

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 334 Session of 2023

INTRODUCED BY STREET, FONTANA, KANE AND COSTA, JANUARY 31, 2023

REFERRED TO FINANCE, JANUARY 31, 2023

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," in research and development tax credit, further
 11 providing for limitation on credits; and providing for Angel
 12 Investment Tax Credit.

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

15 Section 1. Section 1709-B(a) of the act of March 4, 1971
 16 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
 17 July 8, 2022 (P.L.513, No.53), is amended to read:

18 Section 1709-B. Limitation on Credits.--(a) The total
 19 amount of credits approved by the department shall not exceed
 20 [sixty million dollars (\$60,000,000)] one hundred million
 21 dollars (\$100,000,000) in any fiscal year. Of that amount,
 22 [twelve million dollars (\$12,000,000)] twenty million dollars
 23 (\$20,000,000) shall be allocated exclusively for small

1 businesses. However, if the total amounts allocated to either
2 the group of applicants exclusive of small businesses or the
3 group of small business applicants is not approved in any fiscal
4 year, the unused portion will become available for use by the
5 other group of qualifying taxpayers.

6 * * *

7 Section 2. The act is amended by adding an article to read:

8 ARTICLE XVII-M

9 ANGEL INVESTMENT TAX CREDIT

10 Section 1701-M. Scope of article.

11 This article relates to the Angel Investment Tax Credit.

12 Section 1702-M. Definitions.

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

16 "Accredited investor." Any of the following:

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

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

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

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

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

1 "Pass-through entity." A partnership as defined in section
2 301(n.0) or a Pennsylvania S corporation as defined in section
3 301(n.1).

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

6 (1) Is headquartered or that will establish its
7 headquarters in this Commonwealth prior to the time that 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) Employs at least 51% of its employees in this
13 Commonwealth at the time that the taxpayer applies for the
14 tax credit.

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

20 (6) Has not received more than \$2,000,000, in the
21 aggregate, in private equity investments of which not more
22 than \$1,000,000 was invested by a single investor.

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

25 "Qualified tax liability." The liability for taxes imposed
26 under Article III, IV or VI. The term shall include the
27 liability for taxes imposed under Article III on an owner of a
28 pass-through entity.

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

1 "Tax credit." The Angel Investment Tax Credit established
2 under this article.

3 "Taxpayer." A person subject to tax under Article III, IV or
4 VI. The term includes the shareholder, owner or member of a
5 pass-through entity that receives a tax credit.

6 Section 1703-M. Establishment.

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

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

12 (2) Increase capital investment.

13 (3) Encourage job creation.

14 Section 1704-M. Qualified business plans.

15 In order for a business plan to be qualified, the business
16 plan shall:

17 (1) Indicate the potential for increasing jobs in this
18 Commonwealth.

19 (2) Indicate the potential for increasing capital
20 investment in this Commonwealth.

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

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

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

28 Section 1705-M. Credit for qualified investment.

29 (a) Application.--A taxpayer that made a qualified
30 investment in a taxable year may apply for a tax credit. The

1 application shall be on a form as required by the department and
2 shall include all of the following:

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

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

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

7 (4) Documentation that the applicant is an accredited
8 investor.

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

11 (6) Documentation that the qualified investment has been
12 made by the applicant.

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

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

17 (1) All requirements established under this article have
18 been met.

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

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

28 (d) Notification.--The department shall notify the taxpayer
29 of the amount of the taxpayer's tax credit within 30 days after
30 approval by the department.

1 Section 1706-M. Carryover, application of tax credit,
2 carryback, refund and assignment.

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

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

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

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

1 this subsection. Before an application is approved, the
2 Department of Revenue shall make a finding that the taxpayer and
3 the taxpayer's assignee have filed all required State tax
4 reports and returns for all taxable years and paid any balance
5 of State tax due as determined by the Department of Revenue.

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

21 Section 1707-M. Time limitation.

22 A taxpayer shall not be entitled to a tax credit for
23 qualified investments incurred in taxable years ending after
24 December 31, 2031.

25 Section 1708-M. Limitation on tax credits.

26 (a) Total amount.--The total amount of tax credits approved
27 by the department in any calendar year shall not exceed
28 \$20,000,000.

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

1 Section 1709-M. Shareholder, owner or member pass-through.

2 (a) Shareholder entitlement.--If a Pennsylvania S
3 corporation does not have an eligible tax liability against
4 which the tax credit may be applied, a shareholder of the
5 Pennsylvania S corporation shall be entitled to a tax credit
6 equal to the tax credit determined for the Pennsylvania S
7 corporation for the taxable year multiplied by the percentage of
8 the Pennsylvania S corporation's distributive income to which
9 the shareholder is entitled.

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

18 (c) Additional credit.--

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

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

27 Section 1710-M. Repayment.

28 The department shall require the taxpayer to repay any tax
29 credit received under this article where the department, in
30 conjunction with the Department of Revenue, determines that any

1 of the following conditions exist:

2 (1) That the qualified business venture did not satisfy
3 the requirements of the qualified business plan submitted at
4 the time of application.

5 (2) That the business in which the taxpayer made the
6 qualified investment is no longer a qualified business
7 venture.

8 (3) That the taxpayer received the tax credit as a
9 result of fraud.

10 Section 1711-M. Recapture.

11 A taxpayer shall repay to the Commonwealth any or all of the
12 tax credit claimed by the taxpayer under this article if the
13 taxpayer withdraws any portion of the taxpayer's qualified
14 investment at any time during the period commencing with the
15 date of the taxpayer's investment through the taxable year that
16 the taxpayer claims or carries over unused portions of the tax
17 credit under section 1706-M. The amount of the repayment shall
18 be calculated as follows:

19 (1) If the withdrawal occurs in the taxable year in
20 which the investment was made or in the taxable year
21 following the taxable year in which the investment was made,
22 the aggregate amount of the tax credit claimed by the
23 taxpayer during both taxable years shall be repaid to the
24 Commonwealth.

25 (2) If the withdrawal occurs in the second taxable year
26 following the taxable year in which the investment was made
27 or any subsequent taxable year, the amount of the tax credit
28 claimed by the taxpayer in the taxable year in which the
29 withdrawal occurs shall be repaid to the Commonwealth.

30 Section 1712-M. Reports.

1 (a) Annual report.--The secretary shall submit an annual
2 report to the chairperson and minority chairperson of each
3 standing committee in the Senate and the chairperson and
4 minority chairperson of each standing committee in the House of
5 Representatives with jurisdiction over the department and the
6 Department of Revenue as follows:

7 (1) The report shall indicate the effectiveness of the
8 tax credit provided under this article.

9 (2) The report shall be submitted no later than March 15
10 following the fiscal year in which the tax credit was
11 approved.

12 (3) Notwithstanding any law providing for the
13 confidentiality of tax records, the report shall include the
14 following:

15 (i) The names of all taxpayers awarded the tax
16 credit.

17 (ii) The names of all taxpayers utilizing the tax
18 credit.

19 (iii) The amount of tax credits approved and
20 utilized by each taxpayer.

21 (iv) The names and locations of the qualified
22 business ventures for which the tax credit was awarded.

23 (4) The report may include any recommendations for
24 changes in the calculation or administration of the tax
25 credit.

26 (b) Public record.--The report shall be considered a public
27 record as defined in section 102 of the act of February 14, 2008
28 (P.L.6, No.3), known as the Right-to-Know Law.

29 Section 1713-M. Termination.

30 The department shall not approve a tax credit for qualified

1 investments incurred in taxable years ending after December 31,
2 2031.

3 Section 1714-M. Guidelines.

4 The department, in consultation with the Department of
5 Revenue, shall develop written guidelines for the implementation
6 and administration of this article. The guidelines shall be
7 posted on the department's publicly accessible Internet website.

8 Section 3. The addition of Article XVII-M of the act shall
9 apply to qualified investments made in taxable years beginning
10 after December 31, 2023.

11 Section 4. This act shall take effect as follows:

12 (1) The following shall take effect immediately:

13 (i) The addition of Article XVII-M of the act.

14 (ii) Section 3 of this act.

15 (iii) This section.

16 (2) The remainder of this act shall take effect in 60
17 days.