



## Legislative Fiscal Bureau

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Joint Committee on Finance

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### **Angel Investment Tax Credit (General Fund Taxes -- Income and Franchise Taxes)**

[LFB 2011-13 Budget Summary: Page 188, #11]

#### **CURRENT LAW**

The early stage business investment program includes the angel investment tax credit, which can be claimed under the state individual income tax, and the early stage seed investment tax credit, which can be claimed under the state individual income, corporate income/franchise, and insurance premiums taxes.

*Angel Investment Tax Credit.* The angel investment tax credit equals 25% of the claimant's bona fide angel investment made directly in a qualified new business venture (QNBV) for the tax year. The maximum aggregate amount of angel investment tax credits that can be claimed for a tax year is \$20 million, plus an additional \$250,000 for tax credits claimed for investments in nanotechnology businesses. The maximum total amount of tax credits that can be claimed for all tax years is \$47.5 million.

*Early Stage Seed Investment Tax Credit.* The early stage seed investment tax credit is equal to 25% of the claimant's investment paid in the tax year to a certified fund manager that the fund manager invests in a QNBV certified by the Department of Commerce (Commerce). The maximum aggregate amount of early stage seed investment tax credits that can be claimed for a tax year is \$20.5 million, plus an additional \$250,000 for tax credits claimed for investments in nanotechnology businesses.

"Bona fide angel investment" means a purchase of an equity interest, or any other expenditures (determined by Commerce administrative rules) that is made by any of the following: (a) a person who reviews new businesses, or proposed new businesses, for potential investment of the person's money; or a network of persons who review new or proposed businesses for potential investment by the network. "Person" means a partnership or limited liability company that is a non-operating entity (as determined by Commerce), a natural person, or fiduciary.

## GOVERNOR

Include tax-option corporations (S corporations) in the definition of "person" used to determine eligibility for claiming the angel investment tax credit. Provide that shareholders of tax-option corporations could claim the angel investment tax credit based on eligible investments made by the tax-option corporation. The tax-option corporation could not claim the credit, but the amount of the credit would be based on the corporation's eligible investments. The tax-option corporation would be required to compute the amount of credit each shareholder could claim, and provide that information to them. Shareholders of tax-option corporations could claim the credit in proportion to their ownership interest, or as specifically allocated in their organizational documents.

## MODIFICATION

Delete provision, and restore current law.

**Explanation:** The angel investment tax credit is based on the "bona fide angel investment" made by an eligible "person" or network of "persons." An eligible "person" includes partnerships or LLCs that are *non-operating* entities. Establishing the requirement that an entity must be a non-operating entity to qualify for the angel investment credit was included to limit eligible claimants to entities that are formed for the sole purpose of making and holding investments. By definition, angel investors are wealthy individuals who invest in small and early stage business ventures. Many of these angel investors form groups and organize as partnerships, limited partnerships, or LLCs to make such investments, in order to consolidate ownership control for a larger voting share in the business venture. These entities are not active LLCs or corporations that would be considered institutional investors. Under Internal Revenue Code (IRC) provisions, tax-option corporations generally do not qualify as non-operating entities. The IRC provides that if a tax-option corporation has accumulated earnings and profits for three consecutive years, and more than 25% of the tax-option corporation's revenue is derived from passive investments, the tax-option corporation election is revoked. This modification deletes tax-option corporations from the definition of "person" used to determine eligibility for angel investment tax credits, and the related credit allocation provisions, to recognize that tax-option corporations are not non-operating investment entities.

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