

SB0011



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0011

Introduced 1/27/2011, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

35 ILCS 5/221 new
35 ILCS 5/222 new

Amends the Illinois Income Tax Act. Creates income tax credits for amounts invested by a taxpayer in a qualified new business venture, including investments made through an investment fund manager. Provides that the credit shall be equal to 25% of the amount invested. Provides that the credits may be carried forward for a period of 5 years. Provides that not more than \$10,000,000 in angel investment credits may be issued per calendar year. Provides that the credits are exempt from the Act's automatic sunset provisions. Provides that the Department of Commerce and Economic Opportunity shall certify the qualified business ventures and investment fund managers. Sets forth certain criteria for the certification of the business venture. Effective immediately.

LRB097 06654 HLH 46740 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 adding
5 Sections 221 and 222 as follows:

6 (35 ILCS 5/221 new)

7 Sec. 221. Early stage seed investment credit.

8 (a) As used in this Section:

9 "Claimant" means a person who files a claim for a credit
10 under this Section.

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

13 "Fund manager" means an investment fund manager certified
14 under subsection (e) of this Section.

15 (b) For taxable years beginning after December 31, 2011,
16 subject to the limitations provided under this Section, a
17 claimant may claim, as a credit against the tax imposed under
18 subsections (a) and (b) of Section 201 of this Act, an amount
19 equal to 25% of the amount invested by the claimant with a fund
20 manager and invested by the fund manager in a business
21 certified under Section 222 of this Act. The credit under this
22 Section may not exceed the taxpayer's Illinois income tax
23 liability for the taxable year. If the amount of the credit

1 exceeds the tax liability for the year, the excess may be
2 carried forward and applied to the tax liability of the 5
3 taxable years following the excess credit year. The credit
4 shall be applied to the earliest year for which there is a tax
5 liability. If there are credits from more than one tax year
6 that are available to offset a liability, the earlier credit
7 shall be applied first.

8 In the case of a partnership or limited liability company,
9 the computation of the 25% limitation under this subsection
10 shall be determined at the entity level rather than the
11 claimant level and may be allocated among the claimants who
12 make investments in the manner set forth in the entity's
13 organizational documents. The partnership or limited liability
14 company shall provide to the Department and the Department of
15 Revenue the names and tax identification numbers of the
16 claimants, the amounts of the credits allocated to the
17 claimants, and the computation of the allocations.

18 (c) The Illinois adjusted basis of any investment for which
19 a credit is claimed under this Section shall be reduced by the
20 amount of the credit that is offset against Illinois income
21 taxes. The Illinois basis of a partner's interest in a
22 partnership, a member's interest in a limited liability
23 company, or stock in an S corporation shall be adjusted to
24 reflect adjustments made under this subsection.

25 (d) If an investment for which a claimant claims a credit
26 under subsection (b) is held by the claimant for less than 3

1 years, the claimant shall pay to the Department, in the manner
2 prescribed by the Department, the amount of the credit that the
3 claimant received related to the investment.

4 (e) The Department shall implement a program to certify
5 investment fund managers for purposes of this Section. An
6 investment fund manager desiring certification shall submit an
7 application to the Department. The investment fund manager
8 shall specify in the application the investment amount that the
9 manager wishes to raise, and the Department may certify the
10 manager and determine the amount that qualifies for purposes of
11 this Section. In determining whether to certify an investment
12 fund manager, the Department shall consider the investment fund
13 manager's experience in managing venture capital funds, the
14 past performance of investment funds managed by the applicant,
15 the expected level of investment in the investment fund to be
16 managed by the applicant, and any other relevant factors. The
17 Department may certify only investment fund managers that
18 commit to consider placing investments in businesses certified
19 under Section 222 of this Act.

20 The Department shall maintain a list of businesses
21 certified under Section 222 of this Act and investment fund
22 managers certified under this subsection, and shall permit
23 public access to the lists through the Department's Internet
24 website.

25 The Department shall notify the Department of Revenue of
26 every certification issued under this subsection and under

1 Section 222 of this Act and the date on which any such
2 certification is revoked or expires.

3 (f) The Department, in consultation with the Department of
4 Revenue, shall adopt rules to administer this Section. The
5 rules shall limit the aggregate amount of the tax credits under
6 this Section that may be claimed for investments paid to fund
7 managers certified under subsection (e) at \$10,000,000 per
8 calendar year. The rules shall also provide that no claimant
9 may receive a credit under this Section unless the claimant's
10 investment is kept in a certified business, or with a certified
11 fund manager, for no less than 3 years.

12 (g) A claimant may sell or otherwise transfer a credit
13 awarded under this Section to another person who is subject to
14 the taxes or fees imposed under subsections (a) or (b) of
15 Section 201, if the transferee receives prior authorization
16 from the Department and the Department of Revenue and the
17 Department then notifies the investment fund manager of the
18 transfer. The Department may charge any person selling or
19 otherwise transferring a credit under this subsection a fee
20 equal to 1% of the credit amount sold or transferred.

21 (h) This Section is exempt from the provisions of Section
22 250.

23 (35 ILCS 5/222 new)

24 Sec. 222. Angel investment credit.

25 (a) As used in this Section:

1 "Bona fide angel investment" means a purchase of an equity
2 interest, or any other expenditure, as determined by rule under
3 this Section, that is made by:

4 (1) a person who reviews new businesses or proposed new
5 businesses for potential investment of the person's money;

6 or

7 (2) a network of persons each of whom satisfies item
8 (1).

9 "Claimant" means an individual who files a claim for a
10 credit under this Section.

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

13 "Person" means a partnership or limited liability company
14 that is a non-operating entity, as determined by the
15 Department, a natural person, or fiduciary.

16 "Qualified new business venture" means a business that is
17 certified under this Section.

18 (b) For taxable years beginning after December 31, 2011,
19 subject to the limitations provided in this Section, a claimant
20 may claim, as a credit against the tax imposed under
21 subsections (a) and (b) of Section 201 of this Act, an amount
22 equal to 25% of the claimant's bona fide angel investment made
23 directly in a qualified new business venture. The credit under
24 this Section may not exceed the taxpayer's Illinois income tax
25 liability for the taxable year. If the amount of the credit
26 exceeds the tax liability for the year, the excess may be

1 carried forward and applied to the tax liability of the 5
2 taxable years following the excess credit year. The credit
3 shall be applied to the earliest year for which there is a tax
4 liability. If there are credits from more than one tax year
5 that are available to offset a liability, the earlier credit
6 shall be applied first.

7 (c) The maximum amount of a claimant's investment that may
8 be used as the basis for a credit under this Section is
9 \$2,000,000 for each investment made directly in a business
10 certified under this Section.

11 (d) If an investment for which a claimant claims a credit
12 under subsection (b) is held by the claimant for less than 3
13 years, the claimant shall pay to the Department, in the manner
14 prescribed by the Department, the amount of the credit that the
15 claimant received related to the investment.

16 (e) The Illinois adjusted basis of any investment for which
17 a credit is claimed under subsection (b) shall be reduced by
18 the amount of the credit that is offset against Illinois income
19 taxes.

20 (f) The Department shall implement a program to certify
21 businesses for purposes of this Section. A business desiring
22 certification shall submit an application to the Department in
23 each taxable year for which the business desires certification.
24 The business shall specify in its application the investment
25 amount it wishes to raise, and the Department may certify the
26 business and determine the amount that qualifies for purposes

1 of this Section. Unless otherwise provided under the rules of
2 the Department, a business may be certified under this
3 subsection, and may maintain such certification, only if the
4 business satisfies all of the following conditions:

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

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

8 (3) it has the potential for increasing jobs in this
9 State, increasing capital investment in this State, or
10 both, and any of the following apply:

11 (A) it is engaged in, or has committed to engage
12 in, innovation in any of the following: manufacturing;
13 biotechnology; nanotechnology; communications;
14 agriculture; clean energy creation or storage
15 technology; processing or assembling products,
16 including medical devices, pharmaceuticals, computer
17 software, computer hardware, semiconductors, other
18 innovative technology products, or other products that
19 are produced using manufacturing methods that are
20 enabled by applying proprietary technology; or
21 providing services that are enabled by applying
22 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 primarily 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) it has less than 100 employees;

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

16 (7) prior to certification, it has received not more
17 than (i) \$2,000,000 in investments that qualified for tax
18 credits under this Section, (ii) \$10,000,000 in aggregate
19 private equity investment in cash, and (iii) \$4,000,000 in
20 investments that qualified for tax credits under this
21 Section or Section 219 of this Act.

22 (g) The Department, in consultation with the Department of
23 Revenue, shall adopt rules to administer this Section. The
24 rules shall further define "bona fide angel investment" for
25 purposes of this Section. The rules shall limit the aggregate
26 amount of the tax credits that may be claimed under this

1 Section for investments made in qualified new business ventures
2 at \$10,000,000 per calendar year.

3 (h) A claimant may sell or otherwise transfer a credit
4 awarded under this Section to another person who is subject to
5 the taxes or fees imposed under subsections (a) or (b) of
6 Section 201, if the transferee receives prior authorization
7 from the Department and the Department of Revenue. The
8 Department may charge any person selling or otherwise
9 transferring a credit under this subsection a fee equal to 1%
10 of the credit amount sold or transferred.

11 (i) This Section is exempt from the provisions of Section
12 250.

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.