

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INCOME TAX CREDITS ASSOCIATED WITH
5 INVESTING IN AND OPERATING A QUALIFYING MONTANA BUSINESS; DESCRIBING ELIGIBLE
6 INVESTMENTS IN QUALIFYING MONTANA BUSINESSES; PROVIDING INCOME TAX CREDITS FOR
7 INVESTORS AND QUALIFYING MONTANA BUSINESSES; ALLOWING A TRANSFER OF AN INCOME TAX
8 CREDIT RECEIVED BY A QUALIFYING MONTANA BUSINESS; REQUIRING THE DEPARTMENT OF
9 REVENUE TO ADMINISTER THE TRANSFER OF THE TAX CREDITS; REQUIRING A PERFORMANCE
10 AUDIT BY THE LEGISLATIVE AUDITOR; PROVIDING DEFINITIONS; PROVIDING RULEMAKING
11 AUTHORITY; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 6], the following
16 definitions apply:

17 (1) (a) "Cash investment" means funds that are distributed by an investor to a business during the tax
18 year that are associated with either the immediate purchase of shares or are an unsecured loan with provisions
19 for the loan to convert into shares of the company under circumstances outside the direct control of the
20 investor.

21 (b) The term does not include pledges of equity infusions that are not distributed to a business during
22 the tax year.

23 (2) "Investor" means a person or entity that provides a cash investment from a qualifying fund.

24 (3) "Officer" means an employee of a business who holds a management-level position.

25 (4) "Proprietary technology" means the technical innovations that are unique and legally owned or
26 licensed by a business. The term includes, without limitation, innovations that are patented, patent pending, a
27 subject of trade secrets, or copyrighted.

28 (5) "Qualified field" means the field of aerospace, agriculture, renewable energy, energy efficiency

1 and conservation, environmental engineering, food technology, information technology, materials science
2 technology, nanotechnology, telecommunications, biotechnology, medical device products, pharmaceuticals,
3 diagnostics, biologicals, chemistry, veterinary science, tourism, forestry, mining, manufacturing, photonics, or
4 transportation.

5 (6) "Qualifying fund" means a fund comprising cash, securities, or other investment assets used to
6 provide a cash investment in a qualifying Montana business. The term includes investments from any person or
7 entity.

8 (7) (a) "Qualifying Montana business" means a business:

9 (i) engaged in or committed to engage in innovation in the state in one of the following as its primary
10 business activity:

11 (A) using proprietary technology to add value to a product, process, or service in a qualified field; or

12 (B) researching, developing, or producing a proprietary product, process, or service in a qualified
13 field;

14 (ii) that conducts a substantial amount of its business from the state;

15 (iii) with a minimum of two employees and at least 65% of the business's employees employed in the
16 state;

17 (iv) with at least 65% of the business's total payroll paid or incurred in the state and tangible assets
18 totaling less than \$10 million; and

19 (v) that uses the investments provided for in this section to perform daily functions of the business,
20 including but not limited to expanding office or manufacturing facilities, laboratories, cleaning rooms, buying
21 equipment, and hiring employees, or to qualify for loans from a financial institution.

22 (b) The term does not include, other than the activities specifically listed in subsection (7)(a)(i), a
23 business engaged in real estate development, insurance, banking, lending, lobbying, political consulting,
24 information technology consulting, wholesale or retail trade, leisure, construction, or professional services
25 provided by attorneys, accountants, business consultants, physicians, or health care consultants.

26 (8) "Related" means a father, mother, spouse, son, or daughter.

27

28 **NEW SECTION. Section 2. Small business investment tax credit -- investor capital credit. (1)**

1 For tax years 2022 through 2029, an investor is allowed as a credit against taxes otherwise imposed by this
2 chapter a percentage of a cash investment made by the investor during the year to a qualifying Montana
3 business.

4 (2) The amount of the credit is 30% of the total cash investments in a qualifying Montana business,
5 and the minimum cash investment to qualify for the credit is \$25,000.

6 (3) A credit of up to \$75,000 may be claimed in a year by an investor. If the credit calculated as
7 provided in subsection (2) exceeds \$75,000, the unused portion may be carried forward to a subsequent tax
8 year, but the total credit claimed in all years by an investor may not exceed \$750,000.

9 (4) The credit allowed under this section may not exceed the investor's income tax liability. The
10 unused portion of a credit may be carried forward for 7 succeeding tax years.

11 (5) The credit may not be claimed by a principal or officer of a qualifying fund if the principal or officer
12 is also:

13 (a) a principal or officer of a qualifying Montana business in which the qualifying fund invests; or

14 (b) related to a principal or officer of a qualifying Montana business in which the qualifying fund
15 invests.

16
17 **NEW SECTION. Section 3. Small business investment tax credit -- business credit.** (1) For tax
18 years 2022 through 2029, a qualifying Montana business is allowed as a credit against taxes otherwise
19 imposed by this chapter a percentage of the cash investment received from an investor during the year. The
20 credit must be claimed or transferred for the tax year in which the qualifying Montana business received the
21 cash investment.

22 (2) A qualifying Montana business that desires to claim or transfer the tax credit provided for in this
23 section shall submit detailed information to the department regarding the total amount of cash investments
24 received, the name and taxpayer identification number of the investor that provided the cash investment, and
25 any further information required by the department to properly administer the credit.

26 (3) Subject to the aggregate limit in subsection (4), the percentage of cash investment that may be
27 claimed or transferred as a tax credit during each tax year is as follows:

28 (a) 0% of the cash investment if the amount is below \$150,000 during the tax year;

1 (b) 25% of the cash investment on the first \$500,000, or any part of that cash investment subject to
2 the minimum cash investment amount provided in subsection (3)(a);

3 (c) 20% on the next \$250,000 of the cash investment, or any part of that cash investment;

4 (d) 10% on the next \$250,000 of the cash investment, or any part of that cash investment; and

5 (e) 0% on any cash investment amount in excess of \$1 million.

6 (4) (a) The aggregate amount of tax credits allowed under this section is \$4 million for each tax year.

7 (b) The department shall approve the tax credits provided for under this section on a first-come, first-
8 served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a
9 qualifying Montana business claims a tax credit after the amount of credits claimed exceeds the aggregate limit,
10 the taxpayer's return will be processed without regard to the credit.

11 (5) The credit may not be claimed by a principal or officer of a qualifying fund if the principal or officer
12 is also:

13 (a) a principal or officer of a qualifying Montana business in which the qualifying fund invests; or

14 (b) related to a principal or officer of a qualifying Montana business in which the qualifying fund
15 invests.

16 (6) In order to claim the credit provided by this section, a qualifying business must meet at least two of
17 the following requirements:

18 (a) have fewer than 50 employees;

19 (b) have been in operation fewer than 7 years; and

20 (c) have had previous equity infusions of less than \$10 million.

21 (7) A qualifying Montana business is not required to offset a tax liability, and the credit may be carried
22 forward for 2 years. Any portion of a credit that is not used by a qualifying Montana business may be
23 transferred as provided in [section 4] prior to the expiration of the 2-year carryforward.

24 (8) The credit allowed under this section is not refundable and may not exceed the income tax liability
25 of a qualifying Montana business or a transferee.

26
27 **NEW SECTION. Section 4. Transfer of business tax credit.** (1) A tax credit or a portion of a tax
28 credit for a qualifying Montana business approved and calculated as provided in [section 3] but not claimed in

1 whole or in part by the qualifying Montana business may be transferred by the qualifying Montana business to
2 another taxpayer as provided in this section.

3 (2) The transferred credit may be used as a credit against the taxes imposed by chapter 31 and this
4 chapter. A credit may be transferred only one time and may not involve more than one transferee. If the credit is
5 transferred to a small business corporation, a partnership, a limited liability partnership, or a limited liability
6 company, the credit must be attributed to the individual shareholders, partners, members, or managers in the
7 same proportion used to report income or loss for state tax purposes.

8 (3) A qualifying Montana business that transfers a tax credit shall submit a written notification of the
9 transfer of the tax credit to the department within 30 days after the transfer. The notification must include the
10 following information:

- 11 (a) the tax credit balance before and after the transfer;
- 12 (b) the tax year the credit was realized;
- 13 (c) the tax identification number of the taxpayer to whom the credit was transferred;
- 14 (d) the amount of credit transferred;
- 15 (e) the date of the transfer; and
- 16 (f) any other information required by the department.

17 (4) A transferee has rights to claim the tax credit available to the qualifying Montana business only at
18 the time of the transfer, except that the carryforward is extended. A transferee is not required to offset a tax
19 liability in the year of the transfer, and the credit may be carried forward for 2 tax years after the year of the
20 transfer. A transferred credit is not refundable and may not exceed the income tax liability of the transferee. The
21 department shall administer the transfer of credits pursuant to [section 3] and this section.

22

23 NEW SECTION. **Section 5. Statement of purpose -- rulemaking.** (1) Pursuant to 5-4-104, the
24 legislature finds that the purpose of the tax credits provided for in [sections 2 through 4] is to encourage
25 investment in small businesses and to increase the number of high-wage jobs in the state.

26 (2) The department shall adopt rules to implement and administer [sections 1 through 4] and this
27 section. The rules must:

- 28 (a) include a process for the department to certify a qualifying Montana business and qualifying funds;

- 1 (b) include a process for the transfer of credits; and
- 2 (c) provide for the disallowance of a credit when it is not part of a bona fide business transaction or
- 3 when an investor does not exercise due diligence prior to providing a cash investment to a qualifying Montana
- 4 business.

5

6 **NEW SECTION. Section 6. Legislative performance audit required.** (1) By June 30, 2028, the

7 legislative auditor shall present a performance audit report to the legislative audit committee and the revenue

8 interim committee evaluating the results of the tax credit programs in [sections 1 through 5].

- 9 (2) The legislative audit report must include but is not limited to:
- 10 (a) the number of taxpayers claiming the credits and the corresponding credit amounts;
 - 11 (b) the types of investments made by the recipients of credits under [section 1];
 - 12 (c) the financial impact of the investments in qualifying Montana businesses;
 - 13 (d) whether the credits materially affected the amount and type of investments made and the success
 - 14 of those investments, with particular attention to whether the credits encouraged investors to invest in projects
 - 15 with a lower likelihood of financial success;
 - 16 (e) the amount of economic activity, including the number of jobs and the wages of those jobs
 - 17 generated by the investments;
 - 18 (f) the incremental change in Montana state and local taxes paid as a result of the allowance of the
 - 19 credits;
 - 20 (g) state and local revenue generated by the investments; and
 - 21 (h) additional state and local costs attributable to the investments.

22 (3) The department of revenue shall work closely with the legislative auditor to provide information

23 necessary to complete the audit report.

24 (4) Following completion of the legislative audit, the revenue interim committee shall present to the

25 legislature meeting in the 2029 regular session a recommendation on whether the tax credit programs in

26 [sections 1 through 5] should be:

- 27 (a) immediately terminated;
- 28 (b) extended for a period of up to 8 years; or

1 (c) amended and extended for a period of up to 8 years.

2 (5) The report provided by the legislative auditor to the interim committees must be in summary
3 fashion to protect individual taxpayer confidential information.

4
5 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be
6 codified as an integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part 23,
7 apply to [sections 1 through 6].

8
9 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12
13 **NEW SECTION. Section 9. Applicability.** [This act] applies to tax years beginning after December
14 31, 2021.

15
16 **NEW SECTION. Section 10. Termination.** (1) Except as provided in subsection (2), [this act]
17 terminates December 31, 2036.

18 (2) [Section 6] terminates June 30, 2029.

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