

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36 Session of 2013

INTRODUCED BY SAYLOR, HENNESSEY, EVERETT, EMRICK, TRUITT, C. HARRIS, KNOWLES, FABRIZIO, HARHART, AUMENT, LONGIETTI, BAKER, MARSICO, HESS, GOODMAN, MARSHALL, KAUFFMAN, CLYMER, MAJOR, HAHN, KORTZ, STEVENSON, TALLMAN, ROCK, GROVE, PETRI, R. BROWN, HICKERNELL, PICKETT, LAWRENCE, MOUL, DENLINGER, CUTLER, CALTAGIRONE, MATZIE, R. MILLER, MILNE, MURT, MOLCHANY, FARRY, RAPP, FLECK, HELM AND DAVIDSON, JANUARY 8, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 2, 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 ANGEI 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.

1 3806. Carryover, application of tax credit, carryback, refund
2 and assignment.

3 3807. Time limitation.

4 3808. Limitation on tax credits.

5 3809. Shareholder, owner or member pass-through.

6 3810. Repayment and penalty. <--

7 3811. Reports.

8 3812. Termination.

9 3813. Guidelines.

10 § 3801. Scope of chapter.

11 This chapter relates to angel investment tax credits.

12 § 3802. Definitions.

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

16 "Accredited investor." Any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 "Secretary." The Secretary of Community and Economic

1 Development of the Commonwealth.

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

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

9 § 3803. Establishment.

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

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

15 (2) Increase capital investment.

16 (3) Encourage job creation.

17 § 3804. Qualified business plans.

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

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

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

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

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

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

1 § 3805. Credit for qualified investment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 § 3807. Time limitation.

25 A taxpayer shall not be entitled to a tax credit for
26 qualified investments incurred in taxable years ending after
27 December 31, 2023.

28 § 3808. Limitation on tax credits.

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

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

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

10 § 3809. Shareholder, owner or member pass-through.

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

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

27 (c) Additional credit.--

28 (1) Except as provided under paragraph (2), the tax
29 credit provided under subsection (a) or (b) shall be in
30 addition to any other tax credit to which a shareholder,

1 owner or member of a pass-through entity is otherwise
2 entitled under this chapter.

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

6 § 3810. Repayment.

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

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

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

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

19 § 3810.1. RECAPTURE.

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20 A TAXPAYER SHALL REPAY TO THE COMMONWEALTH ANY OR ALL OF THE
21 TAX CREDIT CLAIMED BY THE TAXPAYER UNDER THIS CHAPTER IF THE
22 TAXPAYER WITHDRAWS ANY PORTION OF ITS QUALIFIED INVESTMENT AT
23 ANY TIME DURING THE PERIOD COMMENCING WITH THE DATE OF ITS
24 INVESTMENT THROUGH THE TAXABLE YEAR THAT THE TAXPAYER CLAIMS OR
25 CARRIES OVER UNUSED PORTIONS OF THE TAX CREDIT UNDER SECTION
26 3806 (RELATING TO CARRYOVER, APPLICATION OF TAX CREDIT,
27 CARRYBACK, REFUND AND ASSIGNMENT). THE AMOUNT OF THE REPAYMENT
28 SHALL BE CALCULATED AS FOLLOWS:

29 (1) IF THE WITHDRAWAL OCCURS IN THE TAXABLE YEAR IN
30 WHICH THE INVESTMENT WAS MADE OR IN THE TAXABLE YEAR

1 FOLLOWING THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE,
2 THE AGGREGATE AMOUNT OF THE TAX CREDIT CLAIMED BY THE
3 TAXPAYER DURING BOTH TAXABLE YEARS SHALL BE REPAID TO THE
4 COMMONWEALTH.

5 (2) IF THE WITHDRAWAL OCCURS IN THE SECOND TAXABLE YEAR
6 FOLLOWING THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE
7 OR ANY SUBSEQUENT TAXABLE YEAR, THE AMOUNT OF THE TAX CREDIT
8 CLAIMED BY THE TAXPAYER IN THE TAXABLE YEAR IN WHICH THE
9 WITHDRAWAL OCCURS SHALL BE REPAID TO THE COMMONWEALTH.

10 § 3811. Reports.

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

29 § 3812. Termination.

30 The department shall not approve a tax credit for qualified

1 investments incurred in taxable years ending after December 31,
2 2023.

3 § 3813. Guidelines.

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

8 Section 2. The addition of 12 Pa.C.S. Ch. 38 shall apply to
9 qualified investments made in taxable years beginning after
10 December 31, 2013.

11 Section 3. This act shall take effect immediately.