

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

SENATOR BRUBAKER, FINANCE, AS AMENDED, MAY 9, 2012

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:

CHAPTER 38

ANGEL INVESTMENT TAX CREDIT

10 Sec.

11 3801. Scope of chapter.

12 3802. Purpose.

13 3803. Definitions.

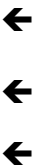
14 3804. PROGRAM ESTABLISHED.

15 ~~3804~~ 3805. Credit for qualified investment.

16 ~~3805. Carryover, application of tax credit~~ 3806. APPLICATION

17 OF TAX CREDIT, CARRYOVER, carryback, refund and

18 assignment.



1 ~~3806~~ 3807. Time limitation. ←

2 ~~3807~~ 3808. Limitation on tax credits. ←

3 ~~3808~~ 3809. Shareholder, owner or member pass-through. ←

4 ~~3809~~ 3810. Repayment and penalty. ←

5 ~~3810~~ 3811. Reports. ←

6 ~~3811~~ 3812. Termination. ←

7 ~~3812 Regulations~~ 3813. GUIDELINES. ←

8 § 3801. Scope of chapter.

9 This chapter relates to angel investment tax credits.

10 § 3802. Purpose.

11 The purposes of this chapter are to:

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

16 (2) Increase capital investment in this Commonwealth.

17 (3) Encourage job creation in this Commonwealth.

18 § 3803. Definitions.

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

22 "Accredited investor." ~~Any~~ A person who comes within any of ←
23 the following categories at the time qualified to claim an angel
24 investment tax credit:

25 (1) ~~Any~~ A natural person whose individual net worth, or ←
26 joint net worth with that individual's spouse exceeds
27 \$1,000,000.

28 (2) ~~Any~~ A natural person who had an individual income in ←
29 excess of \$200,000 in each of the two most recent years or
30 joint income with that individual's spouse in excess of

1 \$300,000 in each of those years and has a reasonable
2 expectation of reaching the same income level in the current
3 year.

4 (3) Any AN entity in which all of the equity owners are ←
5 accredited investors PERSONS WHO SATISFY PARAGRAPH (1) OR ←
6 (2), OR BOTH. FOR PURPOSES OF THIS PARAGRAPH AN EQUITY OWNER
7 SHALL MEAN THE BENEFICIAL OWNER OF EQUITY SECURITIES OR
8 EQUITY INTEREST IN THE ENTITY.

9 "Business plan." An outline of business structure and a
10 formal statement of business goals, including an explanation of
11 how the goals are anticipated to be achieved. At a minimum the
12 business goals should indicate the potential for increasing jobs
13 in this Commonwealth and increasing AND capital investment IN ←
14 THIS COMMONWEALTH. A plan shall specify that it is based upon
15 the development or commercialization of intellectual property
16 for which either of the following apply:

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

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

21 "Department." The Department of Community and Economic
22 Development of the Commonwealth.

23 "NET WORTH." THE VALUE OF ALL LONG-TERM ASSETS MINUS THE ←
24 VALUE OF ALL LIABILITIES OF A PERSON, EXCEPT AS FOLLOWS:

25 (1) THE PERSON'S PRIMARY RESIDENCE SHALL NOT BE INCLUDED
26 AS AN ASSET; AND

27 (2) INDEBTEDNESS THAT IS SECURED BY THE PERSON'S PRIMARY
28 RESIDENCE, UP TO THE ESTIMATED FAIR MARKET VALUE OF THE
29 PRIMARY RESIDENCE AT THE TIME QUALIFIED TO CLAIM AN ANGEL
30 INVESTMENT TAX CREDIT, SHALL NOT BE INCLUDED AS A LIABILITY,

1 EXCEPT THAT IF THE AMOUNT OF SUCH INDEBTEDNESS OUTSTANDING AT
2 THE TIME QUALIFIED TO CLAIM AN ANGEL INVESTMENT TAX CREDIT
3 EXCEEDS THE AMOUNT OUTSTANDING 60 DAYS BEFORE SUCH TIME,
4 OTHER THAN AS A RESULT OF THE ACQUISITION OF THE PRIMARY
5 RESIDENCE, THE AMOUNT OF SUCH EXCESS SHALL BE INCLUDED IN A
6 LIABILITY.

7 "Pass-through entity." A partnership as defined in section
8 301(n.o) of the act of March 4, 1971 (P.L.6, No.2), known as the
9 Tax Reform Code of 1971, or a Pennsylvania S corporation as
10 defined in section 301(n.1) of the Tax Reform Code of 1971.

11 "Qualified business venture." A business that is based on a
12 business plan that satisfies the following requirements ALL OF ←
13 THE FOLLOWING:

14 (1) The business is headquartered or establishes its ←
15 headquarters in this Commonwealth prior to AT the time the ←
16 taxpayer is qualified to apply for an APPLIES FOR THE angel ←
17 investment tax credit and for at least five years thereafter. ←

18 (2) THE BUSINESS MAINTAINS ITS HEADQUARTERS IN THIS ←
19 COMMONWEALTH FOR AT LEAST FIVE YEARS AFTER THE TAXPAYER
20 APPLIED FOR THE ANGEL INVESTMENT TAX CREDIT.

21 ~~(2)~~ (3) At least 51% of the employees employed by OF the ←
22 business are employed in this Commonwealth at the time the
23 taxpayer is qualified to apply for an APPLIES FOR THE angel ←
24 investment tax credit and for at least three years
25 thereafter.

26 ~~(3)~~ (4) The business has fewer than 100 employees at the ←
27 time the taxpayer is qualified to apply for an APPLIES FOR ←
28 THE angel investment tax credit.

29 ~~(4)~~ (5) The business has been in operation in this ←
30 Commonwealth for not more than five consecutive years at the

1 time the taxpayer is qualified to apply for an APPLIES FOR ←
2 THE angel investment tax credit.

3 ~~(5)~~ (6) The business has not received, in aggregate, ←
4 more than \$5,000,000, IN THE AGGREGATE, in private equity ←
5 investments AT THE TIME THE TAXPAYER APPLIES FOR THE ANGEL ←
6 INVESTMENT TAX CREDIT.

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

15 "Qualified tax liability." The liability for taxes imposed
16 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,
17 No.2), known as the Tax Reform Code of 1971. The term shall
18 include the liability for taxes imposed under Article III of the
19 Tax Reform Code of 1971 on ~~an owner~~ A MEMBER, OWNER OR ←
20 SHAREHOLDER of a pass-through entity.

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

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

25 "Taxpayer." ~~An entity~~ A PERSON subject to tax under Article ←
26 III, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known
27 as the Tax Reform Code of 1971. The term shall include ~~the~~ ←
28 ~~shareholder, owner or member~~ A MEMBER, OWNER OR SHAREHOLDER of a ←
29 pass-through entity that receives an angel investment tax
30 credit.

1 § 3804. PROGRAM ESTABLISHED. ←

2 THE ANGEL INVESTMENT TAX CREDIT PROGRAM IS ESTABLISHED IN THE
3 DEPARTMENT.

4 ~~§ 3804~~ 3805. Credit for qualified investment. ←

5 (a) Application.--A taxpayer that made a qualified
6 investment in a taxable year may apply for a tax credit ~~as~~ ←
7 ~~provided under this chapter.~~ The department, in consultation
8 with the Department of Revenue, shall establish appropriate
9 APPLICATION filing deadlines for tax credits in a manner that ←
10 allows for the expeditious utilization of the tax credit by the
11 taxpayer. The application shall be submitted on a form required
12 by the department and must be accompanied by the business plan
13 which has been certified by the taxpayer applying for the tax
14 credit.

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

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

22 (2) The Department of Revenue finds that all taxpayers
23 ~~applying for the tax credit have filed all required State tax~~ ←
24 ~~reports and returns for all applicable taxable years and paid~~
25 APPLYING FOR THE TAX CREDIT HAVE: ←

26 (I) FILED ALL REQUIRED STATE TAX REPORTS AND RETURNS
27 FOR ALL TAXABLE YEARS; AND

28 (II) ENTERED INTO A PAYMENT PLAN UNDER WHICH
29 PAYMENTS HAVE BEEN MAINTAINED OR PAID any balance of
30 State tax due as determined ~~at settlement, assessment or~~ ←

1 determination by the Department of Revenue.

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

6 (d) Notification.--By December 31 of the calendar year
7 following the close of the taxable year during which the
8 qualified investment was made, the department shall notify the
9 taxpayer of the amount of the taxpayer's tax credit approved by
10 the department.

11 ~~§ 3805. Carryover, application of tax credit~~ 3806. APPLICATION ←
12 OF TAX CREDIT, CARRYOVER, carryback, refund and
13 assignment.

14 (A) APPLICATION OF TAX CREDIT.--A TAX CREDIT APPROVED BY THE ←
15 DEPARTMENT FOR A QUALIFIED INVESTMENT IN A TAXABLE YEAR SHALL
16 FIRST BE APPLIED AGAINST THE TAXPAYER'S QUALIFIED TAX LIABILITY
17 FOR THE CURRENT TAXABLE YEAR AS OF THE DATE ON WHICH THE TAX
18 CREDIT WAS APPROVED BEFORE THE TAX CREDIT IS APPLIED AGAINST ANY
19 TAX LIABILITY UNDER SUBSECTION (B).

20 ~~(a)~~ (B) Carryover.--If the taxpayer cannot use the entire ←
21 amount of the tax credit for the taxable year in which the tax
22 credit is first approved, the excess may be carried over to
23 succeeding taxable years and used as a credit against the
24 qualified tax liability of the taxpayer for those taxable years.
25 Each time that the tax credit is carried over to a succeeding
26 taxable year, it shall be reduced by the amount that was used as
27 a credit during the immediately preceding taxable year. The tax
28 credit may be carried over and applied to succeeding taxable
29 years for no more than seven taxable years following the first
30 taxable year for which the taxpayer was entitled to claim the

1 tax credit.

2 ~~(b) Application of tax credit. A tax credit approved by the~~ ←
3 ~~department for a qualified investment in a taxable year shall~~
4 ~~first be applied against the taxpayer's qualified tax liability~~
5 ~~for the current taxable year as of the date on which the tax~~
6 ~~credit was approved before the tax credit is applied against any~~
7 ~~tax liability under subsection (a).~~

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

10 ~~(d) Sale or assignment. A taxpayer, upon application to and~~ ←

11 (D) SALE OR ASSIGNMENT.-- ←

12 (1) A TAXPAYER, UPON APPLICATION TO AND approval by the
13 department in consultation with the Department of Revenue,
14 may sell or assign, in whole or in part, a tax credit granted
15 to the taxpayer under this chapter if the taxpayer does not
16 have a qualified tax liability against which the tax credit
17 may be applied in the current taxable year. The department
18 shall establish guidelines, in consultation with the
19 Department of Revenue, for the approval of applications under
20 this subsection. Before an application is approved, the ←
21 THIS SUBSECTION. ←

22 (2) BEFORE AN APPLICATION IS APPROVED, THE Department of
23 Revenue shall make a finding that the applicant has filed all ←
24 required State tax reports and returns for all applicable
25 taxable years and paid any balance of State tax due TAXPAYER ←
26 AND ASSIGNEE, IF ANY, HAVE:

27 (I) FILED ALL REQUIRED STATE TAX REPORTS AND RETURNS
28 FOR ALL TAXABLE YEARS; AND

29 (II) ENTERED INTO A PAYMENT PLAN UNDER WHICH
30 PAYMENTS HAVE BEEN MAINTAINED OR PAID ANY BALANCE OF

1 STATE TAX DUE as determined at settlement, assessment or
2 determination by the Department of Revenue.

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

18 (F) TAXPAYER'S ADJUSTED BASIS IN A QUALIFIED INVESTMENT.-- ←

19 (1) A TAXPAYER'S ADJUSTED BASIS IN A QUALIFIED
20 INVESTMENT MUST BE REDUCED BY AN AMOUNT EQUAL TO THE TAX
21 CREDIT APPROVED UNDER SECTION 3805(C) (RELATING TO CREDIT FOR
22 QUALIFIED INVESTMENT).

23 (2) EXCEPT FOR THE REDUCTION IN ADJUSTED BASIS REQUIRED
24 IN PARAGRAPH (1), A TAXPAYER'S ADJUSTED BASIS IN A QUALIFIED
25 INVESTMENT IS DETERMINED UNDER THE ACT OF MARCH 4, 1971
26 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, AND THE
27 REGULATIONS PROMULGATED THEREUNDER.

28 § ~~3806~~ 3807. Time limitation. ←

29 A taxpayer shall not be entitled to a tax credit for
30 qualified investments ~~incurred~~ MADE in taxable years ending ←

1 after December 31, 2021.

2 § ~~3807~~ 3808. Limitation on tax credits. ←

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

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

11 § ~~3808~~ 3809. Shareholder, owner or member pass-through. ←

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

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

28 (c) Additional credit.--

29 (1) Except as provided under paragraph (2), the tax
30 credit provided under subsections (a) or (b) shall be in

1 addition to any tax credit to which a shareholder, owner or
2 member of a pass-through entity is otherwise entitled under
3 this chapter.

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

7 ~~§ 3809~~ 3810. Repayment and penalty. ←

8 (a) Imposition.--Except as provided in subsection (b), the
9 department shall require the taxpayer to repay any tax credit
10 received and any monetary value received from the sale or
11 assignment, IF ANY, of a tax credit and shall impose a penalty ←
12 of 10% ~~where it has been determined that the recipient taxpayer~~ ←
13 ~~did not meet the requirements of the taxpayer's certified~~
14 ~~qualified business plan or received such as the result of fraud~~
15 ~~and false pretenses.~~ BASED ON THE TOTAL AMOUNT OF THE TAX CREDIT ←
16 RECEIVED, WHERE THE DEPARTMENT, IN CONJUNCTION WITH THE
17 DEPARTMENT OF REVENUE, DETERMINES THAT ANY OF THE FOLLOWING
18 CONDITIONS EXISTS:

19 (1) THE QUALIFIED BUSINESS VENTURE DID NOT SATISFY THE
20 REQUIREMENTS OF THE CERTIFIED QUALIFIED BUSINESS PLAN.

21 (2) THE BUSINESS IN WHICH THE TAXPAYER MADE THE
22 QUALIFIED INVESTMENT IS NO LONGER A QUALIFIED BUSINESS
23 VENTURE.

24 (3) THE TAXPAYER RECEIVED THE TAX CREDIT AS A RESULT OF
25 FRAUD OR FALSE PRETENSES.

26 (b) Exception.--The department may waive the repayment of a
27 tax credit ~~or~~ AND ANY MONETARY VALUE RECEIVED FROM THE SALE OR ←
28 ASSIGNMENT, IF ANY, OF THE TAX CREDIT AND MAY WAIVE THE penalty
29 required ~~in~~ BY subsection (a) if the department determines that ←
30 the failure to meet the requirements of the certified qualified

1 business plan was due to circumstances outside the recipient
2 taxpayer's control.

3 ~~§ 3810~~ 3811. Reports. ←

4 ~~(a) Annual report to General Assembly.~~ The secretary shall ←
5 submit an annual report to the chair and minority chair of the
6 standing committees in the Senate and the chair and minority
7 chair of the standing committees in the House of Representatives
8 with jurisdiction over the department and the Department of
9 Revenue indicating the effectiveness of the tax credit provided
10 under this chapter no later than March 15 following the fiscal
11 year in which the tax credits were approved. Notwithstanding any
12 law providing for the confidentiality of tax records, the report
13 shall include the names of all taxpayers AWARDED THE TAX CREDIT, ←
14 utilizing the tax credit as of the date of the report and, the ←
15 amount of the tax credits approved and utilized by each taxpayer
16 AND THE NAMES AND LOCATIONS OF THE QUALIFIED BUSINESS VENTURES ←
17 FOR WHICH THE TAX CREDITS WERE AWARDED. The report may also
18 include any recommendations for changes in the calculation or
19 administration of the ~~angel investment~~ tax credit. The report ←
20 and the information contained in it shall be considered a public
21 record under section 102 of the act of February 14, 2008 (P.L.6,
22 No.3), known as the Right-to-Know Law.

23 ~~(b) Reports to General Assembly. The department shall~~ ←
24 submit a report to the the chair and minority chair of the
25 standing committees in the Senate and the chair and minority
26 chair of the standing committees in the House of Representatives
27 with jurisdiction over the department and the Department of
28 Revenue indicating the effectiveness of the tax credit by
29 December 31, 2013, and by December 31, 2016. Notwithstanding any
30 law providing for the confidentiality of tax records, the report

1 ~~shall include the names of all taxpayers awarded the tax~~
2 ~~credits, all taxpayers utilizing the tax credits, the amount of~~
3 ~~tax credits approved and utilized by each taxpayer and the~~
4 ~~locations of the qualified business awarded the tax credits. The~~
5 ~~report and the information contained in it shall be considered a~~
6 ~~public record.~~

7 ~~§ 3811~~ 3812. Termination. ←

8 ~~The department shall not approve a tax credit for qualified~~
9 ~~investments incurred MADE in taxable years ending after December~~ ←
10 ~~31, 2021.~~

11 ~~§ 3812. Regulations.~~ ←

12 ~~The secretary, in consultation with the Secretary of Revenue,~~
13 ~~shall promulgate regulations necessary for the implementation~~
14 ~~and administration of this chapter.~~

15 § 3813. GUIDELINES. ←

16 ~~THE DEPARTMENT, IN CONJUNCTION WITH THE DEPARTMENT OF~~
17 ~~REVENUE, SHALL DEVELOP WRITTEN GUIDELINES FOR THE IMPLEMENTATION~~
18 ~~AND ADMINISTRATION OF THIS CHAPTER. THE GUIDELINES SHALL BE~~
19 ~~POSTED ON THE DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE.~~

20 Section 2. This act shall take effect immediately.