

STATE OF NEW YORK

991

2017-2018 Regular Sessions

IN ASSEMBLY

January 10, 2017

Introduced by M. of A. ROSENTHAL, MORELLE, MAGNARELLI -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the establishment of the angel investment tax credit for qualified emerging technologies; to repeal certain provisions of such law relating thereto; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 8 of section 210-B of the tax law is REPEALED
2 and a new subdivision 8 is added to read as follows:

3 8. Angel investment tax credit. (a) for the purposes of this subdivi-
4 sion, the following terms shall have the following meanings:

5 (1) "Qualified emerging technology company" shall mean a private
6 company as defined in subparagraph one of paragraph (c) of subdivision
7 one of section thirty-one hundred two-e of the public authorities law.

8 (2) "Seed company" shall mean a qualified emerging technology company
9 with annual revenue of less than five million dollars or a qualified
10 emerging technology company that may not yet have fully established
11 commercial operations to enable such company to conduct research to
12 prove a concept.

13 (3) "Qualified angel investment" shall mean the investment of money in
14 a seed company in exchange for original issue capital stock or other
15 ownership interest, provided, that repayment of the investment is
16 dependent on the success of the business operations and is not secured
17 by a lien on business assets or a personal guaranty of any principal
18 owner, and provided, further, that such investment is not made by or on
19 behalf of an owner of the business, including, but not limited to, a
20 stockholder, partner or sole proprietor, or any related person as
21 defined in section 465(b)(3)(c) of the internal revenue code.

22 (4) "Qualified angel network fund investment" shall mean the amount of
23 committed capital a limited partner has actually transferred to a seed

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

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1 capital fund provided, that such fund was established solely to make
2 qualified angel investments.

3 (b) A taxpayer shall be allowed a credit against the tax imposed by
4 this article. The amount of the credit shall be equal to the sum of the
5 amounts specified in subparagraphs one and two of this paragraph.

6 (1) Forty percent of a qualified angel investment, provided that twenty-
7 ty percent of the qualified angel investment can be taken as a credit in
8 the taxable year in which the investment was made and ten percent of the
9 qualified angel investment can be taken as a credit in each of the next
10 two taxable years, and further provided that such investment is not
11 sold, transferred or otherwise recovered by the taxpayer during the
12 taxable year the investment was made or within twenty-four months from
13 the close of the taxable year in which the credit was first claimed. The
14 total amount of credits allowable to a taxpayer under this subparagraph
15 for all years is six hundred thousand dollars.

16 (2) Twenty percent of a qualified angel network fund investment,
17 provided that ten percent of the qualified angel fund investment can be
18 taken as a credit in the taxable year in which the investment was made
19 and five percent of the qualified angel network fund investment can be
20 taken as a credit in each of the next two taxable years, and further
21 provided that such investment is not sold, transferred or otherwise
22 recovered by the taxpayer during the taxable year the investment was
23 made or within twenty-four months from the close of the taxable year in
24 which the credit was first claimed. The total amount of credits allow-
25 able to a taxpayer under this subparagraph for all years is three
26 hundred thousand dollars.

27 (c) In no event shall the credit and carryover of such credit allowed
28 under this subdivision for any taxable year, in the aggregate, reduce
29 the tax due for such year to less than the higher of the amounts
30 prescribed in paragraphs (c) and (d) of subdivision one of section two
31 hundred ten of this article. Provided, however, if the amount of credit
32 or carryovers of such credit, or both, allowed under this subdivision
33 for any taxable year reduces the tax to such amount, or if any part of
34 the credit or carryovers of such credit may not be deducted from the tax
35 otherwise due by reason of the final sentence of this paragraph, any
36 amount of credit or carryovers of such credit thus not deductible in
37 such taxable year may be carried over to the following year or years and
38 may be deducted from the tax for such year or years. In addition, the
39 amount of such credit, and carryovers of such credit to the taxable
40 year, deducted from the tax otherwise due may not, in the aggregate,
41 exceed fifty percent of the tax imposed under section two hundred nine
42 of this article computed without regard to any credit provided for by
43 section two hundred ten of this article.

44 (d) Where a taxpayer sells, transfers, or otherwise recovers the
45 investment, in whole or in part, which was the basis for the allowance
46 of credit provided for under subparagraphs one or two of paragraph (b)
47 of this subdivision, during the taxable year the investment was made or
48 within twenty-four months from the close of the taxable year in which
49 the credit was first claimed, the taxpayer shall not be allowed the
50 portion of the credit attributable to such investment with respect to
51 the taxable year in which the recovery described above occurred and the
52 following taxable years.

53 § 2. Subsection (r) of section 606 of the tax law is REPEALED and a
54 new subsection (r) is added to read as follows:

55 (r) Angel investment tax credit. (1) For the purposes of this
56 subsection, the following terms shall have the following meanings:

1 (A) "Qualified emerging technology company" shall mean a private
2 company as defined in subparagraph one of paragraph (c) of subdivision
3 one of section thirty-one hundred two-e of the public authorities law.

4 (B) "Seed company" shall mean a qualified emerging technology company
5 with annual revenue of less than five million dollars or a qualified
6 emerging technology company that may not yet have fully established
7 commercial operations to enable such company to conduct research to
8 prove a concept.

9 (C) "Qualified angel investment" shall mean the investment of money in
10 a seed company in exchange for original issue capital stock or other
11 ownership interest, provided that repayment of the investment is depend-
12 ent on the success of the business operations and is not secured by a
13 lien on business assets or a personal guaranty of any principal owner,
14 and provided further that such investment is not made by or on behalf of
15 an owner of the business, including, but not limited to, a stockholder,
16 partner or sole proprietor, or any related person as defined in section
17 465(b)(3)(c) of the internal revenue code.

18 (D) "Qualified angel network fund investment" shall mean the amount of
19 committed capital a limited partner has actually transferred to a seed
20 capital fund, provided that such fund was established solely to make
21 qualified angel investments.

22 (2) A taxpayer shall be allowed a credit against the tax imposed by
23 this article. The amount of the credit shall be equal to the sum of the
24 amounts specified in subparagraphs (A) and (B) of this paragraph.

25 (A) Forty percent of a qualified angel investment, provided that twen-
26 ty percent of the qualified angel investment can be taken as a credit in
27 the taxable year in which the investment was made and ten percent of the
28 qualified angel investment can be taken as a credit in each of the next
29 two taxable years, and further provided that such investment is not
30 sold, transferred or otherwise recovered by the taxpayer during the
31 taxable year the investment was made or within twenty-four months from
32 the close of the taxable year in which the credit was first claimed. The
33 total amount of credits allowable to a taxpayer under this subparagraph
34 for all years is six hundred thousand dollars.

35 (B) Twenty percent of a qualified angel network fund investment,
36 provided that ten percent of the qualified angel network fund investment
37 can be taken as a credit in the taxable year in which the the investment
38 was made and five percent of the qualified angel network fund investment
39 can be taken as a credit in each of the next two taxable years, and
40 further provided that such investment is not sold, transferred or other-
41 wise recovered by the taxpayer during the taxable year the investment
42 was made or within twenty-four months from the close of the taxable year
43 in which the credit was first claimed. The total amount of credits
44 allowable to a taxpayer under this subparagraph for all years is three
45 hundred thousand dollars.

46 (3) (A) If the amount of the credit and carryovers of such credit
47 allowed under this subsection for any taxable year shall exceed the
48 taxpayer's tax for such year, any amount of credit or carryovers of such
49 credit thus not deductible in such taxable year may be carried over to
50 the following year or years and may be deducted from the tax for such
51 year or years. In addition, the amount of such credit, and carryovers of
52 such credit to the taxable year, deducted from the tax otherwise due may
53 not, in the aggregate, exceed fifty percent of the tax imposed under
54 section six hundred one of this article computed without regard to any
55 credit provided for by this section.

1 (B) In the case of a husband or wife who is required to file a sepa-
2 rate return, the limitations provided for in subparagraph (B) of para-
3 graph two of this subsection shall be one hundred fifty thousand dollars
4 in lieu of three hundred thousand dollars, and the limitations provided
5 for in subparagraph (A) of paragraph two of this subsection shall be
6 three hundred thousand dollars in lieu of six hundred thousand dollars,
7 unless the spouse of the taxpayer has no credit allowable under this
8 subsection for the taxable year of such spouse which ends within or with
9 the taxpayer's taxable year.

10 (C) In the case of an estate or trust, the limitations provided for in
11 paragraph two of this subsection shall be reduced to an amount which
12 bears the same ratio to three hundred thousand dollars and an amount
13 which bears the same ratio to six hundred thousand dollars as the
14 portion of the income of the estate or trust which is not allocated to
15 beneficiaries bears to the total income of the estate or trust.

16 (4) Where a taxpayer sells, transfers, or otherwise recovers the
17 investment, in whole or in part, which was the basis for the allowance
18 of credit provided for under subparagraphs (A) or (B) of paragraph two
19 of this subsection, during the taxable year the investment was made or
20 within twenty-four months from the close of the taxable year in which
21 the credit was first claimed, the taxpayer shall not be allowed the
22 portion of credit attributable to such investment with respect to the
23 taxable year in which the recovery described above occurred and the
24 following taxable years.

25 § 3. Clause (xi) of subparagraph (B) of paragraph 1 of subsection (i)
26 of section 606 of the tax law, as amended by section 68 of part A of
27 chapter 59 of the laws of 2014, is amended to read as follows:

28 (xi) [~~Qualified emerging technology~~ ~~Qualified investments under~~
29 ~~company capital~~] Angel investment subdivision eight
30 tax credit under subsection (r) of section two hundred ten-B

31 § 4. This act shall take effect immediately and shall apply to taxable
32 years beginning on and after the first of January next succeeding the
33 date on which it shall have become a law and shall remain in effect for
34 sixty months after it shall have become a law, when upon such date the
35 provisions of this act shall expire and be deemed repealed.