

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2224

Introduced by

Senators Grindberg, Dever, Hacker

Representatives Hawken, Keiser, Owens

1 A BILL for an Act to create and enact a new subsection to section 57-38-30.3 and chapter
2 57-38.7 of the North Dakota Century Code, relating to an angel fund investment income tax
3 credit; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 57-38.7 of the North Dakota Century Code is created and
6 enacted as follows:

7 **57-38.7-01. Definitions.** As used in this chapter, unless the context otherwise
8 requires:

- 9 1. "Angel fund" is an investment fund that commits one hundred percent of its
10 investments to qualified businesses under chapter 57-38.5 and is in compliance
11 with the requirements for filings with the securities laws of this state.
12 2. "Director" means the director of the department of commerce division of economic
13 development and finance.
14 3. "Passthrough entity" means a corporation that for the applicable tax year is treated
15 as an S corporation or a general partnership, limited partnership, limited liability
16 partnership, trust, or limited liability company and which for the applicable tax year
17 is not taxed as a corporation under chapter 57-38.
18 4. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough
19 entity. The term does not include a real estate investment trust.

20 **57-38.7-02. Certification.**

- 21 1. The director shall certify whether a business that has requested certification as an
22 angel fund meets the requirements of subsection 1 of section 57-38.7-01. The
23 director shall establish the necessary forms and procedures for certifying qualifying
24 angel funds.

2. The director shall issue a certification letter to a qualified angel fund. The certification letter must include:
 - a. The certification effective date.
 - b. The certification expiration date, which may not be more than four years from the certification effective date.
3. An angel fund seeking recertification shall apply to the director. The application for recertification must be filed with the director within ninety days before the original certification expiration date. The recertification issued by the director must comply with the provisions of subsection 2.

57-38.7-03. Angel fund investment tax credit. If a taxpayer makes a qualified investment in an angel fund, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in angel funds during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not more than two hundred fifty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than one-third of the credit under this section which is attributable to investments in a single taxable year.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

1 5. The investment must be made on or after the certification date and must be at risk
2 in the angel fund to be eligible for the tax credit under this section. An investment
3 for which a credit is received under this section must remain in the angel fund for
4 at least three years. Investments placed in escrow do not qualify for the credit.

5 6. The tax commissioner may disallow any credit otherwise allowed under this
6 section if any representation in the application for certification as an angel fund
7 proves to be false or if the taxpayer or angel fund fails to satisfy any conditions
8 under this section or any conditions consistent with this section otherwise
9 determined by the tax commissioner. The amount of any credit disallowed by the
10 tax commissioner that reduced the taxpayer's income tax liability for any or all
11 applicable tax years, plus penalty and interest as provided under section 57-38-45,
12 must be paid by the taxpayer.

13 7. An investment made in a qualified angel fund from the assets of a retirement plan
14 participant's investment for the purposes of this chapter is a separate account, is
15 maintained for the plan participant, and the participant directly controls where the
16 account assets are invested.

17 **57-38.7-04. Taxable year for angel fund investment tax credit.** The tax credit under
18 section 57-38.7-03 must be credited against the taxpayer's income tax liability for the taxable
19 year in which the investment in the angel fund was received by the angel fund.

20 **57-38.7-05. Angel fund investment tax credit limits.** The aggregate amount of angel
21 fund investment tax credits allowed for investments under this chapter is limited to two million
22 five hundred thousand dollars for each calendar year. If investments in angel funds reported to
23 the commissioner under section 57-38.7-07 exceed the limits on tax credits for investments
24 imposed by this section, the credit must be allowed to taxpayers in the chronological order of
25 their investments in angel funds as determined from the forms filed under section 57-38.7-07.

26 **57-38.7-06. Angel fund investment tax credit - Procedure - Rules.** To receive the
27 tax credit provided by section 57-38.7-03, a taxpayer must claim the credit on the taxpayer's
28 annual state income tax return in the manner prescribed by the tax commissioner and file with
29 the return a copy of the form issued by the angel fund as to the taxpayer's investment in the
30 angel fund under section 57-38.7-07.

1 **57-38.7-07. Investment reporting forms.** Within thirty days after the date on which
2 an investment in an angel fund is purchased, the angel fund shall file with the tax commissioner
3 and provide to the investor completed forms prescribed by the tax commissioner which show as
4 to each investment in the angel fund the following:

- 5 1. The name, address, and social security number of the taxpayer who made the
6 investment.
- 7 2. The dollar amount paid for the investment by the taxpayer.
- 8 3. The date on which full consideration was received by the angel fund for the
9 investment.

10 **57-38.7-08. Rules and administration.** The tax commissioner is charged with
11 administration of this chapter as it relates to an income tax credit and the tax commissioner has
12 the same powers as provided under section 57-38-56 for purposes of this chapter. The director
13 is charged with administration of this chapter as it relates to certification of qualified angel funds
14 and the commissioner of commerce may adopt rules for that purpose.

15 **SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century
16 Code is created and enacted as follows:

17 A taxpayer filing a return under this section is entitled to the credits provided in
18 section 57-38.7-03.

19 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
20 December 31, 2006.