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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 449 Session of  
2015

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INTRODUCED BY SAYLOR, BAKER, CALTAGIRONE, COHEN, CUTLER,  
DAVIDSON, EMRICK, EVERETT, GABLER, GOODMAN, GRELL, HAHN,  
HICKERNELL, KAUFFMAN, KINSEY, LONGIETTI, MAJOR, MARSICO,  
MATZIE, ORTITAY, PETRI, PICKETT, TALLMAN, WATSON, ZIMMERMAN  
AND MOUL, FEBRUARY 11, 2015

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REFERRED TO COMMITTEE ON COMMERCE, FEBRUARY 11, 2015

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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.

1 3807. Time limitation.

2 3808. Limitation on tax credits.

3 3809. Shareholder, owner or member pass-through.

4 3810. Repayment.

5 3811. Recapture.

6 3812. Reports.

7 3813. Termination.

8 3814. Guidelines.

9 § 3801. Scope of chapter.

10 This chapter relates to angel investment tax credits.

11 § 3802. Definitions.

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

15 "Accredited investor." Any of the following:

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

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

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

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

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

30 "Pass-through entity." A partnership as defined in section

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

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

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

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

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

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

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

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

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

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

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

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

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

8 § 3803. Establishment.

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

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

14 (2) Increase capital investment.

15 (3) Encourage job creation.

16 § 3804. Qualified business plans.

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

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

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

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

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

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

30 § 3805. Credit for qualified investment.

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) Notification.--The department shall notify the taxpayer

1 of the amount of the taxpayer's tax credit within 30 days after  
2 approval by the department.

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

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

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

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

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

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

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

23 § 3807. Time limitation.

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

27 § 3808. Limitation on tax credits.

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

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

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

9 § 3809. Shareholder, owner or member pass-through.

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

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

26 (c) Additional credit.--

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



1 entitled under this chapter.

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

5 § 3810. Repayment.

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

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

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

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

18 § 3811. Recapture.

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

28 (1) If the withdrawal occurs in the taxable year in  
29 which the investment was made or in the taxable year  
30 following the taxable year in which the investment was made,

1 the aggregate amount of the tax credit claimed by the  
2 taxpayer during both taxable years shall be repaid to the  
3 Commonwealth.

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

9 § 3812. Reports.

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

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

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

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

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

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

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

30 (iv) The names and locations of the qualified

1 business ventures for which the tax credits were awarded.

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

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

9 § 3813. Termination.

10 The department shall not approve a tax credit for qualified  
11 investments incurred in taxable years ending after December 31,  
12 2025.

13 § 3814. Guidelines.

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

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

21 Section 3. This act shall take effect immediately.