

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 at least fifty-one percent of its
10 investments to qualified businesses under chapter 57-38.5.
11 2. "Passthrough entity" means a corporation that for the applicable tax year is treated
12 as an S corporation or a general partnership, limited partnership, limited liability
13 partnership, trust, or limited liability company and which for the applicable tax year
14 is not taxed as a corporation under chapter 57-38.
15 3. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough
16 entity. The term does not include a real estate investment trust.

17 **57-38.7-02. Certification - Investment reporting.** The tax commissioner shall certify
18 whether an angel fund meets the requirements of subsection 1 of section 57-38.7-01 and the
19 certification must include the period of time the certification covers. The tax commissioner shall
20 establish the necessary forms and procedures for certifying angel funds.

21 **57-38.7-03. Angel fund investment tax credit.** If a taxpayer makes a qualified
22 investment in an angel fund, the taxpayer is entitled to a credit against state income tax liability
23 under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer

1 is entitled is forty-five percent of the amount invested by the taxpayer in angel funds during the
2 taxable year, subject to the following:

- 3 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
4 under this section is not more than two hundred fifty thousand dollars. This
5 subsection may not be interpreted to limit additional investment by a taxpayer for
6 which that taxpayer is not applying for a credit.
- 7 2. In any taxable year, a taxpayer may claim no more than one-third of the credit
8 under this section which is attributable to investments in a single taxable year.
- 9 3. Any amount of credit under this section not allowed because of the limitations in
10 this section may be carried forward for up to four taxable years after the taxable
11 year in which the investment was made.
- 12 4. A passthrough entity that invests in a qualified business must be considered to be
13 the taxpayer for purposes of the investment limitations in this section and the
14 amount of the credit allowed with respect to a passthrough entity's investment in a
15 qualified business must be determined at the passthrough entity level. The amount
16 of the total credit determined at the passthrough entity level must be allowed to the
17 members in proportion to their respective interests in the passthrough entity.
- 18 5. The investment must be at risk in the angel fund. An investment for which a credit
19 is received under this section must remain in the angel fund for at least three
20 years. Investments placed in escrow do not qualify for the credit.
- 21 6. The tax commissioner may disallow any credit otherwise allowed under this section
22 if any representation in the application for certification as an angel fund proves to
23 be false or if the taxpayer or angel fund fails to satisfy any conditions under this
24 section or any conditions consistent with this section otherwise determined by the
25 tax commissioner. The amount of any credit disallowed by the tax commissioner
26 that reduced the taxpayer's income tax liability for any or all applicable tax years,
27 plus penalty and interest as provided under section 57-38-45, must be paid by the
28 taxpayer.

29 **57-38.7-04. Taxable year for angel fund investment tax credit.** The tax credit under
30 section 57-38.7-03 must be credited against the taxpayer's income tax liability for the taxable
31 year in which the investment in the angel fund was received by the angel fund.

1 **57-38.7-05. Angel fund investment tax credit limits.** The aggregate amount of angel
2 fund investment tax credits allowed for investments under this chapter is limited to two million
3 five hundred thousand dollars for each calendar year. If investments in angel funds reported to
4 the commissioner under section 57-38.7-07 exceed the limits on tax credits for investments
5 imposed by this section, the credit must be allowed to taxpayers in the chronological order of
6 their investments in angel funds as determined from the forms filed under section 57-38.7-07.

7 **57-38.7-06. Angel fund investment tax credit - Procedure - Rules.** To receive the
8 tax credit provided by section 57-38.7-03, a taxpayer must claim the credit on the taxpayer's
9 annual state income tax return in the manner prescribed by the tax commissioner and file with
10 the return a copy of the form issued by the angel fund as to the taxpayer's investment in the
11 angel fund under section 57-38.7-07.

12 **57-38.7-07. Investment reporting forms.** Within thirty days after the date on which an
13 investment in an angel fund is purchased, the angel fund shall file with the tax commissioner
14 and provide to the investor completed forms prescribed by the tax commissioner which show as
15 to each investment in the angel fund the following:

- 16 1. The name, address, and social security number of the taxpayer who made the
17 investment.
- 18 2. The dollar amount paid for the investment by the taxpayer.
- 19 3. The date on which full consideration was received by the angel fund for the
20 investment.

21 **57-38.7-08. Rules and administration.** The tax commissioner is charged with
22 administration of this chapter as it relates to an income tax credit and the tax commissioner has
23 the same powers as provided under section 57-38-56 for purposes of this chapter.

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

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

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