

2011 SENATE FINANCE AND TAXATION

SB 2248

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2248
January 24, 2011
Job Number 13240

Conference Committee

Veronica Spurling

Explanation or reason for introduction of bill/resolution:

Relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date

Minutes:

Written Testimony Attached

Chairman Dwight Cook: Opened the hearing on SB 2248.

Ryan Rauschenberger with the office of the State Tax Commissioner explained the changes the bill would make to the current 45% angel fund investment credit. The bill does two primary things. It allows for pass through entities investing in angel funds to be eligible to earn the angel fund credit and pass it through to many owners, the members of the pass through entity. Secondly the bill implements the transferability feature of the credit. He reviewed all of the new language in the bill. Page 2, starting on line 6 clarifies for the reader what early stage and mid stage businesses are. Line 17 clarifies that limited partnerships are allowed to be organized as angel funds. Starting on line 23, this language requires a report to be filed when an investment is being made into an angel fund. The existing law prohibits an angel fund from investing in a business in which one of its angel fund members has a majority ownership. The new language on page 3, lines 5-8 clarifies that the owner of a pass through entity is essentially subject to the same restrictions. This is language that is in place because of the allowance of pass through entities to earn and pass the credit on. On line 12 subsection 6, letter a. it states that any credit being earned by a pass through entity must calculate the credit at the pass through level. Starting at line 16, letter b. it states that the credit may pass through to the members or owners in accordance with the capital ownership if the election to sell the credit is not made. Starting on line 21, letter c. it states that a pass through entity is allowed to make an election to sell the angel fund credits earned or pass the credits through to the member owners and allow them to elect to take the credit or not. Starting on page 4, line 3 and through the end of the bill, this language comes out of our only existing transferable credit, the research and development credit. This section essentially creates a joint filing requirement where the seller and purchaser of any credits would have to file with the tax department. It also states that it limits the credit to where it can only be sold once if transferability were to occur and other administrative language that is required for transferability. The research and development credit is the only credit right now that has a transferability feature. The tax department has historically gone on record regarding transferability and stating that we do have

reservations about some of the administrative issues fiscal impact also tracking accountability. That has been our historic stance on transferability of credit however whatever policy you decide to put in place we are here to administer that.

Senator Dotzenrod: The last part of section one, page 4 and half of page 5, you said it allows for the transferability of the tax credit. I think I also heard you say that it is modeled after the research and development tax credit which is the only other tax credit that we allow transferability on. When you inserted this language, is it identical to the language of the development tax credit language or were there some modifications that you had to put in there?

Ryan Rauschenberger: Currently on subsection 7 for the most part is identical except this does not have a limit. Research and development contains a limit of \$100,000. This does not have that in there. I believe the rest is identical.

Senator Dotzenrod: The research and development credit that we have, is that part of an angel fund thing? The research and development term is used by a lot of companies; many companies do that activity. The credits we allow for research and development, are they part of a separate investment vehicle like angel fund?

Ryan Rauschenberger: The research and development credit piggybacks on the federal research and development credit so that is kind of the first stepping point. If you are eligible for the federal credit, and if your research and development occurs within North Dakota, you are eligible to claim that credit here with some other restrictions. That credit is for a business doing its own research and development so there wouldn't be any overlap. The angel fund credit, you earn the credit when you invest cash into an angel fund and not necessarily when an investment is made into a business. So the research and development is for a business to earn their own credit for their own expenditures. The angel fund is really an investment into a pool fund.

Senator Triplett: Page 2, the changes between lines 6 and 9. Can you tell me where the definition for early-stage and mid-stage came from? Is it consistent with definitions used by neighboring states or other states?

Ryan Rauschenberger: The language in lines 6 through 9 are from industry terms as far as what is accepted as early-stage and mid-stage. This language is put in to shed some light when someone is setting up an angel fund so they kind of know what that end investment should be.

Senator Triplett: So you are saying that the people who are doing this sort of thing already know what the terms mean, and this is just for the uninformed to define it?

Ryan Rauschenberger: Yes

Senator Triplett: Does it mean the same thing now that it did 10 years ago? Will it mean the same thing 10 years in the future? My concern is putting specific dollar amounts into statute just invites us to come back and redefine things every few sessions or so. Is that a long-standing definition in terms of the dollar amounts assigned?

Ryan Rauschenberger: That is a good question for an angel fund representative.

Vice Chairman Miller: Could you tell me how this current angel fund is being utilized?

Ryan Rauschenberger: I have a history of the angel fund credit from 2007 through 2009. It was created in 2007. In 2007, \$256,000 worth of credits were claimed from 32 filers. In 2008, \$603,000 worth of credits were claimed from 54 filers, and in 2009 \$925,000 worth of credits were claimed by 69 filers.

Senator Oehlke: Can you tell me the difference between "at risk in" and "committed"?

Ryan Rauschenberger: This I believe is stating that the angel fund has to have this committed to an end company as opposed to just having it in an angel fund and having it set there for three years.

Senator Oehlke: I'm still not clear on that.

Ryan Rauschenberger: I have an email that was sent to me and I can read that. It says it insures that the fund makes an investment in a company for at least three years and also it allows the company to regain the investment if it is to the company's advantage. It allows for early returns although rare but helpful to the funds and will encourage additional investment in the fund. That is an email that was sent to me by an angel administrator. That was the interpretation of those that wanted the language in there.

Senator Oehlke: So can you be "committed" but not "at risk"?

Donita Wald, legal council: When this bill was drafted in 2007, what we were trying to do was say if you are going to invest in this angel fund, you can't have the money setting in escrow. You have to actually have written a check, given it to the fund, and in order for you to be entitled to the credit, those moneys have to stay in that fund for 3 years. If you commit to something in the future, which year do you get to take the credit? Administratively we still have some things to work out. We still have to come up with the right language.

Senator Dotzenrod: Page 1, line 20, we struck 4 and put in 19, that's a big change. Is there some reason we went to 19?

Ryan Rauschenberger: I neglected to mention that as one of the changes in this bill. There are other examples in code of credits that are carried forward for 20 years.

Jim Carlson, an angel investor from Fargo, spoke in support of SB 2248. In the industry, everyone knows what early-stage vs. mid-stage is. Early-stage is when we are talking about a young start-up company that is trying to get going. It has the highest risk and has at least a 20-30% loss rate which means that the company fails and whatever the angel investors or the venture capital has put in it, it is gone. Mid-stage means that the company has already gone through their proof of concept, they already have their prototype, they have already done some studies, they already have a fairly good handle as to what is going on. Their chance of success is much better. If you have a good product, you can afford to have a bad

management team and it will probably still be successful. Whereas, at mid-stage, if you have a bad product and add a bad management team, again it will fail, the money will be gone. Basically with angel credit you definitely have a risk of 20-30%.

When you were talking about "at risk" money, the intent of that was to avoid having people create an angel fund, collect money from investors, put it into the fund, have them put it into a savings account and leave it. At risk means it has been invested in a company so you are at risk and you get to share the 20-30% total loss with the rest of us.

The reason to go for the 19 years? When you are investing in these small start-up companies, they typically need money put into them for the first 7 to 10 years to organically grow a company and make it successful. The request of the credits to be carried forward 19 years is to try to carry along and keep those investors coming. It is not just a matter of investing up front, or even just at year 3, 4 or 5. You are going to have to have investments again at year 7 or 8 or 10.

Senator Triplett: (She asked a question about the definition of early-stage and mid-stage.) Jim Carlson, defined it one way (see above) and the language of the bill on page 2 lines 4-9 defines it a different way. (She doesn't feel using dollar amounts is a good way to clarify it.)

Jim Carlson: There isn't a good definition. Whether it is years or dollar amounts, it is not definitive.

There were more questions about the intent of the "at risk" overstrike.

Jim Carlson: The goal is to not allow someone to create an angel fund where they can collect money and just let it set in a savings account. I would like to make another point. There hasn't been much discussion about the opportunity to take these tax credits and be able to transfer them. I would like to get out-of-state investors involved. If we would be able to transfer the tax credits dollar for dollar, that would bring in some of this outside money. I do have people outside the state that have an interest and we need something to trigger it.

Senator Burckhart: Do these funds only have a 3 year history?

Jim Carlson: Yes, but speaking nationally on angel funds, they traditionally have 20 -30% total loss, 20-30% break even, 10-20% make money. You hope that out of 10, you will have a home run on 1.

Senator Triplett, District 18, spoke in support of the bill on behalf of Bruce Gjovig from her district. See Attachment A.

Chairman Cook: Closed the hearing on SB 2248.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2248
2/15/2011
Job Number 14535

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the angel fund investment tax credit; to provide a report to the legislative management

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2248.

Donnita Wald, Tax Department, went through the proposed amendments.

Senator Oehlke – On page 3 line 19 and 20 it talks about an investor being able to sell the credits, it mentions they may sell the credit to only one purchaser, so the one purchaser could be an LLC or a corporation or what have you, right? Or is it one purchaser so that it simplifies your process?

Donnita Wald, Tax Department – We did not make that change. I think it's possible that the credit could be sold to another LLC. We did not make that change because that is how the bill was introduced in the House.

Senator Oehlke – Do you have a comfort level with that, or is that a problem area?

Donnita Wald, Tax Department – That could potentially be a problem area for us. I don't see that happening though because the entity itself would be the purchaser. Again, there is some question about interpretation there.

Chairman Cook – The main thing this bill now does after you amended it, it brings pass through entities in to the equation and it goes down the road of allowing these credits to be sold.

Donnita Wald, Tax Department – That is correct.

Chairman Cook – The credits cannot be sold today.

Donnita Wald, Tax Department – That's correct.

Chairman Cook – Those are the only 2 things?

Donnita Wald, Tax Department – Those are the 2 major things.

Senator Hogue – When we define these early in mid stage entities in terms of their revenue, I wondered if it wouldn't also be helpful to define them in terms of the type of activities they could not be involved in. For example, what if a couple of real estate investors came to the Department of Commerce and said yes, we are going to have these revenues and we are right in the middle of a renaissance zone and we think we have tremendous growth potential. I don't see anything in this bill that would stop the Department of Commerce from saying, well yeah, that real estate development qualifies for this tax credit even though I don't think we'd accept the idea that would be an appropriate use of an angel fund, to foster real estate development. I was wondering how the Tax Commissioner felt about it. You've got the qualifier for revenue, what exactly can these angel funds invest in?

Donnita Wald, Tax Department – That's a good question, I personally have to agree that it shouldn't be used for real estate development in that area. The other item I want to address is the renaissance zone aspect of this. There are no limitations in this bill that they can't use one tax incentive while still using this tax incentive.

Senator Dotzenrod – If I understand this right, you could put some money into an angel fund and you could get the credit, but the angel fund wouldn't have to actually use the money for anything. Is that right? You could have an angel fund that was created and the purpose of the angel fund could be completely valid and justified in that they are going to have this fund and invest in enterprises that they think are appropriate but in order to get the credit, if I follow page 1 lines 14 and 15, you can put the money into the angel fund and get the credit, but the angel fund doesn't have to do anything with that money. Am I wrong about that?

Donnita Wald, Tax Department – There is nothing in this bill that requires the angel fund to actually do anything with the money. If I remember from testimony, not necessarily in this committee, that question was asked and the response by the person who was testifying at the time was that really doesn't make any sense because our whole purpose is to get something back on our investment. But, again, this bill does not require that.

Senator Dotzenrod – It appears that the language that is in the code now does require it.

Donnita Wald, Tax Department – That probably is correct. When you looked at it in conjunction with the committed by language, commitments are not clearly defined.

Senator Dotzenrod – It says also investments placed in escrow do not qualify for the credit. I suppose you could argue that an investment that's just sitting there is essentially functioning like it's an escrow although it might not technically be an escrow. If it's invested into the angel fund and they don't get around to finding the right investment at the right time it's probably still legitimate to allow the credit because that's their purpose and they are probably, should be permitted some time, not be forced to have to get it spent right away. There could probably be a good argument to have this read just the way it does.

Donnita Wald, Tax Department – A lot of subsection 2 is language that council picks up from the seed capital investment tax credit and the agricultural commodity processing tax incentive. This is language we have developed over the years when we have run in to some issues. Throughout the life of those 2 credits we've kind of figured out what works and what doesn't work so a lot of what's into, and what we amended to be, follows that language.

Chairman Cook – How many others, or are there any other income tax credits that we allow to be sold?

Donnita Wald, Tax Department – Right now the research and development tax credit can be sold. It's very limited. Nobody has sold it. The other credit that was transferrable for one biennium was the wind energy geothermal.

Chairman Cook – Did we sunset it or take it off?

Donnita Wald, Tax Department – I can't recall. We might have taken it off because, again, no one has used it. Part of the problem with the wind energy was there were many restrictions on who it could be sold to.

Senator Triplett – Could you speak to page 1 line 20 where the 19 that was in the original bill is moved back to 4 from the current law and what the argument is for not allowing the 19?

Donnita Wald, Tax Department – I don't know what the argument was. I can speculate that the only other tax credit that have that long of a carry forward are the ag, the seed, and the RND. I'm not even sure about the seed and the ag.

Senator Triplett – When you say that long of a carry forward, are you referring to the 4 years or 19 years?

Donnita Wald, Tax Department – The 19 years.

Senator Triplett – So if others do have the 19 years then why are we not allowing the 19 years here?

Donnita Wald, Tax Department – That is a policy decision for you to make.

Senator Triplett – So that change is not about the tax department or clarification or the equivalence of anything else.

Senator Hogue – If it's the committee's feeling that this angel fund investment fund shouldn't be used for general real estate development then I think we should put that in the bill, that this is not something where the angel fund can say, well this group over here is putting up a hotel, I think that's going to have strong growth potential and these folks are putting up apartments, and this group is putting up a strip mall so you've got 3 investments, they all have, in the investors eyes, strong growth potential, and so now we are using state income tax to subsidize real estate development. I don't think that is good policy. I don't see anything in the bill that would restrict that either.

Senator Triplett – I would like some discussion on the point of the 4 year carry forward vs. the 19. I don't know if you recall but when we had the hearing on this matter I provided a copy of an email from Bruce Jovig who's from Grand Forks and I would like to refer you to page 2 of his memo, paragraph 7 where he very specifically discusses the reasons for the 19 year carry forward provision and encourages us to adopt that. The carry forward should match the time horizon of the majority of investments and he says no fund organized in 2006 has yet had a harvest going into the 5th year. I guess the suggestion would be that unless you already have other income from other sources to use your credit against, it

really wouldn't be very helpful to you as a credit against the income from this investment unless you put it out further. If there is no policy reason from the Tax Department for not having a longer carry forward. I might think we want to amend that back to something a little longer than 5 years, if not 20 years.

Chairman Cook – I have that feeling, but my other concern is the whole policy issue of selling credits. I've never been a fan of selling credits. I'd be happy to strip that part of this bill out of here.

Senator Triplett – I think they are 2 different issues. The length of time one can carry forward one's own credit is a whole different issue from whether you sell it.

Chairman Cook – I put them together. I think that if you've got 20 years, some of the incentive to sell the credit might be gone because you've got 20 years to use it yourself. Otherwise you've got 5 years and you're not going to have much of a tax liability then you have more of an incentive to sell it. That's the way I would look at it.

Senator Hogue – I agree with Senator Triplett. If you did a \$100,000 investment you'd get a \$45,000 credit. To think you are going to use that in 4 years, that's going to be hard to use if you've got some other tax credits and other investments that are taking your state tax liability down, so I think it needs to go beyond that 4 years. Otherwise people are going to look at that and say, well, I can't claim that in 4 years.

Chairman Cook – We need amendments to change the 4 to 19. We need amendments to offer some sort of restrictions, real estate, renaissance zone, however that gets worded. Dee, can we have amendments for us to consider that would remove the sell ability of credits from this bill?

Donnita Wald, Tax Department – If I could clarify a couple of things that were discussed. On the 20 year carry forward, if someone sells their credit, the purchaser jumps into the shoes of the taxpayer so they too would get that 20 year carry forward. The one reason I think some of the pass through entity and the sell ability was introduced in our discussions was, they are trying to incent out-of-state investors. Out-of-state investors don't have an income tax liability here. Really all this amendment does is strip pages from the bill.

Chairman Cook – So all that would be left in the bill is allowing pass through entities.

Donnita Wald, Tax Department – I just want to add that if the out-of-state investor sells that credit, the income he gets from that sale is 100% taxable to North Dakota. In essence then the purchaser does end up having a tax liability here.

Chairman Cook closed discussion on SB 2248.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2248
2/15/2011
Job Number 14583

Conference Committee

A. Riffmiller

Explanation or reason for introduction of bill/resolution:

Relating to the angel fund investment tax credit; to provide a report to the legislative management

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2248.

Senator Hogue – I put in an arbitrary number of 40% and the idea was I'm sure some companies will have properties were they will have some income. I put 40% in under the understanding that would eliminate substantially all hotels, commercial rental property, residential rental property, because virtually all of their income would be income producing but I didn't want to disqualify someone just because they are an enterprise that builds a big building and uses part of it for their operations or their start up and then decide to lease out some of it. I offer 2 amendments that were presented to us by Alex Kelsch for SB 2248.

Seconded by **Vice Chairman Miller**.

Chairman Cook – All in favor of the motion offered by Senator Hogue to offer these amendments signify by saying yea. Opposed? (6-0-1)

Senator Hogue – I will move the amendments dated February 7, 2011 but excluding page 1 line 20 changing 19 years to 4 years.

Seconded by **Senator Burckhard**.

Chairman Cook – All in favor say yea. Opposed? (6-0-1)

Vice Chairman Miller – I'll move the amendments dated February 15, 2011.

Seconded by **Senator Dotzenrod**.

Chairman Cook – All in favor if the amendments to disallow selling credits signify by saying yea. Opposed? (6-0-1)

Senator Dotzenrod – I thought when the sponsor of this bill brought this in I think their primary objective was to get to be able to sell the credits. I think that's what they were looking to do but I think the bill we have in front of us now with that off of there, it just kind of makes some changes around the edges. We've got some clarification, we changed the 4 to 19, we've got the definition of early stage and mid stage, but I don't know if there is anything else that is significant that we are changing.

Donnita Wald, Tax Department – There is really 2 reasons for this bill moving forward. One was to add the ability for pass through entities, and the other one was for the transferrable.

Senator Dotzenrod – That's a significant thing. We are allowing angel fund investors to be pass through entities.

Chairman Cook – I would think that this is the 3rd session in a row that there has been an effort made to be able to transfer or sell credits and has yet to have been successful.

Chairman Cook closed discussion on SB 2248.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2248
2/16/2011
Job Number 14590

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the angel fund investment tax credit; to provide a report to the legislative management

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2248.

Donnita Wald, Tax Department went through the changes made due to the amendments adopted.

Chairman Cook – Dee, I talked to you this morning about whether or not we should put a study resolution on here. The reason I raised the question is because this is the 3rd session where we have dealt with the transferability of income tax credits. They come to us generally from Department of Commerce as they think it would be a good idea. It has never been an idea that has appeared to gain legs in the tax committee and my thought was maybe during the interim the tax committee ought to actually study the feasibility and benefits of transferring tax credits, as to whether it is sound tax policy.

Senator Hogue – One of the benefits of our trend of lowering this individual income tax rates is that these tax credits become less and less appealing or useful because we keep lowering everyone tax liability but I don't think it hurts to put in a "shall consider" resolution. I will move the February 16, 2011 Senator Cook amendments for SB 22448 with the addition of the word "consider" after the word "shall" on that amendment.

Seconded by **Senator Oehlke**.

Chairman Cook – Any discussion? All in favor of the amendment to study tax credit transferability signify by saying yea. (6-1-0)

Senator Dotzenrod – On page 1 when the bill was introduced by the sponsors, they added this language, “to the enterprises of which the angel fund invests”. We’ve taken that out and I’m wondering if anyone could refresh my memory, I think their reasoning was that they wanted this credit to be used; they wanted to make sure that the investors had put the money to use. They didn’t just stick it in the fund and let it sit there doing nothing. That was my impression. I don’t remember why but we must have had a reason to want to take that language out and I’m trying to remember what it was.

Chairman Cook – My memory and looking at my note here is that we had a lot of question as to really what committed meant. Now we have it clear so that just putting the money into an angel fund does not enable you to get the credit, the money actually has to be invested.

Senator Dotzenrod – I will move a Do Pass as Amended.

Seconded by **Vice Chairman Miller**.

Chairman Cook – Ask the clerk to take the roll. (7-0-0)

FISCAL NOTE
 Requested by Legislative Council
 03/25/2011

Amendment to: Engrossed
 SB 2248

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed Senate Bill 2248 with House Amendments makes a number of changes to the angel fund investment income tax credit law, including expanding the law to allow passthrough entities to qualify for the credit and providing for new reporting and disclosure requirements.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed Senate Bill 2248 with House Amendments changes the angel fund investment income tax credit law to (1) allow the credit to passthrough entities, (2) define what is meant by early-stage and mid-stage businesses, (3) require angel funds to provide to the tax commissioner information about the investments made in angel funds by investors, (4) limit investor eligibility for the credit to taxpayers who own directly or indirectly less than 50 percent of any business in which the angel fund invests its funds, and (5) allow the tax commissioner, upon written request, to disclose the identity and credit amount claimed by an investor, and the identity of the angel fund in which the investment was made.

These changes to the angel fund investment income tax law will potentially decrease state general fund revenues, but the amount of the potential decrease cannot be determined because it is not known to what extent the changes will contribute to increased investment activity during the 2011-13 biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/28/2011

FISCAL NOTE
 Requested by Legislative Council
 02/21/2011

Amendment to: SB 2248

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Eng. SB 2248 changes the angel fund investment income tax credit program to allow passthrough entities to qualify for the credit. It extends the carryover period for an unused credit from 4 to 19 years.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Eng. SB 2248 expands the angel fund investment income tax program to include pass-through entities and allows a longer credit carryover period. These changes to the program will potentially decrease state general fund revenues, but the amount of the potential decrease cannot be determined because it is not known to what extent the changes will contribute to increased investment activity during the 2011-13 biennium.

Eng. SB 2248 also calls for an interim study of the policy implications of the assigning, selling, or transferring of state tax credits.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/21/2011

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: SB 2248

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2248 expands the angel fund investment income tax credit program to allow passthrough entities to qualify for the credit. It extends the carryover period for an unused credit from 4 to 19 years, and permits an unused credit to be sold, assigned, or transferred to another taxpayer.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

SB 2248's expansion of the angel fund investment income tax program will allow more options for potential angel investors to structure their investments. For those angel investors who have little or no state income tax liability, the bill will permit them to sell, assign, or transfer their credit to another taxpayer who can use it. These changes to the program will potentially decrease state general fund revenues, but the amount of the potential decrease cannot be determined because it is not known to what extent the changes will contribute to increased investment activity during the 2011-13 biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/24/2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248 Prepared for Sen. Hogue

Page 1, line 13, after the period, insert "The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 2, line 9, after the underscored period insert "Early-stage and mid-stage entities do not include those entities that have more than forty percent of their revenue from income producing real estate."

Renumber accordingly

Date: 2-15-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Hogue Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, line 11, overstrike "invested" and insert immediately thereafter "remitted", overstrike "in" and insert immediately thereafter "to"

Page 1, line 14, remove the overstrike over "~~at risk in~~" and remove "committed by"

Page 1, line 15, remove "to the enterprises in which the angel fund invests"

Page 1, line 20, remove the overstrike over "~~four~~" and remove "nineteen"

Page 2, line 30, replace "paid for the investment" with "remitted"

Page 3, line 1, replace "on which full consideration" with "the payment"

Page 3, line 27, remove "As"

Page 3, remove lines 28 through 31

Page 4, remove lines 1 and 2

Page 4, after line 4, insert:

"a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years."

Page 4, line 5, replace "a." with "b."

Page 4, line 16, replace "b." with "c."

Page 4, line 23, replace "c." with "d."

Page 4, line 26, replace "d." with "e."

Page 5, line 5, replace "e." with "f."

Page 5, line 9, replace "f." with "g."

Page 5, line 14, replace "g." with "h."

Renumber accordingly

Date: 2-15-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Hogue Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote - Amendments dated February 7, 2011
excluding page 1 line 20 changing 19 to 4.

February 15, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, line 2, remove “to provide a report to the legislative”

Page 1, line 3, remove “management;”

Page 3, line 16, remove “If a passthrough entity does not elect to sell, transfer, or assign the credit as”

Page 3, line 17, replace “provided under this subsection and subsection 7, the” with “The”

Page 3, remove lines 21 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 18

Renumber accordingly

Date: 2-15-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote - Amendments dated February 15, 2011

PROPOSED AMENDMENTS TO SENATE BILL 2248

Page 1, line 2, replace “a report to the legislative” with “for a study and report to legislative management”

Page 1, line 3, remove “management”

Page 5, line 16, replace “**REPORT TO THE LEGISLATIVE MANAGEMENT**” with “**TAX CREDIT TRANSFER STUDY – REPORT**” and remove “and”

Page 5, replace line 17, with “the interim taxation committee shall study the policy reasons, feasibility, and impact to the state of providing for the sale, assignment, or transfer of state tax credits. The interim taxation committee shall report its findings and recommendations, together with any legislation to implement the recommendations to the sixty-third legislative assembly.”

Renumber accordingly

Date: 2-16-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote to adopt study

February 16, 2011

JF3
2-17-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, line 2, after "provide" insert "for"

Page 1, line 2, remove "report to the"

Page 1, line 3, after "management" insert "study"

Page 1, line 11, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 11, overstrike "in" and insert immediately thereafter "to"

Page 1, line 13, after the period insert "The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 14, remove the overstrike over "~~at-risk-in~~"

Page 1, line 14, remove "committed by"

Page 1, line 15, remove "to the enterprises in which the angel fund invests"

Page 2, line 9, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than forty percent of their revenue from income-producing real estate."

Page 2, line 30, replace "paid for the investment" with "remitted"

Page 3, line 1, replace "on which full consideration" with "the payment"

Page 3, line 16, remove "If a passthrough entity does not elect to sell, transfer, or assign the credit as"

Page 3, line 17, replace "provided under this subsection and subsection 7, the" with "The"

Page 3, remove lines 21 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 15

Page 5, line 16, remove "**REPORT TO THE**"

Page 5, line 16, after "**MANAGEMENT**" insert "**TAX CREDIT TRANSFER STUDY**"

Page 5, line 16, remove "and"

Page 5, replace lines 17 and 18 with "interim, the legislative management shall consider studying the policy reasons for, feasibility of, and impact to the state of providing for the sale, assignment, or transfer of state tax credits. The legislative management shall report its findings and recommendations, together with any legislation to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date: 2-16-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Dotzenrod Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman	X		Jim Dotzenrod	X	
Joe Miller - Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Oehlke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2248: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 2, after "provide" insert "for"

Page 1, line 2, remove "report to the"

Page 1, line 3, after "management" insert "study"

Page 1, line 11, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 11, overstrike "in" and insert immediately thereafter "to"

Page 1, line 13, after the period insert "The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 14, remove the overstrike over "at-risk-in"

Page 1, line 14, remove "committed by"

Page 1, line 15, remove "to the enterprises in which the angel fund invests"

Page 2, line 9, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than forty percent of their revenue from income-producing real estate."

Page 2, line 30, replace "paid for the investment" with "remitted"

Page 3, line 1, replace "on which full consideration" with "the payment"

Page 3, line 16, remove "If a passthrough entity does not elect to sell, transfer, or assign the credit as"

Page 3, line 17, replace "provided under this subsection and subsection 7, the" with "The"

Page 3, remove lines 21 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 15

Page 5, line 16, remove "**REPORT TO THE**"

Page 5, line 16, after "**MANAGEMENT**" insert "**TAX CREDIT TRANSFER STUDY**"

Page 5, line 16, remove "and"

Page 5, replace lines 17 and 18 with "interim, the legislative management shall consider studying the policy reasons for, feasibility of, and impact to the state of providing for the sale, assignment, or transfer of state tax credits. The legislative management shall report its findings and recommendations, together with any legislation to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2248

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2248
March 8, 2011
#15121

Conference Committee

Committee Clerk Signature *Mary Buckler*

Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

Minutes:

See attached testimony #1

Senator Grindberg: Sponsor. Introduced bill. Support. Please refer to attached testimony #1. We are very appreciative on your work by passing HB 1057. As the chairman of the interim workforce committee 1057 was a bill we advanced to attract more capital and entrepreneur growth in the state. SB 2248 was introduced after the result of an angel fund summit that was held in December and had direct feedback with a number of investors in my particular part of the state. A couple of the concepts that came out of that discussion was allowing to take the tax credit into more years than four and a couple of other particulars so I introduced the bill. As a result of crossover and understanding your changes to 1057 and the Senate changes to 2248 after it passed, the handout gives this comparison. It is my judgment after visiting with some of the members of the investment committee around the state that I ask that you shoot my own dog and defeat SB 2248. The group is then going to work on HB 1057 as it is now up for hearing across the hallway in Senate Finance and Tax that I need to get too. Just by natural process we don't feel it's right to have two bills so we should work on one to advance the primary motivation and interest and that's the transferability portion in 1057.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2248.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2248
March 8, 2011
#15123

Conference Committee

Committee Clerk Signature	<i>May Bruckner</i>
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Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

Minutes:

<i>No attachments.</i>

Representative Dave Weiler: I move a DO NOT PASS.

Representative Mark S. Owens: Seconded.

**A roll call vote was taken: YES 12 NO 1 ABSENT 1
MOTION CARRIED FOR DO NOT PASS.**

Representative Mark S. Owens will carry SB 2248.

Chairman Belter has requested this bill back to committee and to delete the standing committee report on 3-9-11.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2248
March 23, 2011
#15874

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

Minutes:

See attached amendments.

Representative Mark S. Owens: Distributed and reviewed amendments. Please refer to attached amendments. This was supposed to take out the transferability on page 7. We haven't approved this yet.

Representative Dave Weiler: I make a motion to reconsider our actions where we passed this bill.

Representative Shirley Meyer: Seconded.

A voice vote was taken to reconsider actions: MOTION CARRIED.

Vice Chairman Craig Headland: We have SB 2248 before us. What are the committee's wishes?

Representative Mark S. Owens: There was one other issue that was discovered since we passed out 1057. I would like to call your attention to page 2 paragraph 4 where it says "angel fund investors may be actively involved..." And it talks about direct and indirect ownership of more than 49%. That underlined sentence at the end of this the way it was written in the original bill restated in a different form the first part of paragraph 4 when it's intent was that collectively any member of an angel fund investor group own more than 49% and that's what this does, it adjusts this. **I'd like to move this amendment as you have it before you minus subsection 7 on page 3 that carries all the way through subparagraph h on page 4.**

Representative Roscoe Streyle: Seconded.

Representative Lonny B. Winrich: What does subsection 7 do?

Representative Mark S. Owens: It allows the investors to come in and invest in an angel fund and get the tax credit then sell the tax credit to someone else that's not involved in the angel fund.

Representative Lonny B. Winrich: So this would remove the transferability of the (inaudible)?

Representative Mark S. Owens: That is correct. The only difference between 1057 and 2248 should this amendment be adopted will be the correction that I outlined on page 2 paragraph 4 and the transferability was in 1057 and this will remove it from 2248, other than that they would be identical. We have informed the senate of the correction on subparagraph 4 and we're hoping they change that in 1057.

Representative Lonny B. Winrich: I don't understand why we are fixing this one up since Senator Grindberg recommended that we kill this one because they were going to deal with the whole thing in 1057.

Vice Chairman Craig Headland: It is the desire of the chairman of this committee to fix this in his absence to the way he sees fit and he wants to have the leverage to be able to negotiate.

Representative Shirley Meyer: It doesn't work like that. We passed it on this form and if the senate concurs with that then it gets signed by the governor and this is a mute point.

Vice Chairman Craig Headland: That could be true. I suppose if the senate chooses not to concur with the action here they could kill it over there.

Representative Dave Weiler: They don't have to worry about this bill because the bill we passed over to them has it exactly the way they want it. They will pass that bill and that will be law and people will be able to transfer the credits. I understand what we're trying to do here, however, unless we convince the senate that somehow we want to take that out then I don't know. I am supportive of what we want to do here and I hope the senate understands what we're trying to do.

Vice Chairman Craig Headland: Before we move on any further, I believe the senate is going to make changes on 1057 so we're going to make some changes here. We will have to concur with the changes they make. This thing will come together.

Representative Dave Weiler: That makes sense then and clears it up for me. Representative Owens, in subsection 6 paragraph c it looks like the same language so I'm wondering if that also needs to be removed.

Representative Mark S. Owens: Yes. Representative Streyle pointed it out that this is still in the bill knowing the intent of the chairman was to take it out and I was carrying this for him in his absence. It appears that we need to remove b and c as well, not the whole subsection 6 though.

Representative Steven L. Zaiser: I agree with what has been said with Representative Weiler and Owens but by the fact that's it's in a different section, is there a different context there?

Vice Chairman Craig Headland: We should ask the tax department. Dee, can you address the concerns of the committee.

Donnita Wald, General Counsel for Office of State Tax Commissioner: What kinds of issues are you having with the bill?

Vice Chairman Craig Headland: I believe it's with the transferability of the credit.

Donnita Wald, General Counsel for Office of State Tax Commissioner: That would be subsection 6 c. The other transferability portions of this are in subsection 7 and that is the language that would have to be taken out.

Vice Chairman Craig Headland: Subsection 6 b and c?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That would also have to come out.

Vice Chairman Craig Headland: Would that affect any other part of the passthrough entity? Is there any of that language that is needed or is that all?

Representative Shirley Meyer: On the last page subsection g do we need that in there?

Donnita Wald, General Counsel for Office of State Tax Commissioner: No, the transferable language comes out. With respect to subsection 6, if we leave just 6 a in then we are still allowing a passthrough entity to invest in the angel fund so that language would need to stay.

Representative Roscoe Streyle: I don't think we need section 3 either on the back page.

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is up to the committee.

Representative Roscoe Streyle: Because if we can't transfer them then we don't need to know what the..

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is correct.

Representative Steven L. Zaiser: I don't feel I received an answer as to why in subsection 6 c and 7 b we are taking both of them out. Is there a different context?

Representative Roscoe Streyle: I think it's just a pass through entity and section 7 isn't.

Vice Chairman Craig Headland: Does everybody understand what we are trying to accomplish here?

Representative Mark S. Owens: Let me restate the motion now with everything, the motion would be to adopt the amendment all of page 1, all of page 2, and section 2 and section 4 and renumber accordingly on page 4. That would be the adoption. In other words all of page 3 is gone, the top part of page 4 down to section 2 is gone, and section 3 reporting to legislative management is also removed.

Vice Chairman Craig Headland: We have a motion and a second.

A voice vote was taken to adopt the amendment: MOTION CARRIED.

Vice Chairman Craig Headland: We have an amended version of SB 2248 before us.

Representative Mark S. Owens: I'll move a DO PASS AS AMENDED.

Representative Steven L. Zaiser: Seconded.

**A roll call vote was taken: YES 11 NO 1 ABSENT 2
MOTION CARRIED FOR DO PASS AS AMENDED.**

Representative Steven L. Zaiser will carry SB 2248.

Date: 3-8-11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Weiler Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	AB	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham		✓			

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Owens

If the vote is on an amendment, briefly indicate intent:

Date: 3-23-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Weiler Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE
MOTION CARRIED.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure; to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. Angel fund investment tax credit.

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
 - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
 - b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
 - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
 - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
 - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
 - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
 - h. Be in compliance with the securities laws of this state.
 - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
 - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
 - (2) The dollar amount paid for the investment by the taxpayer or passthrough entity; and
 - (3) The date on which full consideration was received by the angel fund for the investment.
4. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if angel fund officers, employees, and investors collectively own more than forty-nine percent of the ownership interests in the enterprise, either through direct ownership or through ownership of interests in a passthrough entity.
5. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
6. a. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.

- b. If a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 7, the amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
 - c. If a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 7, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 7.
7. A taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section subject to the following:
- a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
 - b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
 - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
 - d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
 - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended

returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.

- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.

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

The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested.

SECTION 3. REPORT TO THE LEGISLATIVE MANAGEMENT. During the 2011-12 and 2013-14 interims, the tax commissioner shall report to the legislative management on the status of the transferability of tax credits under the angel fund tax credit.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective for the first four taxable years beginning after December 31, 2010, and is thereafter ineffective. Section 2 of this Act is effective for angel fund investments made after June 30, 2011."

Renumber accordingly

Date: 3-23-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
minus sub. 7 on p. 3 to sub. 8 on p. 4
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Owens Seconded By Rep. Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE
MOTION CARRIED.

March 23, 2011

YR
3/23/11
1083

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure; to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. Angel fund investment tax credit.

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
 - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
 - b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
 - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
 - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
 - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
 - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
 - h. Be in compliance with the securities laws of this state.
4. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
- a. The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
 - b. The dollar amount paid for the investment by the taxpayer or passthrough entity; and
 - c. The date on which full consideration was received by the angel fund for the investment.
5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if angel fund officers, employees, and investors collectively own more than forty-nine percent of the ownership interests in the enterprise, either through direct ownership or through ownership of interests in a passthrough entity.
- ~~5-6.~~ Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.

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

The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective for the first four taxable years beginning after December 31, 2010, and is thereafter ineffective. Section 2 of this Act is effective for angel fund investments made after June 30, 2011."

Renumber accordingly

Date: 3-23-11
 Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2248

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Owens Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	<input checked="" type="checkbox"/>		Scot Kelsh	<input checked="" type="checkbox"/>	
Vice Chair. Craig Headland	<input checked="" type="checkbox"/>		Shirley Meyer	<input checked="" type="checkbox"/>	
Glen Froseth	<input checked="" type="checkbox"/>		Lonny B. Winrich	<input checked="" type="checkbox"/>	
Bette Grande	<input checked="" type="checkbox"/>		Steven L. Zaiser	<input checked="" type="checkbox"/>	
Patrick Hatlestad	<input checked="" type="checkbox"/>				
Mark S. Owens	<input checked="" type="checkbox"/>				
Roscoe Streyle	<input checked="" type="checkbox"/>				
Wayne Trottier	<input checked="" type="checkbox"/>				
Dave Weiler	<input checked="" type="checkbox"/>				
Dwight Wrangham		<input checked="" type="checkbox"/>			

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Zaiser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2248, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2248 was placed on the Fourteenth order on the calendar.

W A Belter

* Deleted Standing Committee Report
per Chairman Belter on 3-9-11.

REPORT OF STANDING COMMITTEE

SB 2248, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure; to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
 - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
 - b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars.
 - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
 - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.

- e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
 - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
 - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
 - h. Be in compliance with the securities laws of this state.
4. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
- a. The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
 - b. The dollar amount paid for the investment by the taxpayer or passthrough entity; and
 - c. The date on which full consideration was received by the angel fund for the investment.
5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if angel fund officers, employees, and investors collectively own more than forty-nine percent of the ownership interests in the enterprise, either through direct ownership or through ownership of interests in a passthrough entity.
- ~~6.6.~~ Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.

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

The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective for the first four taxable years beginning after December 31, 2010, and is

thereafter ineffective. Section 2 of this Act is effective for angel fund investments made after June 30, 2011."

Renumber accordingly

2011 TESTIMONY

SB 2248

Triplett, Constance T.

From: Bruce Gjovig:[bruce@innovators.net]
Sent: Sunday, January 23, 2011 10:29 PM
To: Cook, Dwight C.; Miller, Joe T.; 'raburkhard@nd.gov'; Dotzenrod, Jim A.; Hogue, David J.; Oehlke, H. Dave; Triplett, Constance T.
Cc: Grindberg, Tony S.
Subject: SB 2248 Angel Tax Credits (FORP)

Members of Senate Finance & Tax Committee:

I cannot be at the hearing Monday at 9am for SB 2248. Below is testimony for the Senate Finance & Tax Committee. Thank you for your favorable consideration. Feel free to contact me.

Bruce Gjovig
 Entrepreneur Coach & CEO
 UND Center for Innovation Foundation
Bruce@innovators.net
 701-739-3132 Cell

<http://www.legis.nd.gov/assembly/62-2011/documents/11-0411-01000.pdf>

For SB 2248 to encourage pass-through entities to invest in pooled angel funds, increases sources of capital for entrepreneurs, allows incentives to work well for more investors, expanding the capital pool.

1. SB 2248 increases the amount of capital available for startup entrepreneurs by increasing number of angel investors in North Dakota by including not only individual accredited investors but also **pass through entities** (Sub-S, LLP, LLC, etc.) in the incentive program. (page 3, lines 12-31) We thought they were included in the 2009 legislation so need this provision in 2011. Pooled angel funds target the right ventures (high growth) and the right angels (multiple investments, at least 10 in a portfolio) to have the most economic impact. Pooled angel funds utilize collective wisdom, expertise and judgment of several investors to draw additional investors (increased seed capital).
2. SB 2248 extends the existing 45% state investment tax credit for pooled angel funds to **pass-through entities**, which are often utilized for investment purposes, esp. among family members and business partners. Including these entities increases the potential investor pool to meet the needs of early-stage capital for venture growth i.e. makes more capital available. Also remember this is high risk capital, and there are significant likelihood the investor will lose their money in the investment. It is not uncommon for an angel fund to have a portfolio of 10-20 companies, and lose all their investment in half of the investments, trying to recover their losses on the remainder. Unless there is at least one spectacular success in the portfolio, the investor may have done better not investing at all. This incentive offsets some of the risk. Of benefit to the state is that portfolio companies that are not growing are still providing jobs, but not a return on investment (ROI), to the investor.
3. More than 20 states offer a state income tax credit to encourage angels to invest and grow early-stage ventures. Most include pass through entities. More investors means more investment. Allowing the tax credits to be sold, transfer or assigned **encourages in-state investors with low tax liability and out-of-state investors** to participate in the incentive, and encourages them to invest in North Dakota pooled funds and entrepreneurs. This helps attract more capital which is needed. States like Minnesota and Connecticut utilize this feature and Minnesota also offers the ability to receive a cash refund of the credit, i.e. cash back from the Treasury. We are not asking for that.
4. Since 2006, nine pooled angel funds were formed in Grand Forks, Fargo, Wahpeton and Bismarck regions. Second funds are under consideration in Grand Forks, Fargo, and Bismarck. New funds are gaining momentum in Jamestown, Minot and are being explored in Williston, Dickinson areas. With these changes, expect 5-8 more angel funds over next two years. To date, about 140 angel investors committed more than \$16 M in pooled funds, and made over 30 investments since 2006. The State Investment Tax Credit has significantly increased access to equity by engaging our state's accredited investors. **It is an unqualified early success**, with far more potential as we improve the law. The changes to the legislation will help other funds to form increasing our equity capital resources. Funds do work well together to share deal flow, due diligence, expertise, and monitoring, and to do larger deals beyond the capacity of one fund. More funds means more capital, more efficiency, and lower transaction costs.

5. Nationwide for each startup that secures venture capital annually, over 200 startup companies (50,000 per year) secure angel investment. Less than 1 in 10 startups receive angel funds as few provide high enough return on investment (ROI) for growth. Angels are vital to the entrepreneur ecosystem and to secure equity capital. The **tax incentive is targeted at high growth ventures**, thus providing the state to ability to recoup tax credits from growing companies and their employees.

6. This **incentive targets North Dakota angel funds** who are primarily comprised of North Dakota investors, who will significantly invest in North Dakota ventures. There should be no attempt to restrict the investments to North Dakota companies in their portfolio. Angels invest close to home – which is North Dakota - but that includes companies that are organized in neighboring states or Delaware but located here. Our funds have invested in four companies that are organized in Minnesota, but most of the jobs are in North Dakota, specifically manufacturing jobs at ComDel in Wahpeton. Investors will bring jobs to our state, matching up with our strength for manufacturing capabilities, workforce or other opportunities. The angel funds need to have the ability to source venture deals from surrounding areas to build a strong portfolio in 4-5 years, as well as syndicate deals across state lines to access more capital in neighboring states. Hampering the ability to do deals together across state lines would be harmful. We are attracting capital now from out of state. We do not want to stop that inflow by telling them we cannot do business with them in the future.

7. This bill extends the **carry forward provision to 19 years** (total 20 years – Page 1, line 20) which is appropriate as early-stage investments have proved to have a long horizon to harvest to a high ROI (7 to 15 years) if at all, and our taxpayers have not been able to fully utilize their tax credits to date. The long horizon/runway is especially true with technologies like medical devices. Early-stage capital is necessary to accelerate innovation, start and grow entrepreneur ventures and create the jobs we need. Angels offer patient money that is higher risk with a longer horizon for liquidity which is why public and private venture prefers later-stage venture deals, thus the need for incentives to fill the funding gap. The higher risk and long horizons define the need for this tax incentive. The carry-forward should match the time horizon of the majority of investments. No fund organized in 2006 has yet had a harvest going into the 5th year.

8. **Angels are more than funding:** they also expertise, coaching, contacts, and problem solvers. This is value added investing, at no cost to taxpayers.

Proposed Amendments to SB 2248:

8. Certify that the transferred or sold tax credit is **irrevocable** to the purchaser of the credit so as to create a reliable marketplace. Perhaps this is addressed on **page 5, Section 7 g line 14-15** that allows the tax commissioner to adopt rules to permit validation of the tax credit, but it is safer to indicate legislative intent to have **No “look back” provision** when unused tax credits are transferred or sold. (**Page 3, Section 6 c**) All tax liability should rest with original investors, who have the upside potential, so when tax credits are sold the purchaser cannot lose the credit. This will also keep investor/seller vigilant.

9. A reliable market, and a good market system, needs to be created for unused tax credits. Companies who want to support entrepreneurs and investors are the likely market, such as banks, who are unable to buy these credits because **Banks are subject to the Financial Institutions Tax (FIT)** instead of the corporate income tax. As the bill is currently written, any taxpayer, individual or corporate, can purchase the tax credits so some corporations could buy the credits. To allow banks to purchase the tax credits, language needs to be added to the Financial Institution Tax chapter of the century code to permit it. We also want to make sure there is **not a \$45,000 cap** (**Page 3, Section 6 c**) as there is with individual taxpayers on this transfer of tax credits, as angel funds would like to bundle their unused credits and sell to one entity vs. negotiating with and marketing to many entities which could be contentious among investor members. We want to make sure they have the same carry forward provision as well. The tax credit is earned through investment and is capped to individual investors (\$45,000) per year, and to the fund (\$5 M) so the impact to state is little by allowing unlimited transfer/sale of credits. This makes North Dakota business friendly.

*Most of economics can be summarized in four words: 'People respond to incentives.' "The rest is just commentary."
Steven Landsburg, the Armchair Economist, U of Rochester (NY)*

COMPARISON OF SIGNIFICANT PROVISIONS OF ENGROSSED HOUSE BILL NO. 1057 AND ENGROSSED SENATE BILL NO. 2248

	Engrossed House Bill No. 1057	Engrossed Senate Bill No. 2248
Angel fund credit 45 percent of up to \$45,000 invested per year	Not changed	Not changed
Use of angel fund investment for any other credit	No provision	Prohibited
Early-stage and mid-stage entities for angel fund investments	Early-stage revenues up to \$2 million Mid-stage revenues \$2 million to \$10 million	Same as Engrossed House Bill No. 1057 but also excludes entities with over 40 percent of revenues from real estate
Information reporting on investment in angel fund	Identifying information for investor plus amount and date of investment	Same as Engrossed House Bill No. 1057
Angel fund investments restricted to passthrough entities that are not 50 percent or more owned by single individual	Yes NOTE: The word "that" on page 3, line 9, should be removed.	Yes
Credits may be sold or transferred (see below)	Yes	No
Report to Legislative Management	Yes - Tax Commissioner to report in 2011-12 and 2013-14 interims	No
Legislative Management study	No	Yes - On sale, assignment, or transfer of any state tax credits
Sunset after four tax years	Yes	Yes

The sale or transfer of angel fund credits under Engrossed House Bill No. 1057 is subject to the following:

- A taxpayer is limited to lifetime transfer of \$100,000 of angel fund credits.
- A transferor and purchaser must file information regarding the transfer with the Tax Commissioner.
- The purchaser of a credit may not claim the credit for tax years before the purchase and may use the credit only under the limitations that applied to the transferor.
- A purchaser may not sell or transfer the credit.
- Proceeds of a sale or transfer are considered North Dakota income and are not subject to reduction for an operating loss of the taxpayer.