26 the business to include in its application the North American

1 Industry Classification System (NAICS) code applicable to the
2 business and the number of employees of the business at the
3 time of application. Each business registered by the
4 Department as a qualified new business venture that receives
5 an investment giving rise to the issuance of a tax credit
6 certificate pursuant to this Section shall, for each of the 3
7 years following the issue date of the last tax credit
8 certificate issued by the Department with respect to such
9 business pursuant to this Section, report to the Department
10 the following:

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

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

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

23 (Source: P.A. 102-16, eff. 6-17-21; 103-9, eff. 1-1-24.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.