PRINTER'S NO. 376

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 223

Session of 2015

INTRODUCED BY FONTANA, GREENLEAF, BREWSTER, BOSCOLA, VULAKOVICH, YUDICHAK, MENSCH, GORDNER, SCHWANK, HUGHES, COSTA, BROWNE, SMITH, WILEY AND BLAKE, FEBRUARY 12, 2015

REFERRED TO FINANCE, FEBRUARY 12, 2015

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, providing for an angel investment tax credit.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 12 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 38

ANGEL INVESTMENT TAX CREDIT

Sec.

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§ 3801. Scope of chapter.

This chapter relates to angel investment tax credits.

§ 3802. Purpose.

The purposes of this chapter are to:

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

(2) Increase capital investment in this Commonwealth.

(3) Encourage job creation in this Commonwealth.

§ 3803. Definitions.

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

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

(1) A natural person whose individual net worth, or joint net worth with that individual's spouse, exceeds $1,000,000.

(2) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that individual's spouse in excess of $300,000 in each of those years and has a reasonable

expectation of reaching the same income level in the current year.

(3) An entity in which all of the equity owners are persons who satisfy paragraph (1) or (2), or both. For purposes of this paragraph, an "equity owner" shall mean the beneficial owner of equity securities or equity interest in the entity.

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

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

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

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

"Net worth." The value of all long-term assets minus the value of all liabilities of a person, except as follows:

(1) the person's primary residence shall not be included as an asset; and

(2) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time qualified to claim an angel investment tax credit, shall not be included as a liability, except that, if the amount of such indebtedness outstanding

at the time qualified to claim an angel investment tax credit exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included in a liability.

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

"Qualified business venture." A business that is based on a business plan that satisfies all of the following:

(1) The business is headquartered in this Commonwealth at the time the taxpayer applies for the angel investment tax credit.

(2) The business maintains its headquarters in this Commonwealth for at least five years after the taxpayer applied for the angel investment tax credit.

(3) At least 51% of the employees of the business are employed in this Commonwealth at the time the taxpayer applies for the angel investment tax credit and for at least three years thereafter.

(4) The business has fewer than 100 employees at the time the taxpayer applies for the angel investment tax credit.

(5) The business has been in operation in this Commonwealth for not more than five consecutive years at the time the taxpayer applies for the angel investment tax credit.

(6) The business has not received more than $5,000,000, in the aggregate, in private equity investments at the time

the taxpayer applies for the angel investment tax credit.

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

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

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

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

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

§ 3804. Program established.

The Angel Investment Tax Credit Program is established in the department.

§ 3805. Credit for qualified investment.

(a) Application.--A taxpayer that made a qualified investment in a taxable year may apply for a tax credit. The department, in consultation with the Department of Revenue, shall establish appropriate application filing deadlines for tax credits in a manner that allows for the expeditious utilization of the tax credit by the taxpayer. The application shall be submitted on a form required by the department and must be accompanied by the business plan which has been certified by the taxpayer applying for the tax credit.

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

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

(2) The Department of Revenue finds that all taxpayers applying for the tax credit have:

(i) filed all required State tax reports and returns for all taxable years; and

(ii) entered into a payment plan under which payments have been maintained or paid any balance of State tax due as determined by the Department of Revenue.

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

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

§ 3806. Application of tax credit, carryover, carryback, refund and assignment.

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

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

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

(d) Sale or assignment.--

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

Department of Revenue, for the approval of applications under this subsection.

(2) Before an application is approved, the Department of Revenue shall make a finding that the taxpayer and assignee, if any, have:

(i) filed all required State tax reports and returns for all taxable years; and

(ii) entered into a payment plan under which payments have been maintained or paid any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue.

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

(f) Taxpayer's adjusted basis in a qualified investment.--

(1) A taxpayer's adjusted basis in a qualified investment must be reduced by an amount equal to the tax credit approved under section 3805(c) (relating to credit for

qualified investment).

(2) Except for the reduction in adjusted basis required in paragraph (1), a taxpayer's adjusted basis in a qualified investment is determined under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and the regulations promulgated thereunder.

§ 3807. Time limitation.

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

§ 3808. Limitation on tax credits.

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

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

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

(a) Shareholder entitlement.--If a Pennsylvania S corporation does not have a qualified tax liability against which the tax credit may be applied, a shareholder of the Pennsylvania S corporation shall be entitled to a tax credit equal to the tax credit determined for the Pennsylvania S corporation for the taxable year multiplied by the percentage of the Pennsylvania S corporation's distributive income to which the shareholder is entitled.

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

(c) Additional credit.--

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

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

§ 3810. Repayment and penalty.

(a) Imposition.--Except as provided in subsection (b), the department shall require the taxpayer to repay any tax credit received and any monetary value received from the sale or assignment, if any, of a tax credit and shall impose a penalty of 10% based on the total amount of the tax credit received, where the department, in conjunction with the Department of Revenue, determines that any of the following conditions exists:

(1) The qualified business venture did not satisfy the requirements of the certified qualified business plan.

(2) The business in which the taxpayer made the qualified investment is no longer a qualified business venture.

(3) The taxpayer received the tax credit as a result of fraud or false pretenses.

(b) Exception.--The department may waive the repayment of a tax credit and any monetary value received from the sale or assignment, if any, of the tax credit and may waive the penalty required by subsection (a) if the department determines that the failure to meet the requirements of the certified qualified business plan was due to circumstances outside the recipient taxpayer's control.

§ 3811. Reports.

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

§ 3812. Termination.

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

§ 3813. Guidelines.

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

Section 2. This act shall take effect immediately.