
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2215 Session of
2022

INTRODUCED BY THOMAS, BOBACK, DRISCOLL, FARRY, GILLEN, HILL-
EVANS, PICKETT, POLINCHOCK, ROTHMAN, RYAN AND ZIMMERMAN,
JANUARY 10, 2022

REFERRED TO COMMITTEE ON FINANCE, JANUARY 10, 2022

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," establishing the Start-up Investment Tax Credit
11 Program.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XIX-H

18 START-UP INVESTMENT TAX CREDIT

19 Section 1901-H. Scope of article.

20 This article relates to the Start-up Investment Tax Credit
21 Program.

22 Section 1902-H. Definitions.

1 The following words and phrases when used in this article
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Business." An entity authorized to do business in this
5 Commonwealth and subject to taxes imposed under Article III or
6 IV.

7 "Business plan." An outline of business structures and a
8 formal statement of business goals, including an explanation of
9 how the goals are anticipated to be achieved.

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

12 "Investment." A payment of money or its equivalent for a
13 private equity interest in a business.

14 "Pass-through entity." A partnership as defined in section
15 301(n.0) or a Pennsylvania S corporation as defined in section
16 301(n.1).

17 "Qualified investment" An investment which meets the
18 requirements under section 1907-H(f).

19 "Qualified start-up business." A business which has been
20 approved under section 1904-H.

21 "Qualified start-up investor." A start-up investor which
22 meets the requirements under section 1905-H.

23 "Start-up investor." An individual or business entity which
24 invests in start-up businesses.

25 "Tax credit." A tax credit awarded under this article.
26 Section 1903-H. Establishment of program.

27 The Start-up Investment Tax Credit Program is established
28 within the department.

29 Section 1904-H. Application for approval as qualified start-up
30 business.

1 (a) Application.--A business may apply to the department for
2 approval as a qualified start-up business. The application shall
3 be submitted on a form and in a manner as required by the
4 department.

5 (b) Information.--An application under subsection (a) shall
6 include the following information:

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

8 (2) A copy of the applicant's business plan.

9 (3) Documentation that the applicant meets the
10 qualifications under subsection (d).

11 (4) Any other information required by the department.

12 (c) Review of application.--Upon receipt of an application
13 under subsection (a), the department shall review the
14 application.

15 (d) Qualifications.--An applicant under subsection (a) shall
16 be approved as a qualified start-up business by the department
17 if the applicant meets all of the following qualifications:

18 (1) The applicant meets one of the following:

19 (i) If the applicant's headquarters is located in
20 this Commonwealth at the time of submitting the
21 application, the applicant must certify to the department
22 that the applicant does not intend to locate the
23 headquarters outside of this Commonwealth and that the
24 applicant's headquarters will be located in this
25 Commonwealth at the time that each qualified investment
26 is made by each qualified start-up investor.

27 (ii) If the applicant's headquarters is not in this
28 Commonwealth at the time of submitting the application,
29 the applicant must certify to the department that the
30 applicant intends to locate the headquarters in this

1 Commonwealth and that the applicant's headquarters will
2 be located in this Commonwealth at the time each
3 qualified investment is made by each qualified start-up
4 investor.

5 (2) The applicant certifies to the department that the
6 applicant will maintain the applicant's headquarters in this
7 Commonwealth for a period of time which is no less than five
8 years after the applicant makes each qualified investment.

9 (3) No fewer than 51% of the applicant's employees are
10 employed in this Commonwealth.

11 (4) The applicant certifies to the department that no
12 fewer than 51% of the applicant's employees will be employed
13 in this Commonwealth for a period of time which is no less
14 than five years after the applicant makes each qualified
15 investment.

16 (5) The applicant employs fewer than 100 employees at
17 the time of submitting the application to the department.

18 (6) The applicant was established no more than five
19 years before the time of submitting the application to the
20 department.

21 (7) The applicant has not received more than \$5,000,000
22 in private equity investments at the time of submitting the
23 application to the department.

24 (e) Approval.--If an applicant under subsection (a) meets
25 the qualifications under subsection (d), the department shall
26 approve the applicant as a qualified start-up business within 30
27 days of receipt of the application.

28 (f) Duration of approval.--An approval under subsection (e)
29 shall expire one year after the business was approved as a
30 qualified start-up business. A qualified start-up business may

1 reapply for approval under this section.

2 (g) List.--The department shall maintain a list of qualified
3 start-up businesses on the department's publicly accessible
4 Internet website. The list under this subsection shall include
5 the date of approval, the date of the expiration of the approval
6 and, if applicable, the amount of tax credits allocated to each
7 qualified start-up business under section 1906-H(e).

8 Section 1905-H. Application for approval as qualified start-up
9 investor.

10 (a) Application.--A start-up investor may apply to the
11 department for approval as a qualified start-up investor. The
12 application shall be submitted on a form and in a manner as
13 required by the department.

14 (b) Information.--An application under subsection (a) shall
15 include the following information:

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

17 (2) Documentation that the applicant meets the
18 qualifications under subsection (d).

19 (3) Any other information required by the department.

20 (c) Review of applications.--Upon receipt of an application
21 under subsection (a), the department shall review the
22 application.

23 (d) Qualifications.--An applicant under subsection (a) shall
24 be approved as a qualified start-up investor if the applicant
25 meets all of the following qualifications:

26 (1) The applicant invests in start-up businesses as the
27 applicant's primary occupation.

28 (2) The applicant demonstrates a history of investing in
29 start-up businesses that have been successful in bringing a
30 product to market or in being acquired by a business entity

1 that brings a product to market.

2 (3) The net worth of the applicant is greater than
3 \$1,000,000.

4 (4) One of the following apply:

5 (i) For an applicant who is an individual:

6 (A) the individual had an income of no less than
7 \$200,000 in each of the two prior calendar years or
8 had a joint income with the individual's spouse of
9 not less than \$300,000 in each of the two prior
10 calendar years; and

11 (B) the individual has a reasonable expectation
12 of reaching the income or joint income amounts under
13 clause (A) in the calendar year when the applicant
14 submits an application to the department.

15 (ii) For an applicant which is a business entity,
16 all of the owners or members of the business entity meet
17 the qualifications under subparagraph (i).

18 (e) Approval.--If an applicant under subsection (a) meets
19 the qualifications under subsection (d), the department shall
20 approve the applicant as a qualified start-up investor within 30
21 days of receipt of the application.

22 Section 1906-H. Application for allocation of tax credits by
23 qualified start-up business.

24 (a) Application.--A qualified start-up business may apply to
25 the department to receive an allocation of a tax credit under
26 this section. The application shall be submitted on a form and
27 in a manner as required by the department.

28 (b) Information.--An application under subsection (a) shall
29 include the following information:

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

1 (2) A copy of the applicant's business plan.

2 (3) Documentation that the applicant meets the
3 qualifications under subsection (d).

4 (4) Any other information required by the department.

5 (c) Review of application.--Upon receipt of an application
6 under subsection (a), the department shall review the
7 application.

8 (d) Qualifications.--An applicant under subsection (a) may
9 be approved for a tax credit if the applicant meets all of the
10 following:

11 (1) The applicant's business plan demonstrates the
12 potential for increasing jobs in this Commonwealth.

13 (2) The applicant's business plan demonstrates the
14 potential for increasing capital investment in this
15 Commonwealth.

16 (3) The applicant's business plan is based on the
17 development or commercialization of intellectual property for
18 which patent protection under 35 U.S.C. (relating to patents)
19 applies.

20 (4) The applicant has applied for patent protection or
21 received patent protection for the intellectual property
22 under paragraph (3).

23 (5) Any other qualification required by the department.

24 (e) Allocation of tax credits.--If an applicant under
25 subsection (a) meets the qualifications under subsection (d),
26 the department may allocate tax credits to the applicant. The
27 department shall prioritize the allocation of tax credits under
28 this subsection for qualified start-up businesses which
29 demonstrate the strongest likelihood of increasing jobs in this
30 Commonwealth and increasing capital investment in this

1 Commonwealth. An allocation of a tax credit under this
2 subsection shall expire one year after the allocation.

3 (f) Assignment.--A qualified start-up business which
4 receives an allocation under subsection (e) may assign an amount
5 of the tax credit that was allocated to a qualified start-up
6 investor. An assignment under this subsection shall be made by a
7 written contract between the qualified start-up business and a
8 qualified start-up investor. The written contract shall include
9 the assignment to a qualified start-up investor as partial
10 consideration for making a qualified investment.

11 Section 1907-H. Application for tax credits by qualified start-
12 up investor.

13 (a) Application.--A qualified start-up investor may apply to
14 the department for approval for a tax credit under this section.
15 The application shall be submitted on a form and in a manner as
16 required by the department.

17 (b) Information.--An application under subsection (a) shall
18 include the following information:

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

20 (2) Documentation that the applicant meets the
21 qualifications under subsection (d).

22 (3) Any other information required by the department.

23 (c) Review of application.--Upon receipt of an application
24 under subsection (a), the department shall review the
25 application.

26 (d) Qualifications.--An applicant under subsection (a) shall
27 be approved for a tax credit if the applicant meets all of the
28 following qualifications:

29 (1) The applicant is a qualified start-up investor and
30 meets the requirements under section 1905-H at the time of

1 submitting the application to the department.

2 (2) The applicant made qualified investments in a
3 qualified start-up business.

4 (3) The applicant entered into a contract under section
5 1906-H(f) under which the applicant was assigned tax credits
6 by a qualified start-up business.

7 (4) The qualified start-up business which was the
8 subject of the qualified investment under paragraph (2) meets
9 the qualifications under section 1904-H(d) at the time of the
10 investment. The department may require the qualified start-up
11 business to recertify material as necessary to confirm
12 continued qualification as a qualified start-up business.

13 (5) The applicant has filed all required State tax
14 reports and returns for all taxable years and paid any
15 balance of State tax due as determined by the Department of
16 Revenue.

17 (6) The applicant provides all documentation necessary
18 to the department to verify compliance with this article.

19 (7) The qualified start-up business which was the
20 subject of the qualified investment under paragraph (2)
21 provides the necessary documentation and makes any necessary
22 certifications to the department for the verification under
23 subsection (e).

24 (8) The qualified start-up business which was the
25 subject of the qualified investment under paragraph (2)
26 provides the necessary documentation to the department to
27 verify compliance with this article.

28 (e) Verification.--Upon receipt of an application under
29 subsection (a), a qualified start-up business shall verify
30 information for the department.

1 (f) Qualified investment.--An investment under subsection
2 (d) (2) shall be approved by the department as a qualified
3 investment if the investment was made by a qualified start-up
4 investor in a qualified start-up business.

5 (g) Amount of credit.--The amount of tax credit approved
6 under subsection (f) shall be 25% of the qualified investment.

7 (h) Approval.--If the application under subsection (a) meets
8 the qualifications under subsection (d) and if the necessary
9 information is verified under subsection (e), the department
10 shall approve the qualified start-up investor for a tax credit.
11 Section 1908-H. Sale, carryover and carryback.

12 (a) Carryover.--If a qualified start-up investor cannot use
13 the entire amount of a tax credit for the taxable year in which
14 the qualified start-up investor is eligible for the tax credit,
15 the excess may be carried over to succeeding taxable years and
16 used as a credit against the qualified tax liability of the
17 qualified start-up investor for those taxable years.

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

24 (c) No carryback or refund.--A qualified start-up investor
25 may not carry back or obtain a refund of all or any portion of
26 an unused tax credit.

27 Section 1909-H. Pass-through entity.

28 (a) Election.--If a pass-through entity has any unused tax
29 credit under section 1908-H, the entity may elect, in writing,
30 according to the department's procedures, to transfer all or a

1 portion of the tax credit to shareholders, members or partners
2 in proportion to the share of the entity's distributive income
3 to which the shareholder, member or partner is entitled.

4 (b) Application of credit.--The tax credit provided under
5 subsection (a) is in addition to any tax credit to which a
6 shareholder, member or partner of a pass-through entity is
7 otherwise entitled under this article. A pass-through entity and
8 a shareholder, member or partner of a pass-through entity may
9 not claim a tax credit under this article for the same qualified
10 investment.

11 (c) Claim.--A shareholder, member or partner of a pass-
12 through entity to whom a tax credit is transferred under
13 subsection (a) shall immediately claim the tax credit in the
14 taxable year in which the tax credit is transferred. The
15 shareholder, member or partner of the pass-through entity may
16 not carry forward, carry back, obtain a refund of or sell or
17 assign the tax credit.

18 Section 1910-H. Limitation on allocations.

19 (a) Total allocations.--The department may allocate an
20 amount of tax credits in a fiscal year not to exceed the amount
21 of unused keystone innovation zone tax credits under section
22 1906-F(c)(2) for the prior fiscal year.

23 (b) Limitation.--No more than 25% of the total amount
24 available for allocation in a fiscal year under subsection (a)
25 may be allocated to a single qualified start-up business.

26 Section 1911-H. Repayment.

27 (a) Investors.--A qualified start-up investor shall repay to
28 the Commonwealth the amount of tax credit claimed if the
29 qualified start-up investor withdraws or otherwise liquidates
30 the qualified investment less than five years after making a

1 qualified investment. The repayment made under this subsection
2 shall be equal to the amount of tax liability reduced as a
3 result of the use of the tax credit.

4 (b) Businesses.--A qualified start-up business which fails
5 to complete any action which was the subject of a certification
6 under section 1904-H(d) shall repay to the Commonwealth the
7 amount of tax credit claimed by a qualified start-up investor
8 which received an allocation from the qualified start-up
9 business under section 1906-H(f).

10 Section 1912-H. Guidelines.

11 The department shall publish guidelines for the
12 implementation of this article within 60 days of the effective
13 date of this section.

14 Section 1913-H. Reports.

15 (a) Submission.--By October 1, 2022, and October 1 of each
16 year thereafter, the department shall submit a report on the tax
17 credit provided by this article to the chairperson and minority
18 chairperson of the Appropriations Committee of the Senate, the
19 chairperson and minority chairperson of the Appropriations
20 Committee of the House of Representatives, the chairperson and
21 minority chair of the Finance Committee of the Senate and the
22 chairperson and minority chairperson of the Finance Committee of
23 the House of Representatives. The department shall make a copy
24 of the report available on the department's publicly accessible
25 Internet website.

26 (b) Contents.--The report under subsection (a) shall include
27 the following information:

28 (1) The name of each qualified start-up business
29 approved under section 1904-H during the prior fiscal year.

30 (2) The number of qualified start-up investors approved

1 under section 1905-H during the prior fiscal year.

2 (3) The amount of tax credits allocated to each
3 qualified start-up business under section 1906-H(e) during
4 the prior fiscal year.

5 (4) The amount of tax credits assigned by each qualified
6 start-up business to a qualified start-up investor under
7 1906-H(f) during the prior fiscal year.

8 (5) The amount of tax credits claimed by start-up
9 investors under section 1907-H during the prior fiscal year.

10 Section 1914-H. Expiration.

11 The department may not allocate a tax credit under this
12 article after July 1, 2027.

13 Section 2. This act shall take effect in 60 days.