

975

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. KELLNER, LUPARDO -- 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

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

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

LBD01895-01-3

1 SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF  
2 SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AND THE  
3 TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE  
4 SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE  
5 INTERNAL REVENUE CODE) AS THE TAXPAYER;

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

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

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

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

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

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

22 S 2. Section 210 of the tax law is amended by adding a new subdivision  
23 46 to read as follows:

24 46. ANGEL INVESTOR CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER, WHO IS  
25 AN ANGEL INVESTOR, AS DEFINED BY SUBPARAGRAPH (II) OF PARAGRAPH (C) OF  
26 THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREIN-  
27 AFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR INVESTING  
28 TWENTY-FIVE THOUSAND DOLLARS OR MORE IN A QUALIFYING BUSINESS. THE  
29 AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE INVESTMENT IN  
30 THE QUALIFYING BUSINESS UP TO BUT NOT EXCEEDING TWO HUNDRED FIFTY THOU-  
31 SAND DOLLARS.

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

40 (C) DEFINITIONS. FOR PURPOSES OF THE CREDIT DESCRIBED IN THIS SUBDIVI-  
41 SION:

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

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

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

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

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

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

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

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

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

18 (XXXV) ANGEL INVESTOR CREDIT	AMOUNT OF CREDIT UNDER
19 UNDER SUBSECTION (VV)	SUBDIVISION FORTY-SIX OF
20	SECTION TWO HUNDRED TEN

21 S 4. This act shall take effect immediately and shall apply to  
22 personal income taxable years beginning on and after January 1, 2014.