

## 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,  
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MARSICO, MILLER, OBERLANDER, PICKETT, PRESTON, PYLE,  
READSHAW, ROAE, ROCK, SAINATO, M. SMITH, STEVENSON, SWANGER,  
TALLMAN, TOOHL, VULAKOVICH, WAGNER, GIBBONS, QUINN, BROOKS,  
TRUITT, COX, GEIST, MURT, BEAR, DENLINGER, FRANKEL AND KAMPF,  
MAY 10, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
NOVEMBER 1, 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. Establishment.

1 3804. Qualified business plans.  
2 3805. Credit for qualified investment.  
3 3806. Carryover, application of tax credit, carryback, refund  
4 and assignment.  
5 3807. Time limitation.  
6 3808. Limitation on tax credits.  
7 3809. Shareholder, owner or member pass-through.  
8 3810. Repayment and penalty.  
9 3811. Reports.  
10 3812. Termination.  
11 3813. Regulations.  
12 § 3801. Scope of chapter.

13 This chapter relates to angel investment tax credits.

14 § 3802. Definitions.

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

18 "Accredited investor." Any of the following:

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

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

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

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

1 "Department." The Department of Community and Economic  
2 Development of the Commonwealth.

3 "Pass-through entity." A partnership as defined in section  
4 301(n.o) of the act of March 4, 1971 (P.L.6, No.2), known as the  
5 Tax Reform Code of 1971, or a Pennsylvania S corporation as  
6 defined in section 301(n.1) of the Tax Reform Code of 1971.

7 "Qualified business venture." A business that is all of the  
8 following:

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

12 (2) Maintains its headquarters in this Commonwealth for  
13 at least five years after the taxpayer applied for the tax  
14 credit.

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

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

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

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

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

27 "Qualified tax liability." The liability for taxes imposed  
28 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,  
29 No.2), known as the Tax Reform Code of 1971. The term shall  
30 include the liability for taxes imposed under Article III of the

Tax Reform Code of 1971 on an owner of a pass-through entity.

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

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

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

§ 3803. Establishment.

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

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

(2) Increase capital investment.

(3) Encourage job creation.

§ 3804. Qualified business plans.

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

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

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

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

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

1           (ii) a copyright under 17 U.S.C. (relating to  
2           copyrights) has been secured or is pending.  
3   \$ 3805. Credit for qualified investment.

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

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

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

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

12          (4) Documentation that the applicant is an accredited  
13   investor.

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

16          (6) Documentation that the qualified investment has been  
17   made by the applicant.

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

19       (b) Review.--The department, in conjunction with the  
20   Department of Revenue, shall review the application and  
21   determine if:

22           (1) All requirements established under this chapter have  
23   been met.

24           (2) The applicant has filed all required State tax  
25   reports and returns for all ~~applicable~~ taxable years and paid ←  
26   any balance of State tax due as determined ~~at settlement,~~ ←  
27   ~~assessment or determination~~ by the Department of Revenue.

28       (c) Approval.--Upon being satisfied under subsection (b),  
29   the department shall approve the application and award the  
30   taxpayer a tax credit for the taxable year in the amount equal

1 to 25% of the taxpayer's qualified investment made during the  
2 taxable year.

3 (d) Notification.--The department shall notify the taxpayer  
4 of the amount of the taxpayer's tax credit within 30 days after  
5 approval by the department.

6 \$ 3806. Carryover, application of tax credit, carryback, refund  
7 and assignment.

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

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

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

28 (d) Sale or assignment.--A taxpayer, upon application to and  
29 approval by the department in consultation with the Department  
30 of Revenue, may sell or assign, in whole or in part, a tax

credit granted to the taxpayer under this chapter if the  
taxpayer does not have a qualified tax liability against which  
the tax credit may be applied in the current taxable year. The  
department shall establish guidelines, in consultation with the  
Department of Revenue, for the approval of applications under  
this subsection. Before an application is approved, the  
Department of Revenue shall make a finding that the taxpayer and  
its assignee have filed all required State tax reports and  
returns for all ~~applicable~~ taxable years and paid any balance of  
State tax due as determined ~~at settlement, assessment or~~  
~~determination~~ by the Department of Revenue.

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

§ 3807. Time limitation.

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

1 § 3808. Limitation on tax credits.

2 (a) Total amount.--The total amount of tax credits approved  
3 by the department in any calendar year shall not exceed the  
4 amount of keystone innovation zone tax credits authorized but  
5 unissued under section 3706 (relating to keystone innovation  
6 zone tax credits) as of December 15 of the prior calendar year.  
7 On or before December 20 of each calendar year the department  
8 shall post on its publicly accessible Internet website the  
9 amount available for the tax credit authorized under this  
10 chapter.

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

13 § 3809. Shareholder, owner or member pass-through.

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

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

30 (c) Additional credit.--



1       (1) Except as provided under paragraph (2), the tax  
2       credit provided under subsections (a) or (b) shall be in  
3       addition to any other tax credit to which a shareholder,  
4       owner or member of a pass-through entity is otherwise  
5       entitled under this chapter.

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

9   § 3810. Repayment.

10   ~~The department shall require the taxpayer to repay any tax~~   ←  
11   ~~credit received and any monetary value received from the sale or~~  
12   ~~assignment of a tax credit where it has been determined that the~~  
13   ~~recipient taxpayer did not satisfy the requirements of the~~  
14   ~~qualified business plan submitted by the applicant or received~~  
15   ~~such as the result of fraud.~~

16   THE DEPARTMENT SHALL REQUIRE THE TAXPAYER TO REPAY ANY TAX   ←  
17   CREDIT RECEIVED UNDER THIS CHAPTER WHERE THE DEPARTMENT, IN  
18   CONJUNCTION WITH THE DEPARTMENT OF REVENUE, DETERMINES THAT ANY  
19   OF THE FOLLOWING CONDITIONS EXISTS:

20       (1) THAT THE QUALIFIED BUSINESS VENTURE DID NOT SATISFY  
21       THE REQUIREMENTS OF THE QUALIFIED BUSINESS PLAN SUBMITTED AT  
22       THE TIME OF APPLICATION.

23       (2) THAT THE BUSINESS IN WHICH THE TAXPAYER MADE THE  
24       QUALIFIED INVESTMENT IS NO LONGER A QUALIFIED BUSINESS  
25       VENTURE.

26       (3) THAT THE TAXPAYER RECEIVED THE TAX CREDIT AS A  
27       RESULT OF FRAUD.

28   § 3811. Reports.

29   The secretary shall submit an annual report to the chair and  
30   minority chair of the standing committees in the Senate and the

chair and minority chair of the standing committees in the House  
of Representatives with jurisdiction over the department and the  
Department of Revenue indicating the effectiveness of the tax  
credit provided under this chapter no later than March 15  
following the fiscal year in which the tax credits were  
approved. Notwithstanding any law providing for the  
confidentiality of tax records, the report shall include the  
names of all taxpayers awarded the tax credits, all taxpayers  
utilizing the tax credits, the amount of tax credits approved  
and utilized by each taxpayer and the names and locations of the  
qualified business ventures for which the tax credits were  
awarded. The report may also include any recommendations for  
changes in the calculation or administration of the tax credit.  
The report and the information contained in it shall be  
considered a public record under section 102 of the act of  
February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.  
§ 3812. Termination.

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

§ 3813. Guidelines.

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

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

Section 3. This act shall take effect immediately.