

## 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  
17 and assignment.

18 3807. Time limitation.

- 1 3808. Limitation on tax credits.
- 2 3809. Shareholder, owner or member pass-through.
- 3 3810. Repayment.
- 4 3811. Recapture.
- 5 3812. Reports.
- 6 3813. Termination.
- 7 3814. Guidelines.
- 8 § 3801. Scope of chapter.

9 This chapter relates to angel investment tax credits.

10 § 3802. Definitions.

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

14 "Accredited investor." Any of the following:

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

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

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

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

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

29 "Pass-through entity." A partnership as defined in section  
30 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the

1 Tax Reform Code of 1971, or a Pennsylvania S corporation as  
2 defined in section 301(n.1) of the Tax Reform Code of 1971.

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

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

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

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

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

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

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

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

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

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

30 "Tax credit." The angel investment tax credit authorized

1 under this chapter.

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

7 § 3803. Establishment.

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

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

13 (2) Increase capital investment.

14 (3) Encourage job creation.

15 § 3804. Qualified business plans.

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

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

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

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

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

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

29 § 3805. Credit for qualified investment.

30 (a) Application.--A taxpayer that made a qualified

1 investment in a taxable year may apply for a tax credit. The  
2 application must be on a form required by the department and  
3 shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

29 (d) Notification.--The department shall notify the taxpayer  
30 of the amount of the taxpayer's tax credit within 30 days after

1 approval by the department.

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

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

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

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

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

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

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

22 § 3807. Time limitation.

23 A taxpayer shall not be entitled to a tax credit for  
24 qualified investments incurred in taxable years ending after  
25 December 31, 2025.

26 § 3808. Limitation on tax credits.

27 (a) Total amount.--The total amount of tax credits approved  
28 by the department in any calendar year shall not exceed the  
29 amount of keystone innovation zone tax credits authorized but  
30 unissued under section 3706 (relating to keystone innovation

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

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

8 § 3809. Shareholder, owner or member pass-through.

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

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

25 (c) Additional credit.--

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



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

4 § 3810. Repayment.

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

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

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

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

17 § 3811. Recapture.

18          A taxpayer shall repay to the Commonwealth any or all of the  
19          tax credit claimed by the taxpayer under this chapter if the  
20          taxpayer withdraws any portion of its qualified investment at  
21          any time during the period commencing with the date of its  
22          investment through the taxable year that the taxpayer claims or  
23          carries over unused portions of the tax credit under section  
24          3806 (relating to carryover, application of tax credit,  
25          carryback, refund and assignment). The amount of the repayment  
26          shall be calculated as follows:

27          (1) If the withdrawal occurs in the taxable year in  
28          which the investment was made or in the taxable year  
29          following the taxable year in which the investment was made,  
30          the aggregate amount of the tax credit claimed by the

1 taxpayer during both taxable years shall be repaid to the  
2 Commonwealth.

3 (2) If the withdrawal occurs in the second taxable year  
4 following the taxable year in which the investment was made  
5 or any subsequent taxable year, the amount of the tax credit  
6 claimed by the taxpayer in the taxable year in which the  
7 withdrawal occurs shall be repaid to the Commonwealth.

8 § 3812. Reports.

9 (a) Annual report.--The secretary shall submit an annual  
10 report to the chairmen and minority chairmen of the standing  
11 committees in the Senate and the chairmen and minority chairmen  
12 of the standing committees in the House of Representatives with  
13 jurisdiction over the department and the Department of Revenue  
14 as follows:

15 (1) The report shall indicate the effectiveness of the  
16 tax credit provided under this chapter.

17 (2) The report shall be submitted no later than March 15  
18 following the fiscal year in which the tax credits were  
19 approved.

20 (3) Notwithstanding any law providing for the  
21 confidentiality of tax records, the report shall include the  
22 following:

23 (i) The names of all taxpayers awarded the tax  
24 credits.

25 (ii) The names of all taxpayers utilizing the tax  
26 credits.

27 (iii) The amount of tax credits approved and  
28 utilized by each taxpayer.

29 (iv) The names and locations of the qualified  
30 business ventures for which the tax credits were awarded.

1           (4) The report may also include any recommendations for  
2           changes in the calculation or administration of the tax  
3           credit.

4           (b) Public record.--The report and the information contained  
5           in it shall be considered a public record under section 102 of  
6           the act of February 14, 2008 (P.L.6, No.3), known as the Right-  
7           to-Know Law.

8           § 3813. Termination.

9           The department shall not approve a tax credit for qualified  
10           investments incurred in taxable years ending after December 31,  
11           2025.

12           § 3814. Guidelines.

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

17           Section 2. The addition of 12 Pa.C.S. Ch. 38 shall apply to  
18 qualified investments made in taxable years beginning after  
19 December 31, 2015.

20           Section 3. This act shall take effect immediately.