
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36 Session of
2013

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PETRI, R. BROWN, THOMAS, HICKERNELL, PICKETT, LAWRENCE, MOUL
AND DENLINGER, JANUARY 8, 2013

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 8, 2013

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, providing for an angel investment tax
3 credit.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 12 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 38

9 ANGEL INVESTMENT TAX CREDIT

10 Sec.

11 3801. Scope of chapter.

12 3802. Definitions.

13 3803. Establishment.

14 3804. Qualified business plans.

15 3805. Credit for qualified investment.

16 3806. Carryover, application of tax credit, carryback, refund

1 and assignment.

2 3807. Time limitation.

3 3808. Limitation on tax credits.

4 3809. Shareholder, owner or member pass-through.

5 3810. Repayment and penalty.

6 3811. Reports.

7 3812. Termination.

8 3813. Guidelines.

9 § 3801. Scope of chapter.

10 This chapter relates to angel investment tax credits.

11 § 3802. Definitions.

12 The following words and phrases, when used in this chapter,
13 shall have the meanings given to them in this section, unless
14 the context clearly indicates otherwise:

15 "Accredited investor." Any of the following:

16 (1) An individual whose net worth or joint net worth
17 with the individual's spouse exceeds \$1,000,000.

18 (2) An individual who had individual income in excess of
19 \$200,000 in each of the two most recent years or joint income
20 with that individual's spouse in excess of \$300,000 in each
21 of those years and has a reasonable expectation of reaching
22 the same income level in the current year.

23 (3) Any entity in which all of the equity owners meet
24 paragraph (1) or (2).

25 "Business plan." An outline of business structure and a
26 formal statement of business goals, including an explanation of
27 how the goals are anticipated to be achieved.

28 "Department." The Department of Community and Economic
29 Development of the Commonwealth.

30 "Pass-through entity." A partnership as defined in section

1 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
2 Tax Reform Code of 1971, or a Pennsylvania S corporation as
3 defined in section 301(n.1) of the Tax Reform Code of 1971.

4 "Qualified business venture." A business that is all of the
5 following:

6 (1) Headquartered or that will establish its
7 headquarters in this Commonwealth prior to the time the
8 taxpayer is eligible to apply for the tax credit.

9 (2) Maintains its headquarters in this Commonwealth for
10 at least five years after the taxpayer applied for the tax
11 credit.

12 (3) Where at least 51% of its employees are employed in
13 this Commonwealth at the time the taxpayer applies for the
14 tax credit.

15 (4) Has fewer than 100 employees at the time the
16 taxpayer applies for the tax credit.

17 (5) Has been in operation in this Commonwealth for not
18 more than five consecutive years at the time the taxpayer
19 applies for the tax credit.

20 (6) Has not received more than \$5,000,000, in the
21 aggregate, in private equity investments.

22 "Qualified investment." A payment of money or its equivalent
23 for a private equity interest in a qualified business venture.

24 "Qualified tax liability." The liability for taxes imposed
25 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,
26 No.2), known as the Tax Reform Code of 1971. The term shall
27 include the liability for taxes imposed under Article III of the
28 Tax Reform Code of 1971 on an owner of a pass-through entity.

29 "Secretary." The Secretary of Community and Economic
30 Development of the Commonwealth.

1 "Tax credit." The angel investment tax credit authorized
2 under this chapter.

3 "Taxpayer." A person subject to tax under Article III, IV or
4 VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
5 Reform Code of 1971. The term shall include the shareholder,
6 owner or member of a pass-through entity that receives an angel
7 investment tax credit.

8 § 3803. Establishment.

9 There is established a tax credit program to be known as the
10 Angel Investment Tax Credit. The program shall:

11 (1) Create a business environment that attracts and
12 encourages early-stage financing for businesses with the
13 potential for high growth.

14 (2) Increase capital investment.

15 (3) Encourage job creation.

16 § 3804. Qualified business plans.

17 In order for a business plan to be qualified, the business
18 plan shall:

19 (1) Indicate the potential for increasing jobs in this
20 Commonwealth.

21 (2) Indicate the potential for increasing capital
22 investment in this Commonwealth.

23 (3) Specify that the plan is based upon the development
24 or commercialization of intellectual property for which
25 either of the following apply:

26 (i) patent protection under 35 U.S.C. (relating to
27 patents) has been secured or is pending; or

28 (ii) a copyright under 17 U.S.C. (relating to
29 copyrights) has been secured or is pending.

30 § 3805. Credit for qualified investment.

1 (a) Application.--A taxpayer that made a qualified
2 investment in a taxable year may apply for a tax credit. The
3 application must be on a form required by the department and
4 shall include all of the following:

5 (1) The name and address of the applicant.

6 (2) The name and address of the business in which the
7 taxpayer has invested.

8 (3) A certified copy of the qualified business plan.

9 (4) Documentation that the applicant is an accredited
10 investor.

11 (5) Documentation that the business in which the
12 taxpayer has invested is a qualified business venture.

13 (6) Documentation that the qualified investment has been
14 made by the applicant.

15 (7) Any other information required by the department.

16 (b) Review.--The department, in conjunction with the
17 Department of Revenue, shall review the application and
18 determine if:

19 (1) All requirements established under this chapter have
20 been met.

21 (2) The applicant has filed all required State tax
22 reports and returns for all taxable years and paid any
23 balance of State tax due as determined by the Department of
24 Revenue.

25 (c) Approval.--Upon being satisfied under subsection (b),
26 the department shall approve the application and award the
27 taxpayer a tax credit for the taxable year in the amount equal
28 to 25% of the taxpayer's qualified investment made during the
29 taxable year.

30 (d) Notification.--The department shall notify the taxpayer

1 of the amount of the taxpayer's tax credit within 30 days after
2 approval by the department.

3 § 3806. Carryover, application of tax credit, carryback, refund
4 and assignment.

5 (a) Carryover.--If the taxpayer cannot use the entire amount
6 of the tax credit for the taxable year in which the tax credit
7 is first approved, the excess may be carried over to succeeding
8 taxable years and used as a credit against the qualified tax
9 liability of the taxpayer for those taxable years. Each time
10 that the tax credit is carried over to a succeeding taxable
11 year, it shall be reduced by the amount that was used as a
12 credit during the immediately preceding taxable year. The tax
13 credit may be carried over and applied to succeeding taxable
14 years for no more than seven taxable years following the first
15 taxable year for which the taxpayer was entitled to claim the
16 tax credit.

17 (b) Application of tax credit.--A tax credit approved by the
18 department for a qualified investment in a taxable year shall
19 first be applied against the taxpayer's qualified tax liability
20 for the current taxable year as of the date on which the tax
21 credit was approved before the tax credit is applied against any
22 tax liability under subsection (a).

23 (c) Carryback or refund.--A taxpayer is not entitled to
24 carry back or obtain a refund of an unused tax credit.

25 (d) Sale or assignment.--A taxpayer, upon application to and
26 approval by the department in consultation with the Department
27 of Revenue, may sell or assign, in whole or in part, a tax
28 credit granted to the taxpayer under this chapter if the
29 taxpayer does not have a qualified tax liability against which
30 the tax credit may be applied in the current taxable year. The

1 department shall establish guidelines, in consultation with the
2 Department of Revenue, for the approval of applications under
3 this subsection. Before an application is approved, the
4 Department of Revenue shall make a finding that the taxpayer and
5 its assignee have filed all required State tax reports and
6 returns for all taxable years and paid any balance of State tax
7 due as determined by the Department of Revenue.

8 (e) Purchasers and assignees.--The purchaser or assignee of
9 all or a portion of a tax credit under subsection (d) shall
10 immediately claim the credit in the taxable year in which the
11 purchase or assignment is made, although the purchaser or
12 assignee may carry over unused tax credits to the succeeding
13 taxable year for up to two years. The amount of the tax credit
14 that a purchaser or assignee may use against any one qualified
15 tax liability may not exceed 75% of the qualified tax liability
16 for the taxable year. The purchaser or assignee may not carry
17 back or obtain a refund of or sell or assign the tax credit. The
18 purchaser or assignee shall notify the department, and the
19 department shall notify the Department of Revenue of the seller
20 or assignor of the tax credit in compliance with procedures
21 specified by the department, in consultation with the Department
22 of Revenue.

23 § 3807. Time limitation.

24 A taxpayer shall not be entitled to a tax credit for
25 qualified investments incurred in taxable years ending after
26 December 31, 2021.

27 § 3808. Limitation on tax credits.

28 (a) Total amount.--The total amount of tax credits approved
29 by the department in any calendar year shall not exceed the
30 amount of keystone innovation zone tax credits authorized but

1 unissued under section 3706 (relating to keystone innovation
2 zone tax credits) as of December 15 of the prior calendar year.
3 On or before December 20 of each calendar year the department
4 shall post on its publicly accessible Internet website the
5 amount available for the tax credit authorized under this
6 chapter.

7 (b) Allocation.--Tax credits shall be allocated by the
8 department on a first-come-first-served basis.

9 § 3809. Shareholder, owner or member pass-through.

10 (a) Shareholder entitlement.--If a Pennsylvania S
11 corporation does not have an eligible tax liability against
12 which the tax credit may be applied, a shareholder of the
13 Pennsylvania S corporation shall be entitled to a tax credit
14 equal to the tax credit determined for the Pennsylvania S
15 corporation for the taxable year multiplied by the percentage of
16 the Pennsylvania S corporation's distributive income to which
17 the shareholder is entitled.

18 (b) Pass-through entity entitlement.--If a pass-through
19 entity other than a Pennsylvania S corporation does not have tax
20 liability against which the tax credit may be applied, an owner
21 or member of the pass-through entity shall be entitled to a tax
22 credit equal to the tax credit determined for the pass-through
23 entity for the taxable year multiplied by the percentage of the
24 pass-through entities' distributive income to which the owner or
25 member is entitled.

26 (c) Additional credit.--

27 (1) Except as provided under paragraph (2), the tax
28 credit provided under subsection (a) or (b) shall be in
29 addition to any other tax credit to which a shareholder,
30 owner or member of a pass-through entity is otherwise

1 entitled under this chapter.

2 (2) A pass-through entity and a shareholder, owner or
3 member of a pass-through entity shall not claim a tax credit
4 under this chapter for the same qualified investment.

5 § 3810. Repayment.

6 The department shall require the taxpayer to repay any tax
7 credit received under this chapter where the department, in
8 conjunction with the Department of Revenue, determines that any
9 of the following conditions exists:

10 (1) That the qualified business venture did not satisfy
11 the requirements of the qualified business plan submitted at
12 the time of application.

13 (2) That the business in which the taxpayer made the
14 qualified investment is no longer a qualified business
15 venture.

16 (3) That the taxpayer received the tax credit as a
17 result of fraud.

18 § 3811. Reports.

19 The secretary shall submit an annual report to the chair and
20 minority chair of the standing committees in the Senate and the
21 chair and minority chair of the standing committees in the House
22 of Representatives with jurisdiction over the department and the
23 Department of Revenue indicating the effectiveness of the tax
24 credit provided under this chapter no later than March 15
25 following the fiscal year in which the tax credits were
26 approved. Notwithstanding any law providing for the
27 confidentiality of tax records, the report shall include the
28 names of all taxpayers awarded the tax credits, all taxpayers
29 utilizing the tax credits, the amount of tax credits approved
30 and utilized by each taxpayer and the names and locations of the

1 qualified business ventures for which the tax credits were
2 awarded. The report may also include any recommendations for
3 changes in the calculation or administration of the tax credit.
4 The report and the information contained in it shall be
5 considered a public record under section 102 of the act of
6 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
7 § 3812. Termination.

8 The department shall not approve a tax credit for qualified
9 investments incurred in taxable years ending after December 31,
10 2021.

11 § 3813. Guidelines.

12 The department, in consultation with the Department of
13 Revenue, shall develop written guidelines for the implementation
14 and administration of this chapter. The guidelines shall be
15 posted on the department's publicly accessible Internet website:

16 Section 2. The addition of 12 Pa.C.S. Ch. 38 shall apply to
17 qualified investments made in taxable years beginning after
18 December 31, 2011.

19 Section 3. This act shall take effect immediately.