

117TH CONGRESS
2D SESSION

S. 5262

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for equity investments by angel investors.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2022

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for equity investments by angel investors.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Angel Tax Credit Act”.

5 **SEC. 2. ANGEL INVESTMENT TAX CREDIT.**

6 (a) IN GENERAL.—Subpart B of part IV of sub-
7 chapter A of chapter 1 of the Internal Revenue Code of
8 1986 is amended by adding at the end the following new
9 section:

1 **“SEC. 30E. ANGEL INVESTMENT TAX CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—There shall be al-
3 lowed as a credit against the tax imposed by this chapter
4 for the taxable year an amount equal to 25 percent of the
5 qualified equity investments made by a qualified investor
6 during the taxable year.

7 “(b) LIMITATION.—The amount of the credit allowed
8 under subsection (a) for any taxpayer for any taxable year
9 shall not exceed \$250,000.

10 “(c) QUALIFIED EQUITY INVESTMENT.—For pur-
11 poses of this section—

12 “(1) IN GENERAL.—The term ‘qualified equity
13 investment’ means any equity investment in a quali-
14 fying business entity if—

15 “(A) the aggregate amount of such invest-
16 ments made by the taxpayer during the taxable
17 year is \$25,000 or more,

18 “(B) such investment is acquired by the
19 taxpayer at its original issue (directly or
20 through an underwriter) solely in exchange for
21 cash, and

22 “(C) such investment is designated for
23 purposes of this section by the qualifying busi-
24 ness entity.

25 “(2) EQUITY INVESTMENT.—The term ‘equity
26 investment’ means—

1 “(A) any form of equity, including a gen-
 2 eral or limited partnership interest, common
 3 stock, preferred stock (other than nonqualified
 4 preferred stock as defined in section 351(g)(2)),
 5 with or without voting rights, without regard to
 6 seniority position and whether or not convert-
 7 ible into common stock or any form of subordi-
 8 nate or convertible debt, or both, with warrants
 9 or other means of equity conversion, and

10 “(B) any capital interest in an entity
 11 which is a partnership.

12 “(3) REDEMPTIONS.—A rule similar to the rule
 13 of section 1202(c)(3) shall apply for purposes of this
 14 subsection.

15 “(d) QUALIFYING BUSINESS ENTITY.—For purposes
 16 of this section—

17 “(1) IN GENERAL.—The term ‘qualifying busi-
 18 ness entity’ means any domestic corporation or part-
 19 nership if such corporation or partnership—

20 “(A) has its headquarters in the United
 21 States,

22 “(B) has gross revenues for the taxable
 23 year preceding the date of the qualified equity
 24 investment of less than \$1,000,000,

1 “(C) employs less than 25 full-time equiva-
2 lent employees as of the date of such invest-
3 ment,

4 “(D) has been in existence for less than 7
5 years as of the date of the qualified equity in-
6 vestment,

7 “(E) has more than 50 percent of the em-
8 ployees performing substantially all of their
9 services in the United States as of the date of
10 such investment,

11 “(F) is engaged in a high technology trade
12 or business related to—

13 “(i) advanced materials, nanotechnol-
14 ogy, or precision manufacturing,

15 “(ii) aerospace, aeronautics, or de-
16 fense,

17 “(iii) biotechnology or pharma-
18 ceuticals,

19 “(iv) electronics, semiconductors, soft-
20 ware, or computer technology,

21 “(v) energy, environment, or clean
22 technologies,

23 “(vi) forest products or agriculture,

1 “(vii) information technology, commu-
 2 nication technology, digital media, or
 3 photonics,

4 “(viii) life sciences or medical
 5 sciences,

6 “(ix) marine technology or aqua-
 7 culture,

8 “(x) transportation, or

9 “(xi) any other high technology trade
 10 or business, as determined by the Sec-
 11 retary of the Treasury, and

12 “(G) has equity investments designated for
 13 purposes of this paragraph.

14 “(2) DESIGNATION OF EQUITY INVEST-
 15 MENTS.—For purposes of paragraph (1)(G), an eq-
 16 uity investment shall not be treated as designated if
 17 such designation would result in the aggregate
 18 amount which may be taken into account under this
 19 section with respect to equity investments in such
 20 corporation or partnership exceeds \$2,000,000, tak-
 21 ing into account the total amount of all qualified eq-
 22 uity investments made by all taxpayers for the tax-
 23 able year and all preceding taxable years.

24 “(e) QUALIFIED INVESTOR.—For purposes of this
 25 section—

1 “(1) IN GENERAL.—The term ‘qualified inves-
 2 tor’ means an accredited investor, as defined by the
 3 Securities and Exchange Commission.

4 “(2) EXCLUSION.—The term ‘qualified investor’
 5 does not include—

6 “(A) a person controlling at least 50 per-
 7 cent of the qualifying business entity,

8 “(B) any venture capital fund (within the
 9 meaning of section 203(l) of the Investment
 10 Advisers Act of 1940 (15 U.S.C. 80b–3(l))), or

11 “(C) any bank, savings association, loan
 12 association, trust company, insurance company,
 13 or similar entity whose business activities in-
 14 clude making similar investments to invest-
 15 ments of a venture capital fund (as so defined).

16 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-
 17 MENTS DESIGNATED.—

18 “(1) IN GENERAL.—There is an angel invest-
 19 ment tax credit limitation of \$500,000,000 for each
 20 of calendar years 2023 through 2027.

21 “(2) ALLOCATION OF LIMITATION.—The limita-
 22 tion under paragraph (1) shall be allocated by the
 23 Secretary among qualified business entities selected
 24 by the Secretary.

1 “(3) CARRYOVER OF UNUSED LIMITATION.—If
 2 the angel investment tax credit limitation for any
 3 calendar year exceeds the aggregate amount allo-
 4 cated under paragraph (2) for such year, such limi-
 5 tation for the succeeding calendar year shall be in-
 6 creased by the amount of such excess. No amount
 7 may be carried under the preceding sentence to any
 8 calendar year after 2032.

9 “(g) APPLICATION WITH OTHER CREDITS.—

10 “(1) BUSINESS CREDIT TREATED AS PART OF
 11 GENERAL BUSINESS CREDIT.—Except as provided in
 12 paragraph (2), the credit which would be allowed
 13 under subsection (a) for any taxable year (deter-
 14 mined without regard to this subsection) shall be
 15 treated as a credit listed in section 38(b) for such
 16 taxable year (and not allowed under subsection (a)).

17 “(2) PERSONAL CREDIT.—

18 “(A) IN GENERAL.—In the case of an indi-
 19 vidual who elects the application of this para-
 20 graph, for purposes of this title, the credit al-
 21 lowed under subsection (a) for any taxable year
 22 (determined after application of paragraph (1))
 23 shall be treated as a credit allowable under sub-
 24 part A for such taxable year.

1 “(B) CARRYFORWARD OF UNUSED CRED-
 2 IT.—If the credit allowable under subsection (a)
 3 by reason of subparagraph (A) exceeds the limi-
 4 tation imposed by section 26(a) for such taxable
 5 year, reduced by the sum of the credits allow-
 6 able under subpart A (other than this section)
 7 for such taxable year, such excess shall be car-
 8 ried to each of the succeeding 20 taxable years
 9 to the extent that such unused credit may not
 10 be taken into account under subsection (a) by
 11 reason of subparagraph (A) for a prior taxable
 12 year because of such limitation.

13 “(h) SPECIAL RULES.—

14 “(1) RELATED PARTIES.—For purposes of this
 15 section—

16 “(A) IN GENERAL.—All related persons
 17 shall be treated as 1 person.

18 “(B) RELATED PERSONS.—A person shall
 19 be treated as related to another person if—

20 “(i) the relationship between such per-
 21 sons would result in the disallowance of
 22 losses under section 267 or 707(b), or

23 “(ii) for purposes of subsection (e),
 24 the person is an individual who is the

1 spouse of a lineal descendant of an indi-
2 vidual described in subsection (e)(2)(A).

3 “(2) BASIS.—For purposes of this subtitle, the
4 basis of any investment with respect to which a cred-
5 it is allowable under this section shall be reduced by
6 the amount of such credit so allowed. This sub-
7 section shall not apply for purposes of sections 1202
8 and 1397B.

9 “(3) RECAPTURE.—The Secretary shall, by reg-
10 ulations, provide for recapturing the benefit of any
11 credit allowable under subsection (a) with respect to
12 any qualified equity investment which is held by the
13 taxpayer less than 3 years, except that no benefit
14 shall be recaptured in the case of—

15 “(A) transfer of such investment by reason
16 of the death of the taxpayer,

17 “(B) transfer between spouses,

18 “(C) transfer incident to the divorce (as
19 defined in section 1041) of such taxpayer, or

20 “(D) a transaction to which section 381(a)
21 applies (relating to certain acquisitions of the
22 assets of one corporation by another corpora-
23 tion).

1 “(i) REGULATIONS.—The Secretary shall prescribe
 2 such regulations as may be appropriate to carry out this
 3 section, including regulations—

4 “(1) which prevent the abuse of the purposes of
 5 this section,

6 “(2) which impose appropriate reporting re-
 7 quirements, and

8 “(3) which apply the provisions of this section
 9 to newly formed entities.”.

10 (b) CREDIT MADE PART OF GENERAL BUSINESS
 11 CREDIT.—Subsection (b) of section 38 of the Internal
 12 Revenue Code of 1986, as amended by Public Law 117–
 13 169, is amended—

14 (1) in paragraph (39), by striking “plus”;

15 (2) in paragraph (40), by striking the period at
 16 the end and inserting “, plus”; and

17 (3) by adding at the end the following new
 18 paragraph:

19 “(41) the portion of the angel investment tax
 20 credit to which section 30E(g)(1) applies.”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 1016(a) of the Internal Revenue
 23 Code of 1986 is amended by striking “and” at the
 24 end of paragraph (37), by striking the period at the
 25 end of paragraph (38) and inserting “, and”, and by

1 inserting after paragraph (38) the following new
2 paragraph:

3 “(39) to the extent provided in section
4 30E(h)(2).”.

5 (2) The table of sections for subpart B of part
6 IV of subchapter A of chapter 1 of the Internal Rev-
7 enue Code of 1986 is amended by adding at the end
8 the following new item:

“Sec. 30E. Angel investment tax credit.”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to investments made after Decem-
11 ber 31, 2022, in taxable years ending after such date.

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