

112TH CONGRESS
1ST SESSION

S. 256

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for equity investments in small business concerns.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2011

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for equity investments in small business concerns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Opportunity
5 Act of 2011”.

6 **SEC. 2. ANGEL INVESTMENT TAX CREDIT.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986 is amended by adding at the end the following new
10 section:

1 **“SEC. 30E. ANGEL INVESTMENT TAX CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—There shall be al-
3 lowed as a credit against the tax imposed by this chapter
4 for the taxable year an amount equal to 25 percent of the
5 qualified equity investments made by a qualified investor
6 during the taxable year.

7 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
8 poses of this section—

9 “(1) IN GENERAL.—The term ‘qualified equity
10 investment’ means any equity investment in a quali-
11 fied small business entity if—

12 “(A) such investment is acquired by the
13 taxpayer at its original issue (directly or
14 through an underwriter) solely in exchange for
15 cash, and

16 “(B) such investment is designated for
17 purposes of this section by the qualified small
18 business entity.

19 “(2) EQUITY INVESTMENT.—The term ‘equity
20 investment’ means—

21 “(A) any form of equity, including a gen-
22 eral or limited partnership interest, common
23 stock, preferred stock (other than nonqualified
24 preferred stock as defined in section 351(g)(2)),
25 with or without voting rights, without regard to
26 seniority position and whether or not convert-

1 ible into common stock or any form of subordi-
2 nate or convertible debt, or both, with warrants
3 or other means of equity conversion, and

4 “(B) any capital interest in an entity
5 which is a partnership.

6 “(3) REDEMPTIONS.—A rule similar to the rule
7 of section 1202(e)(3) shall apply for purposes of this
8 subsection.

9 “(c) QUALIFIED SMALL BUSINESS ENTITY.—For
10 purposes of this section—

11 “(1) IN GENERAL.—The term ‘qualified small
12 business entity’ means any domestic corporation or
13 partnership if such corporation or partnership—

14 “(A) is a small business (as defined in sec-
15 tion 41(b)(3)(D)(iii)),

16 “(B) has its headquarters in the United
17 States,

18 “(C) is engaged in a high technology trade
19 or business related to—

20 “(i) advanced materials, nanotechnol-
21 ogy, or precision manufacturing,

22 “(ii) aerospace, aeronautics, or de-
23 fense,

24 “(iii) biotechnology or pharma-
25 ceuticals,

1 “(iv) electronics, semiconductors, soft-
2 ware, or computer technology,

3 “(v) energy, environment, or clean
4 technologies,

5 “(vi) forest products or agriculture,

6 “(vii) information technology, commu-
7 nication technology, digital media, or
8 photonics,

9 “(viii) life sciences or medical
10 sciences,

11 “(ix) marine technology or aqua-
12 culture,

13 “(x) transportation, or

14 “(xi) any other high technology trade
15 or business as determined by the Sec-
16 retary,

17 “(D) has been in existence for less than 5
18 years as of the date of the qualified equity in-
19 vestment,

20 “(E) employs less than 100 full-time equiv-
21 alent employees as of the date of such invest-
22 ment,

23 “(F) has more than 50 percent of the em-
24 ployees performing substantially all of their

1 services in the United States as of the date of
2 such investment, and

3 “(G) has equity investments designated for
4 purposes of this paragraph.

5 “(2) DESIGNATION OF EQUITY INVEST-
6 MENTS.—For purposes of paragraph (1)(G), an eq-
7 uity investment shall not be treated as designated if
8 such designation would result in the aggregate
9 amount which may be taken into account under this
10 section with respect to equity investments in such
11 corporation or partnership exceeds—

12 “(A) \$10,000,000, taking into account the
13 total amount of all qualified equity investments
14 made by all taxpayers for the taxable year and
15 all preceding taxable years,

16 “(B) \$2,000,000, taking into account the
17 total amount of all qualified equity investments
18 made by all taxpayers for such taxable year,
19 and

20 “(C) \$1,000,000, taking into account the
21 total amount of all qualified equity investments
22 made by the taxpayer for such taxable year.

23 “(d) QUALIFIED INVESTOR.—For purposes of this
24 section—

1 “(1) IN GENERAL.—The term ‘qualified investor’
2 means an accredited investor, as defined by the
3 Securities and Exchange Commission, investor network,
4 or investor fund who review new or proposed
5 businesses for potential investment.

6 “(2) INVESTOR NETWORK.—The term ‘investor
7 network’ means a group of accredited investors organized
8 for the sole purpose of making qualified equity
9 investments.

10 “(3) INVESTOR FUND.—

11 “(A) IN GENERAL.—The term ‘investor
12 fund’ means a corporation that for the applicable
13 taxable year is treated as an S corporation
14 or a general partnership, limited partnership,
15 limited liability partnership, trust, or limited liability
16 company and which for the applicable
17 taxable year is not taxed as a corporation.

18 “(B) ALLOCATION OF CREDIT.—

19 “(i) IN GENERAL.—Except as provided
20 in clause (ii), the credit allowed
21 under subsection (a) shall be allocated to
22 the shareholders or partners of the investor
23 fund in proportion to their ownership interest
24 or as specified in the fund’s organizational
25 documents, except that tax-exempt

1 investors shall be allowed to transfer their
 2 interest to investors within the fund in ex-
 3 change for future financial consideration.

4 “(ii) SINGLE MEMBER LIMITED LI-
 5 ABILITY COMPANY.—If the investor fund is
 6 a single member limited liability company
 7 that is disregarded as an entity separate
 8 from its owner, the credit allowed under
 9 subsection (a) may be claimed by such lim-
 10 ited liability company’s owner, if such
 11 owner is a person subject to the tax under
 12 this title.

13 “(4) EXCLUSION.—The term ‘qualified investor’
 14 does not include—

15 “(A) a person controlling at least 50 per-
 16 cent of the qualified small business entity,

17 “(B) an employee of such entity, or

18 “(C) any bank, bank and trust company,
 19 insurance company, trust company, national
 20 bank, savings association or building and loan
 21 association for activities that are a part of its
 22 normal course of business.

23 “(e) NATIONAL LIMITATION ON AMOUNT OF INVEST-
 24 MENTS DESIGNATED.—

1 “(1) IN GENERAL.—There is an angel invest-
2 ment tax credit limitation of \$500,000,000 for each
3 of calendar years 2011 through 2015.

4 “(2) ALLOCATION OF LIMITATION.—The limita-
5 tion under paragraph (1) shall be allocated by the
6 Secretary among qualified small business entities se-
7 lected by the Secretary.

8 “(3) CARRYOVER OF UNUSED LIMITATION.—If
9 the angel investment tax credit limitation for any
10 calendar year exceeds the aggregate amount allo-
11 cated under paragraph (2) for such year, such limi-
12 tation for the succeeding calendar year shall be in-
13 creased by the amount of such excess. No amount
14 may be carried under the preceding sentence to any
15 calendar year after 2020.

16 “(f) APPLICATION WITH OTHER CREDITS.—

17 “(1) BUSINESS CREDIT TREATED AS PART OF
18 GENERAL BUSINESS CREDIT.—Except as provided in
19 paragraph (2), the credit which would be allowed
20 under subsection (a) for any taxable year (deter-
21 mined without regard to this subsection) shall be
22 treated as a credit listed in section 38(b) for such
23 taxable year (and not allowed under subsection (a)).

24 “(2) PERSONAL CREDIT.—

1 “(A) IN GENERAL.—In the case of an indi-
2 vidual who elects the application of this para-
3 graph, for purposes of this title, the credit al-
4 lowed under subsection (a) for any taxable year
5 (determined after application of paragraph (1))
6 shall be treated as a credit allowable under sub-
7 part A for such taxable year.

8 “(B) LIMITATION BASED ON AMOUNT OF
9 TAX.—In the case of a taxable year to which
10 section 26(a)(2) does not apply, the credit al-
11 lowed under subpart A for any taxable year (de-
12 termined after application of paragraph (1)) by
13 reason of subparagraph (A) shall not exceed the
14 excess of—

15 “(i) the sum of the regular tax liabil-
16 ity (as defined in section 26(b)) plus the
17 tax imposed by section 55, over

18 “(ii) the sum of the credits allowable
19 under subpart A (other than this section)
20 and section 27 for the taxable year.

21 “(C) CARRYFORWARD OF UNUSED CRED-
22 IT.—If the credit allowable under subsection (a)
23 by reason of subparagraph (A) exceeds the limi-
24 tation imposed by section 26(a)(1) or subpara-
25 graph (B), whichever is applicable, for such tax-

1 able year, reduced by the sum of the credits al-
2 lowable under subpart A (other than this sec-
3 tion) for such taxable year, such excess shall be
4 carried to each of the succeeding 20 taxable
5 years to the extent that such unused credit may
6 not be taken into account under subsection (a)
7 by reason of subparagraph (A) for a prior tax-
8 able year because of such limitation.

9 “(g) SPECIAL RULES.—

10 “(1) RELATED PARTIES.—For purposes of this
11 section—

12 “(A) IN GENERAL.—All related persons
13 shall be treated as 1 person.

14 “(B) RELATED PERSONS.—A person shall
15 be treated as related to another person if the
16 relationship between such persons would result
17 in the disallowance of losses under section 267
18 or 707(b).

19 “(2) BASIS.—For purposes of this subtitle, the
20 basis of any investment with respect to which a cred-
21 it is allowable under this section shall be reduced by
22 the amount of such credit so allowed. This sub-
23 section shall not apply for purposes of sections 1202,
24 1397B, and 1400B.

1 “(3) RECAPTURE.—The Secretary shall, by reg-
2 ulations, provide for recapturing the benefit of any
3 credit allowable under subsection (a) with respect to
4 any qualified equity investment which is held by the
5 taxpayer less than 3 years, except that no benefit
6 shall be recaptured in the case of—

7 “(A) transfer of such investment by reason
8 of the death of the taxpayer,

9 “(B) transfer between spouses,

10 “(C) transfer incident to the divorce (as
11 defined in section 1041) of such taxpayer, or

12 “(D) a transaction to which section 381(a)
13 applies (relating to certain acquisitions of the
14 assets of one corporation by another corpora-
15 tion).

16 “(h) REGULATIONS.—The Secretary shall prescribe
17 such regulations as may be appropriate to carry out this
18 section, including regulations—

19 “(1) which prevent the abuse of the purposes of
20 this section,

21 “(2) which impose appropriate reporting re-
22 quirements, and

23 “(3) which apply the provisions of this section
24 to newly formed entities.”.

1 (b) CREDIT MADE PART OF GENERAL BUSINESS
2 CREDIT.—Subsection (b) of section 38 of the Internal
3 Revenue Code of 1986 is amended—

4 (1) in paragraph (35), by striking “plus”;

5 (2) in paragraph (36), by striking the period at
6 the end and inserting “, plus”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(37) the portion of the angel investment tax
10 credit to which section 30E(f)(1) applies.”.

11 (c) CONFORMING AMENDMENTS.—

12 (1) Section 1016(a) of the Internal Revenue
13 Code of 1986 is amended by striking “and” at the
14 end of paragraph (36), by striking the period at the
15 end of paragraph (37) and inserting “, and”, and by
16 inserting after paragraph (37) the following new
17 paragraph:

18 “(38) to the extent provided in section
19 30E(g)(2).”.

20 (2) Section 24(b)(3)(B) of such Code is amend-
21 ed by striking “and 30D” and inserting “30D, and
22 30E”.

23 (3) Section 25(e)(1)(C)(ii) of such Code is
24 amended by inserting “30E,” after “30D,”.

1 (4) Section 25A(i)(5)(B) of such Code is
2 amended by striking “and 30D” and inserting “,
3 30D, and 30E”.

4 (5) Section 25A(i)(5) of such Code is amended
5 by inserting “30E,” after “30D,”.

6 (6) Section 25B(g)(2) of such Code is amended
7 by striking “and 30D” and inserting “30D, and
8 30E”.

9 (7) Section 26(a)(1) of such Code is amended
10 by striking “and 30D” and inserting “30D, and
11 30E”.

12 (8) Section 30(c)(2)(B)(ii) of such Code is
13 amended by striking “and 30D” and inserting “,
14 30D, and 30E”.

15 (9) Section 30B(g)(2)(B)(ii) of such Code is
16 amended by striking “and 30D” and inserting
17 “30D, and 30E”.

18 (10) Section 30D(d)(2)(B)(ii) of such Code is
19 amended by striking “and 25D” and inserting “,
20 25D, and 30E”.

21 (11) Section 904(i) of such Code is amended by
22 striking “and 30D” and inserting “30D, and 30E”.

23 (12) Section 1400C(d)(2) of such Code is
24 amended by striking “and 30D” and inserting
25 “30D, and 30E”.

1 (d) CLERICAL AMENDMENT.—The table of sections
2 for subpart B of part IV of subchapter A of chapter 1
3 of the Internal Revenue Code of 1986 is amended by add-
4 ing at the end the following new item:

“Sec. 30E. Angel investment tax credit.”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to investments made after Decem-
7 ber 31, 2010, in taxable years ending after such date.

8 (f) REGULATIONS ON ALLOCATION OF NATIONAL
9 LIMITATION.—Not later than 120 days after the date of
10 the enactment of this Act, the Secretary of the Treasury
11 or the Secretary’s delegate shall prescribe regulations
12 which specify—

13 (1) how small business entities shall apply for
14 an allocation under section 30E(e)(2) of the Internal
15 Revenue Code of 1986, as added by this section,

16 (2) the competitive procedure through which
17 such allocations are made,

18 (3) the criteria for determining an allocation to
19 a small business entity, including—

20 (A) whether the small business entity is lo-
21 cated in a State that is historically underserved
22 by angel investors and venture capital investors,

23 (B) whether the small business entity has
24 received an angel investment tax credit, or its

1 equivalent, from the State in which the small
2 business entity is located and registered,

3 (C) whether small business entities in
4 low-, medium-, and high-population density
5 States are receiving allocations, and

6 (D) whether the small business entity has
7 been awarded a Small Business Innovative Re-
8 search or Small Business Technology Transfer
9 grant from a Federal agency,

10 (4) the actions that such Secretary or delegate
11 shall take to ensure that such allocations are prop-
12 erly made to qualified small business entities, and

13 (5) the actions that such Secretary or delegate
14 shall take to ensure that angel investment tax cred-
15 its are allocated and issued to the taxpayer.

16 (g) AUDIT AND REPORT.—Not later than January
17 31, 2014, the Comptroller General of the United States,
18 pursuant to an audit of the angel investment tax credit
19 program established under section 30E of the Internal
20 Revenue Code of 1986 (as added by subsection (a)), shall
21 report to Congress on such program, including all quali-
22 fied small business entities that receive an allocation of
23 an angel investment credit under such section.

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