

HOUSE BILL No. 2518

By Representative Sloan

1-24

1 AN ACT concerning income taxation; relating to credits; Kansas angel
2 investor tax credits; limitations and transferability; amending K.S.A.
3 2011 Supp. 74-8133 and 74-8134 and repealing the existing sections.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 74-8133 is hereby amended to read as
7 follows: 74-8133. (a) A credit against the tax imposed by article 32 of
8 chapter 79 of the Kansas Statutes Annotated on the Kansas taxable income
9 of an angel investor and against the tax imposed by K.S.A. 40-252, and
10 amendments thereto, shall be allowed for a cash investment in the
11 qualified securities of a qualified Kansas business. The credit shall be in a
12 total amount equal to 50% of such investors' cash investment in any
13 qualified Kansas business, subject to the limitations set forth in subsection
14 (b). This tax credit may be used in its entirety in the taxable year in which
15 the cash investment is made except that no tax credit shall be allowed in a
16 year prior to January 1, 2005. If the amount by which that portion of the
17 credit allowed by this section exceeds the investors' liability in any one
18 taxable year, beginning in the year 2005, the remaining portion of the
19 credit may be carried forward until the total amount of the credit is used. If
20 the investor is a permitted entity investor, the credit provided by this
21 section shall be claimed by the owners of the permitted entity investor in
22 proportion to their ownership share of the permitted entity investor.

23 (b) The secretary of revenue shall not allow tax credits of more than
24 ~~\$50,000~~ \$100,000 for a single Kansas business or a total of ~~\$250,000-~~
25 ~~\$500,000~~ in tax credits for a single year per investor who is a natural
26 person or owner of a permitted entity investor. No tax credits authorized
27 by this act shall be allowed for any cash investments in qualified securities
28 for any year after the year 2016. The total amount of tax credits which may
29 be allowed under this section shall not exceed ~~\$4,000,000 during the tax~~
30 ~~year 2007 and \$6,000,000 for tax year 2008 and each tax year thereafter,~~
31 ~~except that for tax year 2011, the total amount of tax credits which may be~~
32 ~~allowed under this section shall not exceed \$5,000,000~~ \$12,000,000 for
33 tax year 2012, and each tax year thereafter. The balance of unissued tax
34 credits may be carried over for issuance in future years until 2016.

35 (c) A cash investment in a qualified security shall be deemed to have
36 been made on the date of acquisition of the qualified security, as such date

1 is determined in accordance with the provisions of the internal revenue
2 code.

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

7 (e) ~~Any investor who has not owed any Kansas income tax under the~~
8 ~~provisions of article 32, chapter 79 of the Kansas Statutes Annotated for~~
9 ~~the immediate past three taxable years, who does not reasonably believe~~
10 ~~that it will owe any such tax for the current taxable year and who makes a~~
11 cash investment in a qualified security of a qualified Kansas business shall
12 be deemed to acquire an interest in the nature of a transferable credit
13 limited to an amount equal to 50% of this cash investment. This interest
14 may be transferred to any natural person of net worth, as defined in 17
15 C.F.R. § 230.501(a) as in effect on the effective date of this act whether or
16 not such person is then an investor and be claimed by the transferee as a
17 credit against the transferee's Kansas income tax liability beginning in the
18 year provided in subsection (a). No person shall be entitled to a refund for
19 the interest created under this section. Only the full credit for any one
20 investment may be transferred and this interest may only be transferred
21 one time. A credit acquired by transfer shall be subject to the limitations
22 prescribed in this section. Documentation of any credit acquired by
23 transfer shall be provided by the investor in the manner required by the
24 director of taxation.

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

32 Sec. 2. K.S.A. 2011 Supp. 74-8134 is hereby amended to read as
33 follows: 74-8134. (a) Before an angel investor may be entitled to receive
34 tax credits, as authorized by this act, such investor must have made a cash
35 investment in a qualified security of a qualified Kansas business. This
36 business must have been approved by the secretary as a qualified Kansas
37 business prior to the date on which the cash investment was made. To be
38 designated as a qualified Kansas business, a business must make
39 application to the secretary in accordance with the provisions of this
40 section.

41 (b) Such application shall be in form and substance as required by the
42 secretary, but shall include at least the following:

43 (1) The name of the business and certified copies of the

1 organizational documents of the business;

2 (2) a business plan, including a description of the business and the
3 management, product, market and financial plan of business;

4 (3) a statement of the business innovative and proprietary technology,
5 product or service;

6 (4) a statement of the potential economic impact of the enterprise,
7 including the number, location and types of jobs expected to be created;

8 (5) a description of the qualified securities to be issued, the
9 consideration to be paid for the qualified securities, the amount of any tax
10 credits requested and the earliest year in which the tax credits may be
11 redeemed;

12 (6) a statement of the amount, timing and projected use of the
13 proceeds to be raised from the proposed sale of qualified securities; and

14 (7) such other information as the secretary may request, such as the
15 names, addresses and taxpayer identification numbers of all investors who
16 may qualify for the tax credit. Such list of investors who may qualify for
17 the tax credits shall be amended as new qualified securities are sold or as
18 any information on the list shall change.

19 (c) No business shall be designated as a qualified Kansas business
20 unless such business meets all of the following criteria:

21 (1) The business must not have had annual gross revenues of more
22 than ~~\$5,000,000~~ \$10,000,000 in the most recent tax year of the business;

23 (2) ~~businesses that are not bioscience businesses must have been in~~
24 ~~operation for less than five years; bioscience businesses must have been in~~
25 ~~operation for less than 10 years;~~

26 ~~(3)~~ all else equal, first consideration will be given to animal health
27 companies;

28 ~~(4)~~(3) the business must not have ownership interests including, but
29 not limited to, common or preferred shares of stock that can be traded by
30 the public via a stock exchange, electronic exchange, bulletin board or
31 other public market place on or before the date that a qualifying
32 investment is made;

33 ~~(5)~~(4) the business must not be engaged primarily in any one or more
34 of the following enterprises: (A) Any service provider set forth in K.S.A.
35 17-2707, and amendments thereto; (B) the business of banking, savings
36 and loan or lending institutions, credit or finance, or financial brokerage or
37 investments; (C) the provision of professional services, such as legal,
38 accounting or engineering services; (D) governmental, charitable, religious
39 or trade organizations; (E) the ownership, development, brokerage, sales or
40 leasing of real estate; (F) insurance; (G) construction or construction
41 management or contracting; (H) business consulting or brokerage; (I) any
42 business engaged primarily as a passive business, having irregular or
43 noncontinuous operations, or deriving substantially all of the income of the

1 business from passive investments that generate interest, dividends,
2 royalties, or capital gains, or any business arrangements the effect of
3 which is to immunize an investor from risk of loss; (J) any Kansas
4 certified capital formation company; (K) any activity that is in violation of
5 the law; and (L) any business raising money primarily to purchase real
6 estate, land or fixtures; and

7 ~~(6)~~(5) the business must satisfy all other requirements of this act.

8 (d) Notwithstanding the requirements of subsection (c), a business
9 may be considered as a qualified Kansas business under the provisions of
10 this act if such business falls within a standard industrial classification
11 code.

12 (e) The portions of documents and other materials submitted to the
13 secretary that contain trade secrets shall be kept confidential and shall be
14 maintained in a secured environment by the secretary. For the purposes of
15 this act, such portions of documents and other materials means any
16 customer lists, any formula, compound, production data or compilation of
17 information certain individuals within a commercial concern using such
18 portions of documents and other material means to fabricate, produce or
19 compound an article of trade, or, any service having commercial value,
20 which gives the user an opportunity to obtain a business advantage over
21 competitors who do not know or use such service.

22 (f) A qualified Kansas business shall have the burden of proof to
23 demonstrate to the secretary the qualifications of the business under this
24 section and shall have the obligation to notify the secretary in a timely
25 manner of any changes in the qualifications of the business or in the
26 eligibility of investors to claim a tax credit for cash investment in a
27 qualified security.

28 Sec. 3. K.S.A. 2011 Supp. 74-8133 and 74-8134 are hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after its
30 publication in the statute book.

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