
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1265 Session of
2011

INTRODUCED BY EARLL, FONTANA, GREENLEAF, VOGEL, PIPPY, WAUGH,
GORDNER, McILHINNEY, BOSCOLA, COSTA, FERLO, BROWNE, YUDICHAK,
BLAKE AND FARNESE, SEPTEMBER 29, 2011

REFERRED TO FINANCE, SEPTEMBER 29, 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. Purpose.

13 3803. Definitions.

14 3804. Credit for qualified investment.

15 3805. Carryover, application of tax credit, carryback, refund
16 and assignment.

17 3806. Time limitation.

18 3807. Limitation on tax credits.

1 3808. Shareholder, owner or member pass-through.

2 3809. Repayment and penalty.

3 3810. Reports.

4 3811. Termination.

5 3812. Regulations.

6 § 3801. Scope of chapter.

7 This chapter relates to angel investment tax credits.

8 § 3802. Purpose.

9 The purposes of this chapter are to:

10 (1) Create a business environment in this Commonwealth
11 that attracts and encourages early stage financing which
12 creates business opportunities with the potential for high
13 growth.

14 (2) Increase capital investment in this Commonwealth.

15 (3) Encourage job creation in this Commonwealth.

16 § 3803. Definitions.

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

20 "Accredited investor." Any person who comes within any of
21 the following categories at the time qualified to claim an angel
22 investment tax credit:

23 (1) Any natural person whose individual net worth, or
24 joint net worth with that individual's spouse exceeds
25 \$1,000,000.

26 (2) Any natural person who had an individual income in
27 excess of \$200,000 in each of the two most recent years or
28 joint income with that individual's spouse in excess of
29 \$300,000 in each of those years and has a reasonable
30 expectation of reaching the same income level in the current

1 year.

2 (3) Any entity in which all of the equity owners are
3 accredited investors.

4 "Business plan." An outline of business structure and a
5 formal statement of business goals, including an explanation of
6 how the goals are anticipated to be achieved. At a minimum the
7 business goals should indicate the potential for increasing jobs
8 in this Commonwealth and increasing capital investment. A plan
9 shall specify that it is based upon the development or
10 commercialization of intellectual property for which either of
11 the following apply:

12 (1) Patent protection under 35 U.S.C. (relating to
13 patents) has been secured or is pending.

14 (2) A copyright under 17 U.S.C. (relating to copyrights)
15 has been secured or is pending.

16 "Department." The Department of Community and Economic
17 Development of the Commonwealth.

18 "Pass-through entity." A partnership as defined in section
19 301(n.o) of the act of March 4, 1971 (P.L.6, No.2), known as the
20 Tax Reform Code of 1971, or a Pennsylvania S corporation as
21 defined in section 301(n.1) of the Tax Reform Code of 1971.

22 "Qualified business venture." A business that is based on a
23 business plan that satisfies the following requirements:

24 (1) The business is headquartered or establishes its
25 headquarters in this Commonwealth prior to the time the
26 taxpayer is qualified to apply for an angel investment tax
27 credit and for at least five years thereafter.

28 (2) At least 51% of the employees employed by the
29 business are employed in this Commonwealth at the time the
30 taxpayer is qualified to apply for an angel investment tax

1 credit and for at least three years thereafter.

2 (3) The business has fewer than 100 employees at the
3 time the taxpayer is qualified to apply for an angel
4 investment tax credit.

5 (4) The business has been in operation in this
6 Commonwealth for not more than five consecutive years at the
7 time the taxpayer is qualified to apply for an angel
8 investment tax credit.

9 (5) The business has not received, in aggregate, more
10 than \$5,000,000 in private equity investments.

11 "Qualified investment." A private equity interest in a for-
12 profit business acquired by the payment of money or its
13 equivalent, which is subject to approval by the Department of
14 Community and Economic Development for purposes of qualifying
15 for this tax credit by an accredited investor or a network of
16 accredited investors who review new businesses or a proposed
17 business for the purpose of making an initial or subsequent
18 investment.

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

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

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

28 "Taxpayer." An entity subject to tax under Article III, IV
29 or VI of the act of March 4, 1971 (P.L.6, No.2), known as the
30 Tax Reform Code of 1971. The term shall include the shareholder,

1 owner or member of a pass-through entity that receives an angel
2 investment tax credit.

3 § 3804. 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 as
6 provided under this chapter. The department, in consultation
7 with the Department of Revenue, shall establish appropriate
8 filing deadlines for tax credits in a manner that allows for the
9 expeditious utilization of the tax credit by the taxpayer. The
10 application shall be submitted on a form required by the
11 department and must be accompanied by the business plan which
12 has been certified by the taxpayer applying for the tax credit.

13 (b) Approval.--The department may approve the application
14 upon being satisfied about the following:

15 (1) Upon review of the application for a tax credit, the
16 department finds that all requirements have been met,
17 including the requirements of a qualified business venture
18 and any corresponding guidelines the department establishes
19 in the best interest of the Commonwealth.

20 (2) The Department of Revenue finds that all taxpayers
21 applying for the tax credit have filed all required State tax
22 reports and returns for all applicable taxable years and paid
23 any balance of State tax due as determined at settlement,
24 assessment or determination by the Department of Revenue.

25 (c) Amount.--A taxpayer that is approved under subsection
26 (b) shall receive a tax credit for the taxable year in the
27 amount of 25% of the taxpayer's qualified investment in a
28 qualified business venture.

29 (d) Notification.--By December 31 of the calendar year
30 following the close of the taxable year during which the

1 qualified investment was made, the department shall notify the
2 taxpayer of the amount of the taxpayer's tax credit approved by
3 the department.

4 § 3805. 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 applicant
6 has filed all required State tax reports and returns for all
7 applicable taxable years and paid any balance of State tax due
8 as determined at settlement, assessment or determination by the
9 Department of Revenue.

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

25 § 3806. Time limitation.

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

29 § 3807. Limitation on tax credits.

30 (a) Total amount.--The total amount of tax credits approved

1 by the department in a fiscal year shall be equal to the
2 difference between \$25,000,000 and the total amount of keystone
3 innovation zone tax credits issued under section 3706 (relating
4 to keystone innovation zone tax credits) through December 15th
5 of each year.

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

8 § 3808. 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 subsections (a) or (b) shall be in
28 addition to any tax credit to which a shareholder, owner or
29 member of a pass-through entity is otherwise entitled under
30 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 § 3809. Repayment and penalty.

5 (a) Imposition.--Except as provided in subsection (b), the
6 department shall require the taxpayer to repay any tax credit
7 received and any monetary value received from the sale or
8 assignment of a tax credit and shall impose a penalty of 10%
9 where it has been determined that the recipient taxpayer did not
10 meet the requirements of the taxpayer's certified qualified
11 business plan or received such as the result of fraud and false
12 pretenses.

13 (b) Exception.--The department may waive the repayment of a
14 tax credit or penalty required in subsection (a) if the
15 department determines that the failure to meet the requirements
16 of the certified qualified business plan was due to
17 circumstances outside the recipient taxpayer's control.

18 § 3810. Reports.

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

1 also include any recommendations for changes in the calculation
2 or administration of the angel investment tax credit. The report
3 and the information contained in it shall be considered a public
4 record under section 102 of the act of February 14, 2008 (P.L.6,
5 No.3), known as the Right-to-Know Law.

6 (b) Reports to General Assembly.--The department shall
7 submit a report to the the chair and minority chair of the
8 standing committees in the Senate and the chair and minority
9 chair of the standing committees in the House of Representatives
10 with jurisdiction over the department and the Department of
11 Revenue indicating the effectiveness of the tax credit by
12 December 31, 2013, and by December 31, 2016. Notwithstanding any
13 law providing for the confidentiality of tax records, the report
14 shall include the names of all taxpayers awarded the tax
15 credits, all taxpayers utilizing the tax credits, the amount of
16 tax credits approved and utilized by each taxpayer and the
17 locations of the qualified business awarded the tax credits. The
18 report and the information contained in it shall be considered a
19 public record.

20 § 3811. Termination.

21 The department shall not approve a tax credit for qualified
22 investments incurred in taxable years ending after December 31,
23 2021.

24 § 3812. Regulations.

25 The secretary, in consultation with the Secretary of Revenue,
26 shall promulgate regulations necessary for the implementation
27 and administration of this chapter.

28 Section 2. This act shall take effect immediately.