

9958

I N A S S E M B L Y

April 26, 2012

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing for an angel investor tax credit

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

1 Section 1. Section 606 of the tax law is amended by adding a new
2 subsection (uu) to read as follows:
3 (UU) ANGEL INVESTOR CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER, WHO
4 IS AN ANGEL INVESTOR, AS DEFINED BY SUBPARAGRAPH (II) OF PARAGRAPH THREE
5 OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREIN-
6 AFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR INVESTING
7 TWENTY-FIVE THOUSAND DOLLARS OR MORE IN A QUALIFYING BUSINESS. THE
8 AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE INVESTMENT IN
9 THE QUALIFYING BUSINESS UP TO BUT NOT EXCEEDING TWO HUNDRED FIFTY THOU-
10 SAND DOLLARS.
11 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER
12 THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR
13 SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR
14 YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR
15 YEARS.
16 (3) DEFINITIONS. FOR PURPOSES OF THE CREDIT DESCRIBED IN THIS
17 SUBSECTION:
18 (I) "QUALIFYING BUSINESS" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING
19 A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION THAT:
20 (A) HAS NOT YET GENERATED REVENUE OR HAS GROSS REVENUES, ALONG WITH
21 THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NOT EXCEEDING
22 ONE MILLION DOLLARS FOR THE TAXABLE YEAR IMMEDIATELY PRECEDING THE YEAR
23 THE TAXPAYER IS ALLOWED A CREDIT UNDER THIS SUBSECTION. FOR PURPOSES OF
24 THIS PARAGRAPH, THE TERM "RELATED MEMBER" SHALL HAVE THE SAME MEANING AS
25 SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF
26 SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AND THE
27 TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE

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

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1 SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE
2 INTERNAL REVENUE CODE) AS THE TAXPAYER;
3 (B) HAS NO MORE THAN TWENTY-FIVE FULL-TIME EMPLOYEES, OF WHICH AT
4 LEAST SIXTY PERCENT ARE EMPLOYED IN NEW YORK STATE;
5 (C) HAS OPERATED IN THE STATE FOR NO MORE THAN SEVEN CONSECUTIVE
6 YEARS; AND
7 (D) HAS RECEIVED NO MORE THAN TWO MILLION DOLLARS IN INVESTMENTS
8 ELIGIBLE FOR THE CREDIT DESCRIBED IN THIS SUBSECTION FROM ONE OR MORE
9 THAN ONE ANGEL INVESTOR;
10 (II) "ANGEL INVESTOR" SHALL MEAN AN ACCREDITED INVESTOR AS DEFINED IN
11 RULE 501 OF REGULATION D OF THE FEDERAL SECURITIES ACT OF 1933, AS
12 AMENDED; BUT SHALL NOT INCLUDE:
13 (A) AN INVESTOR WHO CONTROLS FIFTY PERCENT OR MORE OF THE QUALIFYING
14 BUSINESS RECEIVING THE INVESTMENT SUBJECT TO THE CREDIT DESCRIBED BY
15 THIS SUBSECTION; OR
16 (B) A VENTURE CAPITAL COMPANY OR ANY BANK, SAVINGS AND LOAN ASSOCI-
17 ATION, TRUST, INSURANCE COMPANY OR SIMILAR ENTITY, WHOSE NORMAL BUSINESS
18 ACTIVITIES INCLUDE VENTURE CAPITAL INVESTMENT.
19 S 2. Section 210 of the tax law is amended by adding a new subdivision
20 45 to read as follows:
21 45. ANGEL INVESTOR CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER, WHO IS
22 AN ANGEL INVESTOR, AS DEFINED BY SUBPARAGRAPH (II) OF PARAGRAPH (C) OF
23 THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREIN-
24 AFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR INVESTING
25 TWENTY-FIVE THOUSAND DOLLARS OR MORE IN A QUALIFYING BUSINESS. THE
26 AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE INVESTMENT IN
27 THE QUALIFYING BUSINESS UP TO BUT NOT EXCEEDING TWO HUNDRED FIFTY THOU-
28 SAND DOLLARS.
29 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
30 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
31 THAN THE HIGHER AMOUNT PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVI-
32 SION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER
33 THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT,
34 ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE
35 CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE
36 TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.
37 (C) DEFINITIONS. FOR PURPOSES OF THE CREDIT DESCRIBED IN THIS SUBDIVI-
38 SION:
39 (I) "QUALIFYING BUSINESS" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING
40 A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION THAT:
41 (A) HAS NOT YET GENERATED REVENUE OR HAS GROSS REVENUES, ALONG WITH
42 THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NOT EXCEEDING
43 ONE MILLION DOLLARS FOR THE TAXABLE YEAR IMMEDIATELY PRECEDING THE YEAR
44 THE TAXPAYER IS ALLOWED A CREDIT UNDER THIS SUBDIVISION. FOR PURPOSES OF
45 THIS PARAGRAPH, THE TERM "RELATED MEMBER" SHALL HAVE THE SAME MEANING AS
46 SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF
47 SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AND THE
48 TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE
49 SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE
50 INTERNAL REVENUE CODE) AS THE TAXPAYER;
51 (B) HAS NO MORE THAN TWENTY-FIVE FULL-TIME EMPLOYEES, OF WHICH AT
52 LEAST SIXTY PERCENT ARE EMPLOYED IN NEW YORK STATE;
53 (C) HAS OPERATED IN THE STATE FOR NO MORE THAN SEVEN CONSECUTIVE
54 YEARS; AND

1 (D) HAS RECEIVED NO MORE THAN TWO MILLION DOLLARS IN INVESTMENTS
2 ELIGIBLE FOR THE CREDIT DESCRIBED IN THIS SUBDIVISION FROM ONE OR MORE
3 THAN ONE ANGEL INVESTOR;

4 (II) "ANGEL INVESTOR" SHALL MEAN AN ACCREDITED INVESTOR AS DEFINED IN
5 RULE 501 OF REGULATION D OF THE FEDERAL SECURITIES ACT OF 1933, AS
6 AMENDED; BUT SHALL NOT INCLUDE:

7 (A) AN INVESTOR WHO CONTROLS FIFTY PERCENT OR MORE OF THE QUALIFYING
8 BUSINESS RECEIVING THE INVESTMENT SUBJECT TO THE CREDIT DESCRIBED BY
9 THIS SUBDIVISION; OR

10 (B) A VENTURE CAPITAL COMPANY OR ANY BANK, SAVINGS AND LOAN ASSOCI-
11 ATION, TRUST, INSURANCE COMPANY OR SIMILAR ENTITY, WHOSE NORMAL BUSINESS
12 ACTIVITIES INCLUDE VENTURE CAPITAL INVESTMENT.

13 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
14 of the tax law is amended by adding a new clause (xxxiv) to read as
15 follows:

16 (XXXIV) ANGEL INVESTOR CREDIT	AMOUNT OF CREDIT UNDER
17 UNDER SUBSECTION (UU)	SUBDIVISION FORTY-FIVE OF
18	SECTION TWO HUNDRED TEN

19 S 4. This act shall take effect immediately and shall apply to
20 personal income taxable years beginning on and after January 1, 2013.