



Senate Finance Committee

168 Main Capitol Building
Harrisburg, PA 17120-0036
(717) 787-4420

Senator Mike Brubaker
Chairman

Richard Welsh, Esquire
Executive Director
rwelsh@pasen.gov

BILL SUMMARY

Legislation: House Bill 1265, P.N. 1632
Sponsor: Senator Earll
Act Amended: Title 12 (Commerce and Trade)
Topic: Angel Investment Tax Credit
Date: April 20, 2012

Synopsis:

Senate Bill 1265 amends Title 12 (Commerce and Trade) providing an Angel Investment Tax Credit for early stage financing that creates business opportunities with the potential for high growth that increases capital investment and encourages job creation in the Commonwealth.

Summary:

The legislation provides that a taxpayer, who is an “accredited investor”, may apply for an Angel Investment Tax Credit for a “qualified investment” in a “qualified business venture”.

The legislation provides that the tax credit will apply against Personal Income Tax, Corporate Net Income Tax and Capital Stock and Franchise Tax.

The legislation directs the Department of Community and Economic Development (DCED) to establish appropriate filing deadlines in consultation with the Department of Revenue (DOR).

The legislation defines “qualified investment” as a private equity interest in a for-profit business purchased and subject to approval by DCED by an “accredited investor” (or network of accredited investors) who review new or proposed businesses for the purpose of making an initial or subsequent investment.

The legislation defines “qualified business venture” as a business that is based on a business plan that satisfies the following requirements:

- Business headquartered or establishes headquarters in PA for at least 5 yrs.
- 51% of employees employed in PA for at least 3 yrs.
- Business has fewer than 100 employees.
- Business not in operation for more than 5 yrs.
- Business in aggregate has not received more than \$5M in private equity investments.

The legislation defines “accredited investor” as any person who comes within any of the following categories:

- Any natural person whose individual net worth, or joint net worth with that individual’s spouse, exceeds \$1 million.

- Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the 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.
- Any entity in which all of the equity owners are accredited investors

The legislation provides that the tax credit application shall be submitted on a form required by the department and must be accompanied by a certified business plan.

DCED may approve the application upon being satisfied about the following:

- DCED finds all requirements have been met.
- All taxpayers applying for tax credit have been found by DOR to have filed all required reports and returns and paid any balance related to State taxes.

The legislation provides that the Angel Investment Tax Credit is limited to 25% of the taxpayer's qualified investment in a qualified business venture.

The legislation requires DCED notify taxpayer of the approved tax credit amount by December 31.

The legislation permits the carryover of excess tax credits up to seven succeeding taxable years. The legislation specifies that the credit shall first be applied against taxpayer's qualified tax liability for the current taxable year before it can be carried over. The legislation prohibits the carry back or refund of tax credit allowed. The legislation permits the sale or assignment of tax credits if taxpayer does not have a qualified tax liability in the current taxable year against which to apply the tax credit. The legislation requires taxpayers to apply to and receive approval from the DCED in consultation with DOR, which shall make a finding that the applicant has all required State tax reports and returns for all applicable taxable years and paid any State tax balances due. The legislation permits the purchaser or assignee to carryover unused tax credits for up to two years, but is limited to using the tax credit against 75% of any one qualified tax liability in a taxable year.

The legislation provides that Angel Investment Tax Credits are not available for qualified investments incurred in taxable years ending after December 31, 2021.

The legislation provides that the total amount of tax credits approved by the department in a fiscal year shall be equal to the difference between \$25 million and the total amount of Keystone Innovation Zone Tax Credits (KIZ Tax Credits) issued under section 3706 (relating to keystone innovation zone tax credits) through December 15th of each year.

The legislation requires the allocation of tax credits on a first-come-first-serve basis.

The legislation provides that if a PA S corporation does not have tax liability against which to use the tax credit, shareholders shall be entitled to the tax credit. If a pass-thru entity other than a PA S corporation does not have tax liability against which to use the tax credit, shareholders shall be entitled to the tax credit.

The legislation provides that the tax credit shall be in addition to any other tax credit the shareholder, owner or member of a pass-through entity is entitled to under this Chapter. However, the pass-through entity and a shareholder, owner or member shall not claim a tax credit under this chapter for the same qualified investment.

The legislation provides that DCED shall require a taxpayer to repay any tax credit received and any monetary value received from the sale or assignment of a tax credit and shall impose a penalty of 10% where taxpayer did not meet the requirements of the taxpayer's certified business plan or received such as the result of fraud and false pretenses.

The legislation permits DCED to waive the repayment of a tax credit or penalty.

The legislation requires the secretary of the DCED to submit an annual report to the standing committees in the Senate and House with jurisdiction over the DCED and DOR indicating the effectiveness of the tax credit no later than March 15 following the fiscal year in which the tax credits were approved.

The legislation requires DCED to submit a report to the standing committees in the Senate and House with jurisdiction over the department and DOR indicating the effectiveness of the tax credit by December 31, 2013 and December 31, 2016.

The legislation requires the secretary of DCED, in consultation with the Secretary of Revenue, to promulgate necessary regulations.

The legislation shall take effect immediately.

Background:

The legislation is similar to House Bill 1503. On November 14, 2011, House Bill 1503 passed the House (151-44).