Sen. Dan Kotowski

Filed: 3/1/2012

AMENDMENT TO SENATE BILL 3619

AMENDMENT NO. ______. Amend Senate Bill 3619 by replacing everything after the enacting clause with the following:

"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 a corporation, partnership, limited liability company, or a natural person who has a direct or indirect ownership interest of at least 51% in the profits, capital, or value of the investment or 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.

"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 investment, 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 applicant.

(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 applicant.

(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

corporation's outstanding stock.

(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 applicant.

(5) A person to or from whom there is attribution of stock ownership 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, 2016, 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. 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 maximum amount of an applicant's investment that may be used as the basis for a credit under this Section is $2,000,000 for each investment made directly in a qualified new business venture.

(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 the claimant's investment has been made and remains in the qualified new business venture for no less than 3 years.

(d-5) If an investment for which a claimant is allowed a credit under subsection (b) is held by the claimant for less than 3 years, or, if within that period of time the qualified new business venture is moved from the State of Illinois, the claimant shall pay to the Department of Revenue, in the manner prescribed by the Department of Revenue, the amount of the credit that the claimant received related to the investment. Repayment of the credit shall not be required under this paragraph if, prior to the time the claimant disposes of its investment or the business venture is moved from the State of Illinois:

(1) the investment by the claimant becomes worthless;

(2) 80% or more of the assets of the qualified new business venture are sold to a party that is not related to the qualified new business venture or to the claimant;

(3) bankruptcy or insolvency proceedings are commenced for the qualified new business venture; or

(4) the qualified new business venture's common stock begins trading on an established securities market.

If the Department determines that the qualified new business venture did not meet the requirement that at least 51% of the employees employed by the business are employed in this State in any of the 3 years following the date on which an investment in the qualified new business venture was made, the claimant shall pay to the Department of Revenue, in the manner prescribed by the Department of Revenue, the following percentage of the credits allowed for qualified investments in the qualified new business venture:

Year following the date on which the investment was made:	Percentage of credit required to be repaid:
First	100%
Second	66%
Third	33%
Fourth and later	0%

The Department must notify the Department of Revenue of every credit revoked and subject to full or partial repayment under this subsection.

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

(1) it has its headquarters in this State;

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

(3) it has the potential for increasing jobs in this State, increasing capital investment in this State, or both, 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) <u>at the time it is first certified:</u>

<u>(A)</u> it has fewer than 100 employees;

<u>(B) it has been in operation in Illinois for not more than 10 consecutive years prior to the year of</u>

certification; and

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

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

(7) it has received not more than ~~(i) $10,000,000 in aggregate private equity investment in cash or (ii)~~ $4,000,000 in investments that qualified for tax credits under this Section.

(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.

(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 of the qualified new business venture that received the investment giving rise to the credit and the county in which the qualified new business venture is located; and

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

(2) The report must also include:

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

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

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

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

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