

AMENDMENTS TO LB1067

Introduced by Hadley

1 1. Insert the following new sections:

2 Sec. 4. Section 77-6302, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

4 77-6302 For purposes of the Angel Investment Tax Credit
5 Act:

6 (1) Director means the Director of Economic Development;

7 (2) Distressed area means a municipality, a county with a
8 population of fewer than one hundred thousand inhabitants according
9 to the most recent federal decennial census, an unincorporated area
10 within a county, or a census tract in Nebraska that (a) has an
11 unemployment rate which exceeds the statewide average unemployment
12 rate, (b) has a per capita income below the statewide average per
13 capita income, or (c) had a population decrease between the two
14 most recent federal decennial censuses;

15 (3) Family member means a family member within the
16 meaning of section 267(c)(4) of the Internal Revenue Code of 1986,
17 as amended;

18 (4) Investment date means the latest of the following:

19 (a) The date of a fully executed investor subscription
20 agreement or underlying transaction document pertaining to the
21 applicable qualified investment;

22 (b) The date on a check made out to a qualified small
23 business for the applicable qualified investment or the date a wire

1 transfer is completed for the applicable qualified investment; or

2 (c) The date the qualified small business deposits a
3 check made out to such qualified small business for the applicable
4 qualified investment or receives a wire transfer for the applicable
5 qualified investment, as documented on the deposit slip or bank
6 statement of the qualified small business;

7 ~~(4)~~ (5) Pass-through entity means an organization that
8 for the applicable taxable year is a subchapter S corporation,
9 general partnership, limited partnership, limited liability
10 partnership, trust, or limited liability company and that for the
11 applicable taxable year is not taxed as a corporation;

12 ~~(5)~~ (6) Qualified fund means a fund that has been
13 certified by the director under section 77-6304;

14 ~~(6)~~ (7) Qualified high-technology field includes,
15 but is not limited to, aerospace, agricultural processing,
16 renewable energy, energy efficiency and conservation, environmental
17 engineering, food technology, cellulosic ethanol, information
18 technology, materials science technology, nanotechnology,
19 telecommunications, biosolutions, medical device products,
20 pharmaceuticals, diagnostics, biologicals, chemistry, veterinary
21 science, and similar fields;

22 ~~(7)~~ (8) Qualified investment means a cash investment in
23 a qualified small business made in exchange for common stock,
24 a partnership or membership interest, preferred stock, debt with
25 mandatory conversion to equity, or an equivalent ownership interest
26 as determined by the director of a minimum of:

27 (a) Twenty-five thousand dollars in a calendar year by a

1 qualified investor; or

2 (b) Fifty thousand dollars in a calendar year by a
3 qualified fund;

4 ~~(8)~~ (9) Qualified investor means an individual, trust, or
5 pass-through entity which has been certified by the director under
6 section 77-6305; and

7 ~~(9)~~ (10) Qualified small business means a business that
8 has been certified by the director under section 77-6303.

9 Sec. 5. Section 77-6304, Revised Statutes Cumulative
10 Supplement, 2012, is amended to read:

11 77-6304 (1) A pass-through entity may apply to the
12 director for certification as a qualified fund for a calendar
13 year. The application shall be in the form and be made under the
14 procedures specified by the director.

15 (2) Within thirty days after receiving an application
16 for certification under this section, the director shall certify
17 the pass-through entity as satisfying the conditions required
18 of a qualified fund, request additional information, or deny
19 the application. If the director requests additional information,
20 the director shall certify the pass-through entity or deny the
21 application within thirty days after receiving the additional
22 information. If the director neither certifies the pass-through
23 entity nor denies the application within thirty days after
24 receiving the original application or within thirty days after
25 receiving the additional information requested, whichever is later,
26 then the application is deemed approved if the pass-through entity
27 meets the qualifications in subsection (3) of this section. A

1 pass-through entity that applies for certification and is denied
2 may reapply.

3 (3) To be certified, a pass-through entity shall:

4 (a) Invest or intend to invest in qualified small
5 businesses; and

6 (b) Have at least three separate investors ~~and all the~~
7 ~~investors~~ who satisfy the conditions in ~~subsection (3)~~ of section
8 77-6305.

9 (4) A qualified fund may consist of equity investments or
10 notes that pay interest or other fixed amounts, or any combination
11 of both.

12 (5) In order for a qualified investment in a qualified
13 small business to be eligible for tax credits, a qualified fund
14 that makes the qualified investment shall have applied for and
15 received certification for the calendar year in which the qualified
16 investment was made prior to making the qualified investment.

17 Sec. 6. Section 77-6305, Revised Statutes Cumulative
18 Supplement, 2012, is amended to read:

19 77-6305 (1) An individual, trust, or pass-through entity
20 may apply to the director for certification as a qualified investor
21 for a calendar year. The application shall be in the form and be
22 made under the procedures specified by the director. The director
23 shall not certify the following types of individuals, trusts, or
24 pass-through entities as qualified investors:

25 (a) An individual who controls fifty percent or more of
26 the qualified small business receiving the qualified investment;

27 (b) A venture capital company; or

1 (c) Any bank, savings and loan association, insurance
2 company, or similar entity whose normal business activities include
3 venture capital investments.

4 (2) Within thirty days after receiving an application
5 for certification under this section, the director shall certify
6 the individual, trust, or pass-through entity as satisfying the
7 conditions required of a qualified investor, request additional
8 information, or deny the application. If the director requests
9 additional information, the director shall certify the individual,
10 trust, or pass-through entity or deny the application within thirty
11 days after receiving the additional information. If the director
12 neither certifies the individual, trust, or pass-through entity
13 nor denies the application within thirty days after receiving
14 the original application or within thirty days after receiving
15 the additional information requested, whichever is later, then
16 the application is deemed approved if the individual, trust, or
17 pass-through entity meets the qualifications in subsection (1) of
18 this section. An individual, trust, or pass-through entity which
19 applies for certification and is denied may reapply.

20 (3) In order for a qualified investment in a qualified
21 small business to be eligible for tax credits, a qualified investor
22 who makes the qualified investment shall have applied for and
23 received certification for the calendar year in which the qualified
24 investment was made prior to making the qualified investment. ~~7~~
25 ~~except that in the case of an investor who is an accredited~~
26 ~~investor within the meaning of Regulation D of the Securities~~
27 ~~and Exchange Commission, 17 C.F.R. 230.501(a), as such regulation~~

1 ~~existed on January 1, 2011, application for certification may be~~
2 ~~made within thirty days after making the qualified investment.~~

3 Sec. 7. Section 77-6306, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 77-6306 (1) For taxable years beginning or deemed to
6 begin on or after January 1, 2011, under the Internal Revenue Code
7 of 1986, as amended, a qualified investor or qualified fund is
8 eligible for a refundable tax credit equal to thirty-five percent
9 of its qualified investment in a qualified small business, except
10 that if the qualified small business is located in a distressed
11 area the qualified investor or qualified fund is eligible for
12 a refundable tax credit equal to forty percent of its qualified
13 investment in the qualified small business. The director shall not
14 allocate more than three million dollars in tax credits to all
15 qualified investors or qualified funds in a calendar year. If the
16 director does not allocate the entire three million dollars of tax
17 credits in a calendar year, the tax credits that are not allocated
18 shall not carry forward to subsequent years. The director shall not
19 allocate any amount for tax credits for calendar years after 2017.
20 2019.

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

1 dollars. The director shall not allocate more than a total of one
2 million dollars in tax credits for qualified investments in any one
3 qualified small business.

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

16 (4) Tax credits shall be allocated to qualified investors
17 or qualified funds in the order that the tax credit applications
18 are filed with the director. Once tax credits have been approved
19 and allocated by the director, the qualified investors and
20 qualified funds shall implement the qualified investment specified
21 within ninety days after allocation of the tax credits. Qualified
22 investors and qualified funds shall notify the director no later
23 than thirty days after the expiration of the ninety-day period that
24 the qualified investment has been made. If the qualified investment
25 is not made within ninety days after allocation of the tax credits,
26 or the director has not, within thirty days following expiration
27 of the ninety-day period, received notification that the qualified

1 investment was made, the tax credit allocation is canceled and
2 available for reallocation. A qualified investor or qualified fund
3 that fails to invest as specified in the application within ninety
4 days after allocation of the tax credits shall notify the director
5 of the failure to invest within five business days after the
6 expiration of the ninety-day investment period.

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

24 (6) A qualified investor or qualified fund, or a
25 qualified small business acting on behalf of the investor or
26 fund, shall notify the director when an investment for which tax
27 credits were allocated has been made and ~~the date the investment~~

1 ~~was made.~~ shall furnish the director with documentation of the
2 investment date. A qualified fund shall also provide the director
3 with a statement indicating the amount invested by each investor
4 in the qualified fund based on each investor's share of the assets
5 of the qualified fund at the time of the qualified investment.
6 After receiving notification that the qualified investment was
7 made, the director shall issue tax credit certificates for the
8 taxable year in which the qualified investment was made to the
9 qualified investor or, for a qualified investment made by a
10 qualified fund, to each qualified investor who is an investor
11 in the fund. The certificate shall state that the tax credit is
12 subject to revocation if the qualified investor or qualified fund
13 does not hold the investment in the qualified small business for
14 at least three years, consisting of the calendar year in which
15 the investment was made and the two following calendar years. The
16 three-year holding period does not apply if:

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

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

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

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

27 (e) In the case of an individual qualified investor, such

1 investor becomes deceased before the end of the three-year period.

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

5 Sec. 8. Section 77-6307, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

7 77-6307 (1) Beginning July 1, 2012, each qualified small
8 business, qualified investor, and qualified fund shall submit an
9 annual report to the director by July 1 of each year identifying
10 the amount of money that has been invested by or in it in the
11 previous calendar year under the Angel Investment Tax Credit Act.

12 (2) The report shall certify that the business, investor,
13 and fund satisfies the requirements of the act.

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

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

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

25 Sec. 9. Section 77-6309, Revised Statutes Cumulative
26 Supplement, 2012, is amended to read:

27 77-6309 (1) By November 15 of each odd-numbered year, the

1 Department of Economic Development shall submit a report to the
2 Legislature and the Governor that includes:

3 ~~(1)~~ (a) The number and geographic location of qualified
4 investors;

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

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

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

12 ~~(5)~~ (e) The number of jobs created at each qualified
13 small business.

14 The report submitted to the Legislature shall be
15 submitted electronically.

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

24 Sec. 10. Sections 4, 5, 6, 7, 8, 9, and 11 of this act
25 become operative for all taxable years beginning or deemed to begin
26 on or after January 1, 2014, under the Internal Revenue Code of
27 1986, as amended. The other sections of this act become operative

1 on their effective date.

2 Sec. 11. Original sections 77-6302, 77-6304, 77-6305,
3 77-6306, 77-6307, and 77-6309, Revised Statutes Cumulative
4 Supplement, 2012, are repealed.

5 2. Renumber the remaining sections accordingly.