



Senate

General Assembly

File No. 247

January Session, 2009

Substitute Senate Bill No. 883

Senate, March 26, 2009

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING TAX CREDITS FOR ANGEL INVESTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009, and applicable to income years*
2 *commencing on or after January 1, 2009*) (a) As used in this section:

3 (1) "Angel investor" or "investor" means an accredited investor, as
4 defined by the Securities and Exchange Commission, who may seek
5 active involvement, such as consulting and mentoring, in a business,
6 such as consulting and mentoring, but "angel investor" or "investor"
7 does not include (A) persons controlling fifty per cent or more of the
8 Connecticut business invested in by the angel investor or investor, (B)
9 a venture capital company, or (C) any bank, bank and trust company,
10 insurance company, trust company, national bank, savings association
11 or building and loan association for activities that are a part of its
12 normal course of business;

13 (2) "Cash investment" means money or money equivalent in
14 consideration for qualified securities;

15 (3) "Connecticut business" means any business owned by an
16 individual or a partnership, association or corporation, and domiciled
17 in Connecticut, or any corporation, even if a wholly-owned subsidiary
18 of a foreign corporation, that does business primarily in Connecticut,
19 or does substantially all of such business's production in Connecticut;

20 (4) "Qualified securities" means (A) any form of equity, including a
21 general or limited partnership interest, common stock, preferred stock,
22 with or without voting rights, without regard to seniority position and
23 whether or not convertible into common stock, any form of
24 subordinate or convertible debt, or both, with warrants or other means
25 of equity conversion attached; or (B) a debt instrument, including a
26 note or debenture that is secured or unsecured, subordinated to the
27 general creditors of the debtor and requiring no payments of principal,
28 other than principal payments required to be made out of any future
29 profits of the debtor, for at least a seven-year period after
30 commencement of such debt instrument's term.

31 (b) There shall be allowed a credit against the tax imposed under
32 chapter 229 of the general statutes for a cash investment in the
33 qualified securities of a Connecticut business by an angel investor. The
34 credit shall be in an amount equal to twenty-five per cent of such
35 investor's cash investment, provided no credit shall be greater than one
36 hundred twenty-five thousand dollars. The credit shall be taken in the
37 year in which such cash investment is made by the angel investor.

38 (c) To be an eligible cash investment qualifying for a tax credit
39 pursuant to this section, such investment shall be in a business that (1)
40 has been approved as a qualified Connecticut business pursuant to
41 subsection (d) of this section, (2) has had annual gross revenues of less
42 than five million dollars in the most recent income year of the business,
43 (3) has fewer than twenty-five employees, more than half of whom
44 reside in this state, (4) has been operating in this state for less than ten
45 consecutive years, (5) is primarily owned by the management of the
46 business and their families, and (6) received less than one million
47 dollars in the tax credits provided by this section. No investor may

48 claim a credit pursuant to this section for cash investments in
49 Connecticut Innovations, Inc.

50 (d) (1) A Connecticut business may apply to the Commissioner of
51 Economic and Community Development for approval as a Connecticut
52 business qualified to receive cash investments eligible for tax credits
53 pursuant to this section. The application shall include (A) the name of
54 the business and a copy of the organizational documents of such
55 business; (B) a business plan, including a description of the business
56 and the management, product, market and financial plan of the
57 business; (C) a statement of the business innovative and proprietary
58 technology, product or service; (D) a statement of the potential
59 economic impact of the enterprise, including the number, location and
60 types of jobs expected to be created; (E) a description of the qualified
61 securities to be issued, the consideration to be paid for the qualified
62 securities, the amount of any tax credits requested and the earliest year
63 in which such tax credits may be redeemed; (F) a statement of the
64 amount, timing and projected use of the proceeds to be raised from the
65 proposed sale of qualified securities; and (G) such other information as
66 said commissioner may require.

67 (2) The Commissioner of Economic and Community Development
68 shall, on or before August 1, 2009, and monthly thereafter, compile a
69 list, categorized by estimated amount of tax credit and type of
70 qualified securities offered, submitted by qualified Connecticut
71 businesses. Any angel investor that intends to provide a cash
72 investment to a business on such list may apply to the Commissioner
73 of Revenue Services to reserve a tax credit in the amount indicated by
74 such investor. The aggregate amount of all tax credits which may be
75 reserved by the Commissioner of Revenue Services shall not exceed
76 ten million dollars in any one fiscal year.

77 (e) (1) The amount of such credit allowed to any investor pursuant
78 to this section shall not exceed the amount of tax due from such
79 investor under chapter 229 of the general statutes with respect to such
80 taxable year. Any tax credit not used in the taxable year during which

81 the cash investment was made may be carried forward for the five
 82 immediately succeeding taxable years until the full credit has been
 83 allowed.

84 (2) Any credit allowed pursuant to this section may be sold,
 85 assigned or otherwise transferred, in whole or in part, to one or more
 86 taxpayers, and such taxpayers may sell, assign or otherwise transfer, in
 87 whole or in part, such credit. If an investor sells, assigns or otherwise
 88 transfers a credit to another taxpayer, the transferor and transferee
 89 shall jointly submit written notification of such transfer to the
 90 Commissioner of Revenue Services not later than thirty days after such
 91 transfer. If such transferee sells, assigns or otherwise transfers a credit
 92 under this section to a subsequent transferee, such transferee and such
 93 subsequent transferee shall jointly submit written notification of such
 94 transfer to the Commissioner of Revenue Services not later than thirty
 95 days after such transfer. The notification after each transfer shall
 96 include the credit certificate number, the date of transfer, the amount
 97 of such credit transferred, the tax credit balance before and after the
 98 transfer, the tax identification numbers for both the transferor and the
 99 transferee, and any other information required by the Commissioner of
 100 Revenue Services. Failure to comply with this subdivision shall result
 101 in a disallowance of the tax credit until there is full compliance on the
 102 part of the transferor and the transferee and for a second transfer, on
 103 the part of the transferee, and the subsequent transferee.

| | | |
|---|--|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i> | New section |

CE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 10 \$ | FY 11 \$ |
|---|----------------------|---------------------|--------------------|
| Department of Economic & Community Development | GF - Cost | 32,256 - 64,511 | 32,256 - 64,511 |
| Comptroller Misc. Accounts (Fringe Benefits) ¹ | GF - Cost | 8,203 -16,405 | 8,203 -16,405 |
| Department of Revenue Services | GF - Cost | 150,000- 200,000 | None |
| Department of Revenue Services | GF - Revenue Loss | See Below | See Below |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a General Fund revenue loss to the personal income tax of up to \$10 million (the cap) per year beginning in FY 10. However, the initial revenue loss is likely to be less than \$10 million because of the limited number of Angel Investors currently active in Connecticut.

The bill will result in a cost to the Department of Economic and Community Development (DECD) for an Economic and Community Development Agent to review applications and produce a list of Connecticut businesses qualified to receive cash investments and eligible to receive an estimated amount of tax credits. The number of

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

applications is unknown, but is anticipated to require a part-time or full-time agent. The annual cost of a full-time Economic and Community Development Agent is approximately \$80,916 (\$64,511 salary, \$16,405 fringe benefits).

The bill will also result in a one-time cost in FY 10 to the Department of Revenue Services of \$150,000 to \$200,000 for systems development to administer the credit.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Source: Department of Administrative Services,
http://www.das.state.ct.us/HR/CompPlans/Cmp_Cur_list_doc.asp

OLR Bill Analysis**sSB 883*****AN ACT ESTABLISHING TAX CREDITS FOR ANGEL INVESTORS.*****SUMMARY:**

This bill establishes a transferable income tax credit for eligible people, known as “angels,” who invest in qualified Connecticut start-up businesses. The credit is 25% of a cash investment up to a maximum of \$125,000. The taxpayer must claim the credit in the income year in which he or she invested the cash.

Angels can carry unused credits forward for up to five years or can sell or otherwise transfer them to another taxpayer, who can in turn transfer them to a third person. The bill limits the total credits to \$10 million per year for all investments. It establishes criteria for credit-eligible investors, investments, and businesses, as well as a procedure for accessing the angel credits.

EFFECTIVE DATE: July 1, 2009. The credits apply to the income years starting on or after January 1, 2009.

ANGEL INVESTORS

To be an angel investor, a person must qualify as an “accredited investor” under the Securities and Exchange Commission (SEC) rules. (Accredited investors are typically upper-income, high-net-worth, individuals and entities—see BACKGROUND.) Angels may seek active involvement in the businesses in which they invest, through consulting or mentoring, but the following investors are ineligible:

1. a person who controls 50% or more of the business receiving the investment;

2. a venture capital company; and
3. any bank, savings and loan association, trust, insurance company, or similar entity for activities that are part of its normal business.

ELIGIBLE BUSINESSES

Qualifying Criteria

To receive a credit-eligible angel investment, a business must:

1. (a) have its principal place of business in Connecticut or (b) be a corporation that, even if it is the wholly owned subsidiary of an out-of-state corporation, either does business primarily, or has substantially all its production, in the state;
2. have gross revenue under \$5 million for its most recent income year;
3. have fewer than 25 employees with more than half residing in Connecticut;
4. have operated in Connecticut for less than 10 consecutive years;
5. be primarily owned by its management and their families;
6. have received less than \$1 million in angel credits under the bill; and
7. be included on the Department of Economic and Community Developments' (DECD) list of businesses qualified to receive credit-eligible angel investments.

The business receiving the angel investment can be owned by an individual, partnership, association, or a corporation.

List of Qualifying Businesses

The bill requires DECD to issue the first list of qualifying businesses by August 1, 2009, and update it monthly thereafter. The list must categorize businesses by the estimated amount of their tax credits and

the types of qualified securities they offer.

To be listed, a business must apply to the DECD commissioner and provide:

1. its name and a copy of its organizational documents;
2. a business plan that includes a description of the business and its management, product, market, and financial plan;
3. a statement of its innovative and proprietary technology, product, or service;
4. a statement of its potential economic impact, including the number, types, and location of the jobs it expects to create;
5. a description of the qualified securities it offers, their cost, the amount of requested tax credits, and the earliest year the credits can be redeemed;
6. the amount, timing, and projected use of the funds raised from the sale of the securities; and
7. any other information the commissioner requires.

An angle investor who intends to invest cash in a listed business must apply to the commissioner to reserve a tax credit for the amount he or she intends to invest.

QUALIFIED SECURITIES

To be eligible for a credit, an angel must make a cash investment in the business' qualified securities. These securities can be equity or debt instruments. Equity can include general or limited partnership interests, any type of common or preferred stock, or any combination of subordinate or convertible debt with a means of equity conversion attached. Debt instruments can be secured or unsecured, but must (1) be subordinated to the debtor's general creditors and (2) require no payments of principal, other than payments out of the debtor's future

profits, for at least the first seven years of their term.

Cash investments in Connecticut Innovation, Inc., the state's quasi-public venture capital agency, are ineligible for angel credits.

USING OR TRANSFERRING CREDITS

Credits cannot exceed an investor's total income tax due for a particular year. Investors can carry forward unused credits for up to five succeeding years or can sell or otherwise transfer them to others who may transfer them a second time. When a transfer occurs, the seller and the buyer must jointly notify the revenue services commissioner within 30 days and indicate (1) the credit certificate number, (2) the transfer date, (3) the amount of credits transferred, (4) the tax credit balance before and after the transfer, (6) the tax identification numbers of both parties, and (7) any other information the commissioner requires. Violation of the notice requirement disallows the credits until the parties comply.

BACKGROUND

Accredited Investors

SEC regulations (Regulation D, Rule 501) define an accredited investor as:

1. a bank, insurance company, registered investment company, business development company, or small business investment company;
2. an employee benefit plan, as defined in the federal Employee Retirement Income Security Act (ERISA), if (a) it has more than \$5 million in total assets or (b) a bank, insurance company, or registered investment advisor makes its investment decisions;
3. a charitable organization, corporation, or partnership with more than \$5 million in assets;
4. a director, executive officer, or general partner of the company selling securities;

5. a person with individual net worth, or a couple with joint net worth, over \$1 million at the time of the security purchase;
6. a person with income over \$200,000, or a couple with joint income over \$300,000, in each of the two most recent years and a reasonable expectation of the same income in the current year; and
7. a trust with more than \$5 million in assets that is not formed to acquire the offered securities, and whose purchases are made by a sophisticated person.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 19 Nay 1 (03/10/2009)