

3732--B

2013-2014 Regular Sessions

I N S E N A T E

February 13, 2013

Introduced by Sens. DeFRANCISCO, FELDER, GALLIVAN, MAZIARZ, O'BRIEN, SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD07810-09-4

BE NO LESS THAN ONE HUNDRED THOUSAND DOLLARS AND NO MORE THAN ONE MILLION DOLLARS.

(III) FOR THE PERIOD JULY FIRST, TWO THOUSAND FOURTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND FIFTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT. FOR THE PERIOD JULY FIRST, TWO THOUSAND FIFTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND SIXTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT. FOR THE PERIOD JULY FIRST, TWO THOUSAND SIXTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND SEVENTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT.

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

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

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

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

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

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

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

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

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

(4) ELECTRONIC AND PHOTONIC DEVICES AND COMPONENTS FOR USE IN PRODUCING ELECTRONIC, OPTOELECTRONIC, MECHANICAL EQUIPMENT AND PRODUCTS OF ELECTRONIC DISTRIBUTION WITH INTERACTIVE MEDIA CONTENT;

(5) ENERGY EFFICIENCY, RENEWABLE ENERGY AND ENVIRONMENTAL TECHNOLOGIES, PRODUCTS, DEVICES AND SERVICES; OR

(6) SMALL SCALE SYSTEMS INTEGRATION AND PACKAGING.

(III) "QUALIFYING ANGEL INVESTMENT" SHALL MEAN A CONTRIBUTION TO THE CAPITAL OF A CERTIFIED STARTUP BUSINESS ENTERPRISE, PROVIDED THAT SUCH CONTRIBUTION TO CAPITAL IS MADE WITHIN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THE CERTIFIED TECHNOLOGY VENTURE'S CERTIFICATE OF QUALIFICATION AS A CERTIFIED TECHNOLOGY VENTURE AND SUCH CONTRIBUTION IS APPLIED BY THE CERTIFIED STARTUP BUSINESS ENTERPRISE AGAINST ITS ALLOCATION OF QUALIFYING ANGEL INVESTMENT. TOGETHER WITH ALL OTHER QUALIFYING ANGEL INVESTMENTS MADE TO A SINGLE CERTIFIED STARTUP BUSINESS ENTERPRISE, THE TOTAL QUALIFYING ANGEL INVESTMENT MAY NOT EXCEED ONE MILLION DOLLARS. NOTHING HEREIN SHALL PROHIBIT A PERSON MAKING A QUALIFYING ANGEL INVESTMENT FROM MAKING ADDITIONAL CONTRIBUTIONS TO THE CAPITAL OF THE CERTIFIED STARTUP BUSINESS ENTERPRISE OR MAKING LOANS TO OR OTHER INVESTMENTS IN THE CERTIFIED STARTUP BUSINESS ENTERPRISE, PROVIDED, HOWEVER, THAT SUCH OTHER CONTRIBUTIONS, LOANS AND INVESTMENTS SHALL NOT BE TREATED AS QUALIFYING ANGEL INVESTMENTS.

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

3 12-H. ANGEL TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
4 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
5 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
6 GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE
7 PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

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

19 S 3. Section 606 of the tax law is amended by adding a new subsection
20 (ccc) to read as follows:

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

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

39 S 4. Section 1456 of the tax law is amended by adding a new subsection
40 (aa) to read as follows:

41 (AA) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
42 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
43 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
44 GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE
45 PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

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

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

3 (DD) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS
4 MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH
5 (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE
6 GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE
7 PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

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

20 S 6. This act shall take effect immediately; provided that the amend-
21 ments to section 1456 of the tax law made by section four of this act
22 shall not affect the repeal of such section and shall be deemed repealed
23 therewith.