

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.

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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

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## 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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