

SENATE BILL No. 66

AN ACT concerning income taxation; relating to the Kansas angel investor tax credit act; qualified securities; tax credit limitations and amounts; investor requirements; qualified Kansas business designation requirements; bioscience businesses; program expiration date; expenditures to make principal dwelling accessible to persons with a disability; amending K.S.A. 74-8132, 74-8133, 74-8136 and 79-32,176a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-8132 is hereby amended to read as follows: 74-8132. As used in this act:

(a) "Angel investor" and "investor" mean an accredited investor who is a natural person or an owner of a permitted entity investor, who is of high net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the effective date of this act July 1, 2004, and who seeks high returns through private investments in start-up companies and may seek active involvement in business, such as consulting and mentoring the entrepreneur. For the purposes of this act, a person who serves as an executive, officer, employee, vendor or independent contractor of the business in which an otherwise qualified cash investment is made is not an "angel investor" and such person shall not qualify for the issuance of tax credits for such investment;

(b) "bioscience business" means ~~what is reflected~~ a business engaged in bioscience as defined in K.S.A. 74-99b83, and amendments thereto;

(c) "cash investment" means money or money equivalent in consideration for qualified securities;

(d) "department" means the department of commerce;

(e) "Kansas business" means any business owned by an individual, any partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that does business primarily in Kansas or does substantially all of such businesses' production in Kansas;

(f) "owner" means any natural person who is, directly or indirectly, a partner, stockholder or member in a permitted entity investor;

(g) "permitted entity investor" means: (A) Any general partnership, limited partnership, corporation that has in effect a valid election to be taxed as an S corporation under the United States internal revenue code, or a limited liability company that has elected to be taxed as a partnership under the United States internal revenue code; and (B) that was established and is operated for the sole purpose of making investments in other entities;

(h) "qualified Kansas business" means the Kansas businesses that are approved and certified as qualified Kansas businesses as provided in K.S.A. 74-8134, and amendments thereto;

(i) "qualified securities" means a cash investment through ~~any one or more forms~~ form or combination of forms of financial assistance as provided in this subsection that have been approved in form and substance by the secretary. Such forms of financial assistance are: (1) Any form of equity, such as: (A) A general or limited; partnership interest; (B) common stock; or (C) preferred stock, ~~with or~~ without regard to voting rights, ~~without regard to~~ or seniority position, and whether or not convertible into common stock; or ~~(D) any form of subordinate or convertible debt, or both, with warrants or other means of equity conversion attached;~~ or

(2) ~~any debt instrument, such as a note or debenture that is secured or unsecured, subordinated~~ subordinate to the general creditors of the qualified Kansas business debtor ~~and that requires no payments of principal, other than principal payments required to be made out of any future profits of payment from the qualified Kansas business debtor, for at least a seven-year period after commencement of such debt instrument's term~~ and that shall convert to some form of equity prior to the qualified

Kansas business debtor raising any additional funds; and

(j) "secretary" means the secretary of commerce.

Sec. 2. K.S.A. 74-8133 is hereby amended to read as follows: 74-8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, on the Kansas taxable income of an angel investor and against the tax imposed by K.S.A. 40-252, and amendments thereto, shall be allowed for a cash investment in the qualified securities of a qualified Kansas business. *For tax year 2021 and all tax years thereafter*, the credit shall be in a total amount ~~equal~~ *of up to* 50% of such investors' cash investment in any qualified Kansas business, subject to the limitations set forth in subsection (b). This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit shall be allowed in a year prior to January 1, 2005. If the amount by which that portion of the credit allowed by this section exceeds the investors' liability in any one taxable year, beginning in the year 2005, the remaining portion of the credit may be carried forward until the total amount of the credit is used. If the investor is a permitted entity investor, the credit provided by this section shall be claimed by the owners of the permitted entity investor in proportion to their ownership share of the permitted entity investor.

(b) *For tax year 2021 and all tax years thereafter*, the secretary of revenue shall not allow tax credits of more than ~~\$50,000~~ *\$100,000* for a single Kansas business or a total of ~~\$250,000~~ *\$350,000* in tax credits for a single year per investor who is a natural person or owner of a permitted entity investor. No tax credits authorized by this act shall be allowed for any cash investments in qualified securities for any year after the year ~~2021~~ *2026*. The total amount of tax credits ~~which that~~ may be allowed under this section shall not exceed:

(1) \$4,000,000 during the tax year 2007 ~~and~~;

(2) \$6,000,000 for tax ~~year~~ *years* 2008 ~~and each tax year thereafter through 2010 and 2012 through 2022~~, except that for tax year 2011, the total amount of tax credits ~~which that~~ may be allowed under this section shall not exceed \$5,000,000;

(3) *\$6,500,000 for tax year 2023;*

(4) *\$7,000,000 for tax year 2024;*

(5) *\$7,500,000 for tax year 2025; and*

(6) *\$8,000,000 for tax year 2026.*

The balance of unissued tax credits may be carried over for issuance in future years until ~~2021~~ *tax year 2026*.

(c) A cash investment in a qualified security shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the internal revenue code.

(d) ~~No investor shall claim a credit under this section for cash investments in Kansas venture capital, inc. No Kansas venture capital company shall qualify for the tax credit for an investment in a fund created by articles 81, 82, 83 or 84 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto.~~

(e) ~~Any investor who has not owed any Kansas income tax under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the immediate past three taxable years without a current tax liability at the time of the investment in a qualified Kansas business, who does not reasonably believe that it will owe any such tax for the current taxable year and who makes a cash investment in a qualified security of a qualified Kansas business shall be deemed to acquire an interest in the nature of a transferable credit limited, for tax year 2021 and all tax years thereafter, to an amount equal up to 50% of this cash investment. This~~

interest may be transferred to any natural person ~~of net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the effective date of this act,~~ whether or not such person is then an investor and be claimed by the transferee as a credit against the transferee's Kansas income tax liability beginning in the year provided in subsection (a). No person shall be entitled to a refund for the interest created under this section. Only the full credit for any one investment may be transferred and this interest may only be transferred one time. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer shall be provided by the investor in the manner required by the director of taxation.

~~(f)~~(e) The reasonable costs of the administration of this act, the review of applications for certification as qualified Kansas businesses and the issuance of tax credits authorized by this act shall be reimbursed through fees paid by the qualified Kansas businesses and the investors or the transferees of investors, according to a reasonable fee schedule adopted by the secretary by rules and regulations in accordance with the rules and regulations filing act.

Sec. 3. K.S.A. 74-8136 is hereby amended to read as follows: 74-8136. (a) Tax credits for qualified Kansas businesses are a limited resource of the state for which the secretary is designated as the administrator. The purpose of such tax credits is to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas businesses ~~which~~ *that* are job and wealth creating enterprises. To achieve this purpose and to optimize the use of the limited resources of the state, the secretary is authorized to issue tax credits to qualified investors in qualified Kansas businesses. Such tax credits shall be awarded to those qualified Kansas businesses ~~which~~ *that*, as determined by the secretary, are most likely to provide the greatest economic benefit to the state. The secretary may issue whole or partial tax credits based on an assessment of the qualified businesses. The secretary may consider numerous factors in such assessment, including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model and the quality and reasonableness of financial projections for the business.

(b) Each qualified Kansas business for which tax credits have been issued pursuant to this act shall report to the department on an annual basis, the following: (1) The name, address and taxpayer identification number of each angel investor who has made cash investment in the qualified securities of a qualified Kansas business and has received tax credits for this investment during the preceding year and all other preceding years; (2) the amounts of these cash investments by each angel investor and a description of the qualified securities issued in consideration of such cash investments; (3) the name, address and taxpayer identification number of each investor to which tax credits issued pursuant to this act have been transferred by the original angel investor; and (4) any additional information as the secretary may require pursuant to this act.

(c) The secretary shall transmit annually to the governor, the standing committee on commerce of the senate and the standing committee on commerce, labor and economic development of the house of representatives a report, based upon information received from each qualified Kansas business for which tax credits have been issued during the preceding year, describing the following: (1) The manner in which the purpose, as described in this act, has been carried out; (2) the total cash investments made for the purchase of qualified

securities of qualified Kansas businesses during the preceding year and cumulatively since the inception of this act; (3) an estimate of jobs created and jobs preserved by cash investments made in qualified securities of qualified Kansas businesses; and (4) an estimate of the multiplier effect on the Kansas economy of the cash investments made pursuant to this act.

(d) The secretary shall provide the information specified in subsection (c) to the department of revenue on an annual basis. The secretary shall conduct an annual review of the activities undertaken pursuant to this act to ensure that tax credits issued pursuant to this act are issued in compliance with the provisions of this act or rules and regulations promulgated by the department with respect to this act.

(e) Any violation of the reporting requirements set forth in this section shall be grounds for undesignation of a qualified Kansas business under this section.

(f) If the secretary determines that a business is not in substantial compliance with the requirements of this act to maintain its designation, the secretary, by written notice, shall inform the officers of the qualified Kansas business and the business that such business will lose designation as a qualified Kansas business in 120 days from the date of mailing of the notice unless such business corrects the deficiencies and is once again in compliance with the requirements for designation.

(g) At the end of the 120-day period, if the qualified Kansas business is still not in substantial compliance, the secretary shall send a notice of loss of designation to the business, the secretary of the department of revenue and to all known investors in the business. Loss of designation of a qualified Kansas business shall preclude the issuance of any additional tax credits with respect to this business and the secretary shall not approve the application of such business as a qualified Kansas business. Upon loss of the designation as a qualified Kansas business or if a *bioscience* business loses its designation as a qualified Kansas business under this act by moving its operations outside Kansas within 10 years after receiving financial assistance under this act *or a qualified Kansas business that is not a bioscience business loses its designation as a qualified Kansas business under this act by moving its operations outside Kansas within five years after receiving financial assistance under this act*, such business shall repay such financial assistance to the department, in an amount determined by the secretary. Each qualified Kansas business that loses such designation shall enter into a repayment agreement with the secretary specifying the terms of such repayment obligation.

(h) Angel investors *who lawfully make an investment* in a qualified Kansas business shall ~~be entitled to keep all of the tax credits claimed~~ *not have tax credits disallowed solely due to the business losing its designation as a qualified Kansas business* under this act.

(i) The secretary shall adopt rules and regulations in accordance with the rules and regulations filing act necessary to implement the provisions of K.S.A. 74-8131 through 74-8136, and amendments thereto.

Sec. 4. K.S.A. 79-32,176a is hereby amended to read as follows: 79-32,176a. (a) Any resident individual taxpayer who makes expenditures for the purpose of making all or any portion of an existing facility accessible to individuals with a disability, which facility is used as, or in connection with, such taxpayer's principal dwelling or the principal dwelling of a lineal ascendant or descendant, including construction of a small barrier-free living unit attached to such principal dwelling, shall be entitled to claim a tax credit in an amount equal to the applicable percentage of such expenditures or ~~\$9,000~~

\$15,000, whichever is less, against the income tax liability imposed against such taxpayer pursuant to article 32 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Nothing in this subsection shall be deemed to prevent any such taxpayer from claiming such credit: (1) For each principal dwelling in which the taxpayer or lineal ascendant or descendant may reside, or facility used in connection therewith; or (2) more than once, but not more often than once every four-year period of time. The applicable percentage of such expenditures eligible for credit shall be as set forth in the following ~~schedule~~ *schedules*:

Married individuals filing joint returns.

Taxpayers Federal Adjusted Gross Income	% of expenditures eligible for credit
\$0 to \$25,000 \$60,000.....	100%
Over \$25,000 \$60,000 but not over \$30,000 \$70,000.....	90%
Over \$30,000 \$70,000 but not over \$35,000 \$80,000.....	80%
Over \$35,000 \$80,000 but not over \$40,000 \$90,000.....	70%
Over \$40,000 \$90,000 but not over \$45,000 \$100,000.....	60%
Over \$45,000 \$100,000 but not over \$55,000 \$110,000.....	50%
Over \$55,000 \$110,000 but not over \$120,000.....	40%
Over \$120,000 but not over \$130,000.....	30%
Over \$130,000 but not over \$140,000.....	20%
Over \$140,000 but not over \$150,000.....	10%
Over \$150,000.....	0%

All other individuals.

Taxpayers Federal Adjusted Gross Income	% of expenditures eligible for credit
\$0 to \$40,000.....	100%
Over \$40,000 but not over \$50,000.....	90%
Over \$50,000 but not over \$60,000.....	80%
Over \$60,000 but not over \$70,000.....	70%
Over \$70,000 but not over \$80,000.....	60%
Over \$80,000 but not over \$90,000.....	50%
Over \$90,000 but not over \$100,000.....	40%
Over \$100,000 but not over \$110,000.....	30%
Over \$110,000 but not over \$120,000.....	20%
Over \$120,000 but not over \$130,000.....	10%
Over \$130,000.....	0%

Such tax credit shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the taxable year in which the expenditures are made.

(b) Notwithstanding the provisions of subsection (a), if the amount of the taxpayer's tax liability is less than ~~\$2,250~~ \$3,750 in the first year in which the credit is claimed under this section, an amount equal to the amount by which $\frac{1}{4}$ of the credit allowable under this section exceeds such tax liability shall be refunded to the taxpayer and the amount by which such credit exceeds such tax liability less the amount of such refund may be carried over for the next three succeeding taxable years.

If the amount of the taxpayer's tax liability is less than ~~\$2,250~~ \$3,750 in the second year in which the credit is claimed under this section, an amount equal to the amount by which $\frac{1}{3}$ of the amount of the credit carried over from the first taxable year exceeds such tax liability shall be refunded to the taxpayer and the amount by which the amount of the credit carried over from the first taxable year exceeds such tax liability less the amount of such refund may be carried over for the next two succeeding taxable years. If the amount of the taxpayer's tax liability is less than ~~\$2,250~~ \$3,750 in the third year in which the credit is claimed under this section, an amount equal to the amount by which $\frac{1}{2}$ of the amount carried over from the second taxable year exceeds such tax liability shall be refunded to the taxpayer and the amount by which the amount of the credit carried over from the second taxable year exceeds such tax liability less the amount of such refund may be carried over to the next succeeding taxable year. If the amount of the credit carried over from the third taxable year exceeds the taxpayer's income tax liability for such year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer.

(c) *In the case of all tax years commencing after December 31, 2021, the maximum tax credit amount, as prescribed in subsection (a), and the tax liability threshold amount in the first, second and third years, as prescribed in subsection (b), shall be increased by an amount equal to such maximum tax credit amount and tax liability threshold amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) of the federal internal revenue code for the calendar year in which the taxable year commences.*

(d) The provisions of this section are applicable to tax year ~~2013~~ 2021, and all tax years thereafter.

Sec. 5. K.S.A. 74-8132, 74-8133, 74-8136 and 79-32,176a are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.