S T A T E O F N E W Y O R K

7403

I N S E N A T E

May 9, 2012

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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:

Section 1. Section 606 of the tax law is amended by adding a new subsection (uu) to read as follows:

(UU) ANGEL INVESTOR CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER, WHO IS AN ANGEL INVESTOR, AS DEFINED BY SUBPARAGRAPH (II) OF PARAGRAPH THREE OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR INVESTING TWENTY-FIVE THOUSAND DOLLARS OR MORE IN A QUALIFYING BUSINESS. THE AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE INVESTMENT IN THE QUALIFYING BUSINESS UP TO BUT NOT EXCEEDING TWO HUNDRED FIFTY THOUSAND DOLLARS.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(3) DEFINITIONS. FOR PURPOSES OF THE CREDIT DESCRIBED IN THIS SUBSECTION:

(I) "QUALIFYING BUSINESS" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION THAT:

(A) HAS NOT YET GENERATED REVENUE OR HAS GROSS REVENUES, ALONG WITH THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NOT EXCEEDING ONE MILLION DOLLARS FOR THE TAXABLE YEAR IMMEDIATELY PRECEDING THE YEAR THE TAXPAYER IS ALLOWED A CREDIT UNDER THIS SUBSECTION. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "RELATED MEMBER" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AND THE 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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SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER;

(B) HAS NO MORE THAN TWENTY-FIVE FULL-TIME EMPLOYEES, OF WHICH AT LEAST SIXTY PERCENT ARE EMPLOYED IN NEW YORK STATE;

(C) HAS OPERATED IN THE STATE FOR NO MORE THAN SEVEN CONSECUTIVE YEARS; AND

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

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

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

(B) A VENTURE CAPITAL COMPANY OR ANY BANK, SAVINGS AND LOAN ASSOCIATION, TRUST, INSURANCE COMPANY OR SIMILAR ENTITY, WHOSE NORMAL BUSINESS ACTIVITIES INCLUDE VENTURE CAPITAL INVESTMENT.

S 2. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. ANGEL INVESTOR CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER, WHO IS AN ANGEL INVESTOR, AS DEFINED BY SUBPARAGRAPH (II) OF PARAGRAPH (C) OF THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR INVESTING TWENTY-FIVE THOUSAND DOLLARS OR MORE IN A QUALIFYING BUSINESS. THE AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE INVESTMENT IN THE QUALIFYING BUSINESS UP TO BUT NOT EXCEEDING TWO HUNDRED FIFTY THOUSAND DOLLARS.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER AMOUNT PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(C) DEFINITIONS. FOR PURPOSES OF THE CREDIT DESCRIBED IN THIS SUBDIVISION:

(I) "QUALIFYING BUSINESS" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION THAT:

(A) HAS NOT YET GENERATED REVENUE OR HAS GROSS REVENUES, ALONG WITH THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NOT EXCEEDING ONE MILLION DOLLARS FOR THE TAXABLE YEAR IMMEDIATELY PRECEDING THE YEAR THE TAXPAYER IS ALLOWED A CREDIT UNDER THIS SUBDIVISION. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "RELATED MEMBER" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER;

(B) HAS NO MORE THAN TWENTY-FIVE FULL-TIME EMPLOYEES, OF WHICH AT LEAST SIXTY PERCENT ARE EMPLOYED IN NEW YORK STATE;

(C) HAS OPERATED IN THE STATE FOR NO MORE THAN SEVEN CONSECUTIVE YEARS; AND

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

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

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

(B) A VENTURE CAPITAL COMPANY OR ANY BANK, SAVINGS AND LOAN ASSOCIATION, TRUST, INSURANCE COMPANY OR SIMILAR ENTITY, WHOSE NORMAL BUSINESS ACTIVITIES INCLUDE VENTURE CAPITAL INVESTMENT.

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

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

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