

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1503 Session of 2011

INTRODUCED BY SAYLOR, PAYNE, EVANKOVICH, AUMENT, BOYD, DUNBAR, HARRIS, MILNE, RAPP, SCAVELLO, MAJOR, BAKER, CALTAGIRONE, CHRISTIANA, CLYMER, CREIGHTON, CUTLER, DALEY, ELLIS, EVERETT, FARRY, GILLESPIE, GINGRICH, GOODMAN, GROVE, HARHAI, HARKINS, HENNESSEY, HESS, HICKERNELL, HORNAMAN, KAUFFMAN, M. K. KELLER, KILLION, KORTZ, LAWRENCE, LONGIETTI, MARSHALL, MARSICO, MILLER, OBERLANDER, PICKETT, PRESTON, PYLE, READSHAW, ROAE, ROCK, SAINATO, M. SMITH, STEVENSON, SWANGER, TALLMAN, TOOHIL, VULAKOVICH, WAGNER, GIBBONS AND QUINN, MAY 10, 2011

REFERRED TO COMMITTEE ON FINANCE, MAY 10, 2011

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. Credit for qualified angel investment.

14 3804. Carryover, carryback, refund and assignment.

1 3805. Time limitation.

2 3806. Limitation on angel investment tax credits.

3 3807. Shareholder, owner or member pass-through.

4 3808. Reports.

5 3809. Termination.

6 3810. Regulations.

7 § 3801. Scope of chapter.

8 This chapter relates to angel investment tax credits.

9 § 3802. Definitions.

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

13 "Business plan." An outline of business structure and a
14 formal statement of business goals, the reasons why the goals
15 are believed to be attainable and the plan for reaching those
16 goals.

17 "Department." The Department of Revenue of the Commonwealth.

18 "Pass-through entity." Any of the following:

19 (1) A partnership, limited partnership, limited
20 liability company, business trust or other unincorporated
21 entity that for Federal income tax purposes is taxable as a
22 partnership.

23 (2) A Pennsylvania S corporation.

24 "Qualified angel investment." A purchase of equity interest
25 or any other expenditure made by an individual or a network of
26 individuals who review new businesses or a proposed business for
27 potential investment of an individual's money.

28 "Qualified business venture." A business plan that satisfies
29 the following:

30 (1) The business has its headquarters in this

1 Commonwealth.

2 (2) At least 51% of the employees employed by the
3 business are employed in this Commonwealth.

4 (3) The success of the business plan depends upon the
5 development or commercialization of intellectual property for
6 which either of the following apply:

7 (i) Patent protection under 35 U.S.C (relating to
8 patents) has been secured, is pending or will be sought.

9 (ii) A copyright under 17 U.S.C. (relating to
10 copyrights) has been secured, is pending or will be
11 sought.

12 (4) The business has less than 100 employees.

13 (5) The business has been in operation in this
14 Commonwealth for not more than seven consecutive years.

15 (6) The business has not received more than \$1,000,000
16 in investments that have qualified tax credits under this
17 chapter.

18 "Qualified tax liability." The liability for taxes imposed
19 under Article III, IV or VI of the Tax Reform Code of 1971. The
20 term shall include the liability for taxes imposed under Article
21 III of the Tax Reform Code of 1971 on an owner of a pass-through
22 entity.

23 "Secretary." The Secretary of Revenue of the Commonwealth.

24 "Tax credit." The angel investment tax credit authorized
25 under this chapter.

26 "Tax Reform Code of 1971." The act of March 4, 1971 (P.L.6,
27 No.2), known as the Tax Reform Code of 1971.

28 "Taxpayer." An entity subject to tax under Article III, IV
29 or VI of the Tax Reform Code of 1971. The term shall include the
30 shareholder, owner or member of a pass-through entity that

1 receives a tax credit.

2 § 3803. Credit for qualified angel investment.

3 (a) Application.--A taxpayer with qualified angel investment
4 in a taxable year may apply for an angel investment tax credit
5 as provided under this chapter. The department shall establish
6 appropriate filing deadlines for angel investment tax credits in
7 a manner that allows for the expeditious utilization of the
8 angel investment tax credit by the taxpayer.

9 (b) Amount.--A taxpayer that is qualified under subsection
10 (a) shall receive an angel investment tax credit for the taxable
11 year in the amount of 25% of the taxpayer's qualified angel
12 investment in a qualified business venture. The Department of
13 Community and Economic Development shall certify that entities
14 meet the requirements of a qualified business venture.

15 (c) Notification.--By December 16 of the calendar year
16 following the close of the taxable year during which the
17 qualified angel investment was made, the department shall notify
18 the taxpayer of the amount of the taxpayer's angel investment
19 tax credit approved by the department.

20 § 3804. Carryover, carryback, refund and assignment.

21 (a) Carryover.--If the taxpayer cannot use the entire amount
22 of the angel investment tax credit for the taxable year in which
23 the angel investment tax credit is first approved, the excess
24 may be carried over to succeeding taxable years and used as a
25 credit against the qualified tax liability of the taxpayer for
26 those taxable years. Each time that the angel investment tax
27 credit is carried over to a succeeding taxable year, it shall be
28 reduced by the amount that was used as a credit during the
29 immediately preceding taxable year. The angel investment tax
30 credit may be carried over and applied to succeeding taxable

years for no more than seven taxable years following the first taxable year for which the taxpayer was entitled to claim the angel investment tax credit.

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

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

§ 3805. Time limitation.

A taxpayer shall not be entitled to an angel investment tax credit for qualified angel investments incurred in taxable years ending after December 31, 2021.

§ 3806. Limitation on angel investment tax credits.

(a) Total amount.--The total amount of angel investment tax credits approved by the department in a fiscal year shall be equal to the greater of:

(1) \$3,000,000; or

(2) The difference between \$25,000,000 and the total amount of keystone innovation zone tax credits issued under section 3706 (relating to keystone innovation zone tax credits) through December 15th of the fiscal year.

(b) Sale or assignment.--A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, an angel investment tax credit granted to the taxpayer under this chapter. The department shall establish guidelines

1 for the approval of applications under this subsection.

2 § 3807. Shareholder, owner or member pass-through.

3 (a) Shareholder entitlement.--If a Pennsylvania S
4 corporation does not have an eligible tax liability against
5 which the angel investment tax credit may be applied, a
6 shareholder of the Pennsylvania S corporation shall be entitled
7 to an angel investment tax credit equal to the angel investment
8 tax credit determined for the Pennsylvania S corporation for the
9 taxable year multiplied by the percentage of the Pennsylvania S
10 corporation's distributive income to which the shareholder is
11 entitled.

12 (b) Pass-through entity entitlement.--If a pass-through
13 entity other than a Pennsylvania S corporation does not have an
14 eligible tax liability against which the angel investment tax
15 credit may be applied, an owner or member of the pass-through
16 entity is entitled to an angel investment tax credit equal to
17 the angel investment tax credit determined for the pass-through
18 entity for the taxable year multiplied by the percentage of the
19 pass-through entities' distributive income to which the owner or
20 member is entitled.

21 (c) Additional credit.--

22 (1) Except as provided under paragraph (2), the angel
23 investment tax credit provided under subsections (a) or (b)
24 shall be in addition to any tax credit to which a
25 shareholder, owner or member of a pass-through entity is
26 otherwise entitled under this chapter.

27 (2) A pass-through entity and a shareholder, owner or
28 member of a pass-through entity may not claim an angel
29 investment tax credit under this chapter for the same
30 qualified angel investment.

1 § 3808. Reports.

2 (a) Report to General Assembly.--The secretary shall submit
3 an annual report to the General Assembly indicating the
4 effectiveness of the angel investment tax credit provided under
5 this chapter no later than March 15 following the year in which
6 the angel investment tax credits were approved. The report shall
7 include the names of all taxpayers utilizing the angel
8 investment tax credit as of the date of the report and the
9 amount of the angel investment tax credits approved and utilized
10 by each taxpayer. Notwithstanding any law providing for the
11 confidentiality of tax records, the information contained in the
12 report shall be public information. The report may also include
13 any recommendations for changes in the calculation or
14 administration of the angel investment tax credit.

15 (b) Report to Secretary of the Senate and the Chief Clerk of
16 the House of Representatives.--The department shall submit a
17 report to the Secretary of the Senate and the Chief Clerk of the
18 House of Representatives indicating the effectiveness of the
19 angel investment tax credit by December 31, 2013 and by December
20 31, 2016. Notwithstanding any law providing for the
21 confidentiality of tax records, the report shall include the
22 names of all taxpayers awarded the angel investment tax credits,
23 all taxpayers utilizing the angel investment tax credits, the
24 amount of angel investment tax credits approved and utilized by
25 each taxpayer and the locations of the keystone innovation zone
26 companies as defined in section 3702 (relating to definitions)
27 awarded the angel investment tax credits. The report shall be
28 considered a public record under section 102 of the act of
29 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

30 § 3809. Termination.

1 The department shall not approve an angel investment tax
2 credit for taxable years ending after December 31, 2021.
3 § 3810. Regulations.

4 The secretary shall promulgate regulations necessary for the
5 implementation and administration of this chapter.

6 Section 2. This act shall take effect immediately.