

6837

I N S E N A T E

March 28, 2012

Introduced by Sens. DeFRANCISCO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law and the tax law, in relation to establishing an angel tax credit for investments made in small businesses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general municipal law is amended by adding a new
2 section 959-c to read as follows:
3 S 959-C. CERTIFIED STARTUP BUSINESS ENTERPRISE. (A) CERTIFICATION. (I)
4 THE COMMISSIONER SHALL APPROVE APPLICATIONS FOR QUALIFICATION OF A BUSI-
5 NESS ENTERPRISE AS A CERTIFIED STARTUP BUSINESS ENTERPRISE. AS A CONDI-
6 TION FOR APPROVAL OF SUCH APPLICATION, THE COMMISSIONER IS AUTHORIZED TO
7 SPECIFY CERTAIN REQUIREMENTS TO BE SATISFIED AS A CONDITION FOR APPROVAL
8 OF A BUSINESS ENTERPRISE AS A CERTIFIED STARTUP BUSINESS ENTERPRISE AS
9 THE COMMISSIONER DEEMS NECESSARY TO ENSURE THE QUALIFYING ANGEL INVEST-
10 MENT WILL MAKE A SUBSTANTIAL CONTRIBUTION TO THE ECONOMIC DEVELOPMENT OF
11 THIS STATE, INCLUDING THE USE OF A SYSTEM OF EVALUATION OF VARIOUS
12 APPLICANT BUSINESS ENTERPRISES IN A COMPETITIVE FASHION.
13 (II) WITH RESPECT TO AN APPROVED APPLICATION FOR QUALIFICATION OF A
14 BUSINESS ENTERPRISE AS A CERTIFIED STARTUP BUSINESS ENTERPRISE, THE
15 COMMISSIONER SHALL ISSUE TO SUCH BUSINESS ENTERPRISE A CERTIFICATE OF
16 QUALIFICATION AS A CERTIFIED STARTUP BUSINESS ENTERPRISE SETTING FORTH
17 THE EFFECTIVE DATE OF THE CERTIFICATION AND THE AMOUNT OF QUALIFYING
18 ANGEL INVESTMENT AWARDED TO SUCH BUSINESS ENTERPRISE, WHICH AMOUNT SHALL
19 BE NO LESS THAN ONE HUNDRED THOUSAND DOLLARS AND NO MORE THAN ONE
20 MILLION DOLLARS.
21 (III) FOR THE PERIOD JULY FIRST, TWO THOUSAND TWELVE THROUGH JUNE
22 THIRTIETH, TWO THOUSAND THIRTEEN, THE COMMISSIONER MAY CERTIFY UP TO
23 SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT. FOR THE PERIOD
24 JULY FIRST, TWO THOUSAND THIRTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND
25 FOURTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN
26 QUALIFYING ANGEL INVESTMENT. FOR THE PERIOD JULY FIRST, TWO THOUSAND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 FOURTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND FIFTEEN, THE COMMISSIONER
2 MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT.

3 (B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL
4 HAVE THE FOLLOWING MEANINGS:

5 (I) "CERTIFIED STARTUP BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS
6 ENTERPRISE LOCATED IN NEW YORK STATE:

7 (1) WITH LESS THAN FIVE MILLION DOLLARS IN ANNUAL REVENUES;

8 (2) WHOSE PRIMARY ACTIVITY CONSISTS OF A QUALIFYING TECHNOLOGY OR
9 INNOVATION ACTIVITY; AND

10 (3) THAT HAS BEEN CERTIFIED AS A CERTIFIED STARTUP BUSINESS ENTERPRISE
11 BY THE COMMISSIONER.

12 (II) "QUALIFYING TECHNOLOGY OR INNOVATION ACTIVITY" SHALL MEAN:

13 (1) BIOTECHNOLOGIES, WHICH SHALL BE DEFINED AS TECHNOLOGIES INVOLVING
14 THE SCIENTIFIC MANIPULATION OF LIVING ORGANISMS, ESPECIALLY AT THE
15 MOLECULAR AND/OR THE SUB-MOLECULAR GENETIC LEVEL, TO PRODUCE PRODUCTS
16 CONDUCIVE TO IMPROVING THE LIVES AND HEALTH OF PLANTS, ANIMALS, AND
17 HUMANS; AND THE ASSOCIATED SCIENTIFIC RESEARCH, PHARMACOLOGICAL, MECHAN-
18 ICAL, AND COMPUTATIONAL APPLICATIONS AND SERVICES CONNECTED WITH THESE
19 IMPROVEMENTS;

20 (2) INFORMATION AND COMMUNICATION TECHNOLOGIES, EQUIPMENT AND SYSTEMS
21 THAT INVOLVE ADVANCED COMPUTER SOFTWARE AND HARDWARE, VISUALIZATION
22 TECHNOLOGIES, AND HUMAN INTERFACE TECHNOLOGIES;

23 (3) ADVANCED MATERIALS AND PROCESSING TECHNOLOGIES THAT INVOLVE THE
24 DEVELOPMENT, MODIFICATION, OR IMPROVEMENT OF ONE OR MORE MATERIALS OR
25 METHODS TO PRODUCE DEVICES AND STRUCTURES WITH IMPROVED PERFORMANCE
26 CHARACTERISTICS OR SPECIAL FUNCTIONAL ATTRIBUTES, OR TO ACTIVATE, SPEED
27 UP, OR OTHERWISE ALTER CHEMICAL, BIOCHEMICAL, OR MEDICAL PROCESSES;

28 (4) ELECTRONIC AND PHOTONIC DEVICES AND COMPONENTS FOR USE IN PRODUC-
29 ING ELECTRONIC, OPTOELECTRONIC, MECHANICAL EQUIPMENT AND PRODUCTS OF
30 ELECTRONIC DISTRIBUTION WITH INTERACTIVE MEDIA CONTENT;

31 (5) ENERGY EFFICIENCY, RENEWABLE ENERGY AND ENVIRONMENTAL TECHNOLO-
32 GIES, PRODUCTS, DEVICES AND SERVICES; OR

33 (6) SMALL SCALE SYSTEMS INTEGRATION AND PACKAGING.

34 (III) "QUALIFYING ANGEL INVESTMENT" SHALL MEAN A CONTRIBUTION TO THE
35 CAPITAL OF A CERTIFIED STARTUP BUSINESS ENTERPRISE, PROVIDED THAT SUCH
36 CONTRIBUTION TO CAPITAL IS MADE WITHIN TWELVE MONTHS AFTER THE EFFECTIVE
37 DATE OF THE CERTIFIED TECHNOLOGY VENTURE'S CERTIFICATE OF QUALIFICATION
38 AS A CERTIFIED TECHNOLOGY VENTURE AND SUCH CONTRIBUTION IS APPLIED BY
39 THE CERTIFIED STARTUP BUSINESS ENTERPRISE AGAINST ITS ALLOCATION OF
40 QUALIFYING ANGEL INVESTMENT. TOGETHER WITH ALL OTHER QUALIFYING ANGEL
41 INVESTMENTS MADE TO A SINGLE CERTIFIED STARTUP BUSINESS ENTERPRISE, THE
42 TOTAL QUALIFYING ANGEL INVESTMENT MAY NOT EXCEED ONE MILLION DOLLARS.
43 NOTHING HEREIN SHALL PROHIBIT A PERSON MAKING A QUALIFYING ANGEL INVEST-
44 MENT FROM MAKING ADDITIONAL CONTRIBUTIONS TO THE CAPITAL OF THE CERTI-
45 FIED STARTUP BUSINESS ENTERPRISE OR MAKING LOANS TO OR OTHER INVESTMENTS
46 IN THE CERTIFIED STARTUP BUSINESS ENTERPRISE, PROVIDED, HOWEVER, THAT
47 SUCH OTHER CONTRIBUTIONS, LOANS AND INVESTMENTS SHALL NOT BE TREATED AS
48 QUALIFYING ANGEL INVESTMENTS.

49 S 2. Section 210 of the tax law is amended by adding a new subdivision
50 12-H to read as follows:

51 12-H. ANGEL TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
52 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
53 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
54 GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE
55 PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

1 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
2 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
3 THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF
4 SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT
5 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO
6 SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE
7 YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
8 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHT-
9 Y-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION
10 (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING,
11 NO INTEREST SHALL BE PAID THEREON.

12 S 3. Section 606 of the tax law is amended by adding a new subdivision
13 (uu) to read as follows:

14 (UU) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
15 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
16 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
17 GENERAL MUNICIPAL LAW, OR THAT IS A MEMBER OF A PARTNERSHIP THAT HAS
18 MADE A QUALIFYING ANGEL INVESTMENT, SHALL BE ALLOWED A CREDIT EQUAL TO
19 THIRTY-FIVE PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT
20 OR, IN THE CASE OF A TAXPAYER WHO IS A MEMBER OF A PARTNERSHIP THAT HAS
21 MADE A QUALIFYING ANGEL INVESTMENT, A PORTION OF SUCH QUALIFYING ANGEL
22 INVESTMENT EQUAL TO THE PORTION OF ITEMS OF INCOME, GAIN, LOSS AND
23 DEDUCTION ASSOCIATED WITH THE QUALIFYING ANGEL INVESTMENT PROPERLY ALLO-
24 CABLE TO SUCH TAXPAYER UNDER SECTION 704 OF THE INTERNAL REVENUE CODE
25 FOR THE TAXABLE YEAR.

26 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER
27 THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR
28 SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE
29 CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX
30 HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST
31 SHALL BE PAID THEREON.

32 S 4. Section 1456 of the tax law is amended by adding a new subdivi-
33 sion (z) to read as follows:

34 (Z) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
35 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
36 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
37 GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE
38 PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

39 (2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBSECTION
40 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
41 THAN THE MINIMUM TAX FIXED BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED
42 FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED
43 UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH
44 AMOUNT, THEN ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE
45 YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
46 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHT-
47 Y-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION
48 (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING,
49 NO INTEREST SHALL BE PAID THEREON.

50 S 5. Section 1511 of the tax law is amended by adding a new subdivi-
51 sion (cc) to read as follows:

52 (CC) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
53 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
54 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
55 GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE
56 PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

1 (2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
2 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
3 THAN THE MINIMUM TAX FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF
4 SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE OR BY SECTION FIFTEEN
5 HUNDRED TWO-A OF THIS ARTICLE, WHICHEVER IS APPLICABLE. HOWEVER, IF THE
6 AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
7 REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS NOT
8 DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF
9 TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF
10 SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE
11 PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS
12 CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

13 S 6. This act shall take effect immediately.