

# Legislative Analysis

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## ANGEL INVESTOR TAX CREDIT

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5786 (reported from committee as H-1)**

**House Bill 5787 (reported without amendment)**

**Sponsor: Rep. Jeff Farrington**

**Committee: Tax Policy**

**Revised on 11-4-16**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 5786 would amend the Income Tax Act to provide an income tax credit equal to 20% of an investment made by a taxpayer in certain small, new, Michigan-based businesses known as "seed stage or early stage" businesses<sup>1</sup>. (Proposed MCL 206.278a)

House Bill 5787 would make a complementary amendment to the Michigan Strategic Fund Act to require the MSF board to determine eligibility and issue certificates for the investment tax credits. (Proposed MCL 125.2001)

[This credit is similar to the Venture Investment Credit created in the Income Tax Act in 2010, at MCL 206.278, but ended one year early as part of the comprehensive state tax overhaul enacted in 2011.]

To qualify for the credit, a taxpayer would have to make such an investment, after December 31, 2016, and before January 1, 2022, alongside of, or through, a seed venture capital or angel investor group registered with the Michigan Strategic Fund. A minimum investment would be \$20,000. There would be a \$200,000 limit on the tax credit for all such investments made by any one taxpayer in any one year. Further, a taxpayer could not claim a tax credit in an amount over \$200,000 for investment in any one business. The total amount of credits that the MSF could certify under this program would be capped \$6 million.

A taxpayer would have to take this credit in equal installments over two years. If a credit exceeded a taxpayer's tax liability in any tax year, the credit would not be refunded but could be carried forward for up to five years or until used up, whichever occurs first.

To qualify for investment under this program, a business could not have a pre-investment valuation of more than \$10 million and could not have more than 100 full-time-equivalent employees. It could have been in existence no more than five years, or ten years, if its business activity is derived from research at a Michigan university or at a Michigan 501(c)(3) tax exempt organization. A qualified business must have its headquarters in

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<sup>1</sup> The bill defines "seed stage company" as a business initiated with funding from its founders, family, or friends and may have received funding from an angel investor or angel investor group and is currently seeking additional investment to develop prototypes, identify customers, and general sufficient investor interest to further its business progression. An "early stage company" is one that began as a seed stage company and is operational but requires additional investment capital before it can generate sufficient cash flow to finance and support operations.

Michigan, have a majority of its employees working in the state, and be domiciled in the state. Retail businesses would not qualify, nor would businesses that had claimed credits under the Michigan Business Tax (MBT). The MSF could not certify more than \$1 million in qualified investments in any one qualified business.

### ***Obtaining the Tax Credit***

To claim the credit, the taxpayer would have to request certification from the Michigan Strategic Fund within 60 days of making the investment. A credit could not be claimed without a certificate issued by the MSF.

The taxpayer would attach the certificate issued by the MSF to the annual income tax return. The certificate would specify (1) the total amount of investment made during the tax year by the taxpayer in each qualified business; (2) the total amount of qualified investments in each qualified business, if different from the previous amount; and (3) the total amount of the credit that the taxpayer could claim for the designated tax year.

The board of the MSF would have to develop an application and approval process to certify investments, and must adopt a program describing parameters and criteria to be used for approving investments. As part of the program the board could determine and describe the conditions to be met to be considered as an investment *alongside or through* an approved angel group, seed capital firm, or venture capital firm.

The MSF would have to forward a copy of each certificate to the governor, president of the MSF, chair of the Senate Finance Committee, chair of the House Tax Policy Committee, and the directors of the House and Senate Fiscal Agencies.

### ***Investments Not Eligible for Credit***

A credit would not be available for investments made in a business in cases where a member of the investor's family is an employee or owner, or with which a member of the investor's family has a pre-existing fiduciary relationship. Taxpayers also couldn't claim the credit for an investment in a business that engages in life sciences technology unless its activities meet the definition of "life sciences" in the Michigan Strategic Fund Act.<sup>2</sup>

A credit could not be approved for a taxpayer who had been convicted of a felony involving fiduciary obligation or the conversion or misappropriation of funds or insurance accounts, theft, deceit, fraud, misrepresentation or corruption. Further, a credit would not be available to a taxpayer who was in a bankruptcy proceeding or who had not paid or entered into an installment plan regarding a final assessment of an unpaid state tax liability for which all rights of appeal had been exhausted.

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<sup>2</sup> See Sec. 88(n) of the Michigan Strategic Fund Act for what is included and excluded. Notable exclusions include stem cell research with human embryonic tissue and various activities prohibited under the Michigan Public Health Code. See:

[http://www.legislature.mi.gov/\(S\(ufvdp355gb3ygszri432cuc0\)\)/documents/mcl/pdf/mcl-125-2088a.pdf](http://www.legislature.mi.gov/(S(ufvdp355gb3ygszri432cuc0))/documents/mcl/pdf/mcl-125-2088a.pdf)

## **FISCAL IMPACT:**

As written, the bills would reduce income tax revenue by a maximum of \$6 million, although the impact would be spread over a minimum of two years. House Bill 5786 dictates that a taxpayer claiming a credit must do so in equal installments over a two-year period, and that if the credit exceeds the taxpayer's liability in a given year, the excess credit is not refundable but may be carried forward for a maximum of five years.

The bulk of the revenue reduction would likely be borne by the General Fund, although to the extent a taxpayer reduced estimated payments or withholding in anticipation of receiving a credit, School Aid Fund revenue would also decline by a small amount.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.