LEGISLATIVE BILL 156

Approved by the Governor May 27, 2015

Introduced by Stinner, 48; Coash, 27.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-6306, 77-6307, and 77-6309, Revised Statutes Cumulative Supplement, 2014; to change the amount of tax credits allowed and reporting requirements under the Angel Investment Tax Credit Act; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-6306, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-6306 (1) For taxable years beginning or deemed to begin on or after January 1, 2011, under the Internal Revenue Code of 1986, as amended, a qualified investor or qualified fund is eligible for a refundable tax credit equal to thirty-five percent of its qualified investment in a qualified small business, except that if the qualified small business is located in a distressed area the qualified investor or qualified fund is eligible for a refundable tax credit equal to forty percent of its qualified investment in the qualified small business. The director shall not allocate more than four ~~three~~ million dollars in tax credits to all qualified investors or qualified funds in a calendar year. If the director does not allocate the entire four ~~three~~ million dollars of tax credits in a calendar year, the tax credits that are not allocated shall not carry forward to subsequent years. The director shall not allocate any amount for tax credits for calendar years after 2019.

(2) The director shall not allocate more than a total maximum amount in tax credits for a calendar year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund as provided in this subsection. For married couples filing joint returns the maximum is three hundred fifty thousand dollars, and for all other filers the maximum is three hundred thousand dollars. The director shall not allocate more than a total of one million dollars in tax credits for qualified investments in any one qualified small business.

(3) The director shall not allocate a tax credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than forty-nine percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. A family member of an individual disqualified by this subsection is not eligible for a tax credit under this section. For a married couple filing a joint return, the limitations in this subsection apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this subsection, the rules under section 267(c) and (e) of the Internal Revenue Code of 1986, as amended, apply.

(4) Tax credits shall be allocated to qualified investors or qualified funds in the order that the tax credit applications are filed with the director. Once tax credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the qualified investment specified within ninety days after allocation of the tax credits. Qualified investors and qualified funds shall notify the director no later than thirty days after the expiration of the ninety-day period that the qualified investment has been made. If the qualified investment is not made within ninety days after allocation of the tax credits, or the director has not, within thirty days following expiration of the ninety-day period, received notification that the qualified investment was made, the tax credit allocation is canceled and available for reallocation. A qualified investor or qualified fund that fails to invest as specified in the application within ninety days after allocation of the tax credits shall notify the director of the failure to invest within five business days after the expiration of the ninety-day investment period.

(5) All tax credit applications filed with the director on the same day shall be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit applications on the same day and the aggregate amount of tax credit allocation requests exceeds the aggregate limit of tax credits under this section or the lesser amount of tax credits that remain unallocated on that day, then the tax credits shall be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts requested. The pro rata allocation for any one qualified investor or qualified fund shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the tax credit allocation request filed on behalf of a qualified investor or qualified fund and the denominator of which is the total of all tax credit allocation requests filed on behalf of all applicants on that day, by the amount of tax credits that remain unallocated on that day for the taxable year.

(6) A qualified investor or qualified fund, or a qualified small business

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acting on behalf of the investor or fund, shall notify the director when an investment for which tax credits were allocated has been made and shall furnish the director with documentation of the investment date. A qualified fund shall also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the qualified investment was made, the director shall issue tax credit certificates for the taxable year in which the qualified investment was made to the qualified investor or, for a qualified investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate shall state that the tax credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following calendar years. The three-year holding period does not apply if:

(a) The qualified investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(b) Eighty percent or more of the assets of the qualified small business are sold before the end of the three-year period;

(c) The qualified small business is sold or merges with another business before the end of the three-year period;

(d) The qualified small business's common stock begins trading on a public exchange before the end of the three-year period; or

(e) In the case of an individual qualified investor, such investor becomes deceased before the end of the three-year period.

(7) The director shall notify the Tax Commissioner that tax credit certificates have been issued, including the amount of tax credits and all other pertinent tax information.

Sec. 2. Section 77-6307, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-6307 (1) Each ~~Beginning July 1, 2012, each~~ qualified small business, qualified investor, and qualified fund shall submit an annual report to the director by July 1 of each year~~ identifying the amount of money that has been invested by or in it in the previous calendar year under the Angel Investment Tax Credit Act~~. ~~(2)~~ The report shall certify that the business, investor, or ~~and~~ fund satisfies the requirements of the Angel Investment Tax Credit Act and shall include all information which will enable the Department of Economic Development to fulfill its reporting requirements under section 77-6309 ~~act~~.

(2 ~~3~~) A qualified small business that ceases all operations and becomes insolvent shall file a final report with the director in the form required by the director documenting its insolvency.

(3 ~~4~~) To maintain the confidentiality of the qualified investor and qualified small business, the Department of Economic Development shall use a designated number to identify such persons or businesses.

(4 ~~5~~) A qualified small business, qualified investor, or qualified fund that fails to file a complete ~~an~~ annual report by July 1 shall, at the discretion of the director, be subject to a fine of two hundred dollars, revocation of its certification, or both.

Sec. 3. Section 77-6309, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-6309 (1) By November 15 of each odd-numbered year, the Department of Economic Development shall submit a report to the Legislature and the Governor that includes:

(a) The number and geographic location of qualified investors;

(b) The number, geographic location, and amount of qualified investment made into each qualified small business;

(c) The total amount of all grants, loans, incentives, and investments that are not qualified investments received by each qualified small business since receiving the initial qualified investment;

(d ~~c~~) A breakdown of the industry sectors in which qualified small businesses are involved;

(e ~~d~~) The number of actual tax credits issued by project under the Angel Investment Tax Credit Act on an annual basis; and

(f ~~e~~) The number and annual salary or wage of jobs created at each qualified small business since receiving the initial qualified investment.

The report submitted to the Legislature shall be submitted electronically.

(2) Information received, developed, created, or otherwise maintained by the Department of Economic Development and the Department of Revenue in administering and enforcing the Angel Investment Tax Credit Act, other than information required to be included in the report to be submitted by the Department of Economic Development pursuant to this section, may be deemed confidential by the respective departments and not subject to public disclosure.

Sec. 4. Original sections 77-6306, 77-6307, and 77-6309, Revised Statutes Cumulative Supplement, 2014, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.