

HOUSE BILL No. 2045

By Representative Owens

1-7

Proposed Amendments for HB 2045
House Committee on Commerce Labor and
Economic Development
January 28, 2021
Prepared by Chuck Reimer
Office of Revisor of Statutes

1 AN ACT concerning economic development; relating to the Kansas angel
2 investor tax credit act; qualified securities; tax credit limitations and
3 amounts; investor requirements; qualified Kansas business designation
4 requirements; bioscience businesses; program expiration date;
5 amending K.S.A. 74-8132, 74-8133 and 74-8136 and repealing the
6 existing sections.
7

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

9 Section 1. K.S.A. 74-8132 is hereby amended to read as follows: 74-
10 8132. As used in this act:

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

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

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

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

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

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

34 (g) "permitted entity investor" means: (A) Any general partnership,
35 limited partnership, corporation that has in effect a valid election to be
36 taxed as an S corporation under the United States internal revenue code, or

1 a limited liability company that has elected to be taxed as a partnership
2 under the United States internal revenue code; and (B) that was established
3 and is operated for the sole purpose of making investments in other
4 entities;

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

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

17 (2) ~~any debt instrument, such as a note or debenture that is secured~~
18 ~~or unsecured, subordinated~~ *subordinate* to the general creditors of the
19 *qualified Kansas business* debtor ~~and that requires no payments of~~
20 ~~principal, other than principal payments required to be made out of any~~
21 ~~future profits of payment from the qualified Kansas business debtor, for at~~
22 ~~least a seven-year period after commencement of such debt instrument's~~
23 ~~term and that shall convert to some form of equity prior to the qualified~~
24 *Kansas business debtor raising* ~~[its next series of funding]~~ and

any additional funds

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

26 Sec. 2. K.S.A. 74-8133 is hereby amended to read as follows: 74-
27 8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the
28 Kansas Statutes Annotated, and amendments thereto, on the Kansas
29 taxable income of an angel investor and against the tax imposed by K.S.A.
30 40-252, and amendments thereto, shall be allowed for a cash investment in
31 the qualified securities of a qualified Kansas business. *For tax year 2021*
32 *and all tax years thereafter*, the credit shall be in a total amount ~~equal of~~
33 *up to* 50% of such investors' cash investment in any qualified Kansas
34 business, subject to the limitations set forth in subsection (b). This tax
35 credit may be used in its entirety in the taxable year in which the cash
36 investment is made except that no tax credit shall be allowed in a year
37 prior to January 1, 2005. If the amount by which that portion of the credit
38 allowed by this section exceeds the investors' liability in any one taxable
39 year, beginning in the year 2005, the remaining portion of the credit may
40 be carried forward until the total amount of the credit is used. If the
41 investor is a permitted entity investor, the credit provided by this section
42 shall be claimed by the owners of the permitted entity investor in
43 proportion to their ownership share of the permitted entity investor.

1 (b) *For tax year 2021 and all tax years thereafter*, the secretary of
 2 revenue shall not allow tax credits of more than ~~\$50,000~~ \$100,000 for a
 3 single Kansas business or a total of ~~\$250,000~~ \$350,000 in tax credits for a
 4 single year per investor who is a natural person or owner of a permitted
 5 entity investor. No tax credits authorized by this act shall be allowed for
 6 any cash investments in qualified securities for any year after the year
 7 ~~2021~~ 2026. The total amount of tax credits ~~which~~ that may be allowed
 8 under this section shall not exceed:

9 (1) \$4,000,000 during the tax year 2007 ~~and~~;

10 (2) \$6,000,000 for tax ~~year~~ years 2008 ~~and each tax year thereafter~~
 11 *through 2010 and 2012 through 2022*, except that for tax year 2011, the
 12 total amount of tax credits ~~which~~ that may be allowed under this section
 13 shall not exceed \$5,000,000;

14 (3) \$6,500,000 for tax year 2023;

15 (4) \$7,000,000 for tax year 2024;

16 (5) \$7,500,000 for tax year 2025; and

17 (6) \$8,000,000 for tax year 2026.

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

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

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

29 (e) Any investor ~~who has not owed any Kansas income tax under the~~
 30 ~~provisions of article 32, chapter 79 of the Kansas Statutes Annotated, and~~
 31 ~~amendments thereto, for the immediate past three taxable years without a~~
 32 ~~current tax liability,~~ who does not reasonably believe that it will owe any
 33 such tax for the current taxable year and who makes a cash investment in a
 34 qualified security of a qualified Kansas business shall be deemed to
 35 acquire an interest in the nature of a transferable credit limited, *for tax*
 36 *year 2021 and all tax years thereafter*, to an amount ~~equal~~ up to 50% of
 37 this cash investment. This interest may be transferred to any natural person
 38 of net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the
 39 effective date of this act, whether or not such person is then an investor
 40 and be claimed by the transferee as a credit against the transferee's Kansas
 41 income tax liability beginning in the year provided in subsection (a). No
 42 person shall be entitled to a refund for the interest created under this
 43 section. Only the full credit for any one investment may be transferred and

at the time of the investment in a qualified Kansas business

1 this interest may only be transferred one time. A credit acquired by transfer
2 shall be subject to the limitations prescribed in this section. Documentation
3 of any credit acquired by transfer shall be provided by the investor in the
4 manner required by the director of taxation.

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

12 Sec. 3. K.S.A. 74-8136 is hereby amended to read as follows: 74-
13 8136. (a) Tax credits for qualified Kansas businesses are a limited resource
14 of the state for which the secretary is designated as the administrator. The
15 purpose of such tax credits is to facilitate the availability of equity
16 investment in businesses in the early stages of commercial development
17 and to assist in the creation and expansion of Kansas businesses ~~which~~
18 *that* are job and wealth creating enterprises. To achieve this purpose and to
19 optimize the use of the limited resources of the state, the secretary is
20 authorized to issue tax credits to qualified investors in qualified Kansas
21 businesses. Such tax credits shall be awarded to those qualified Kansas
22 businesses ~~which~~ *that*, as determined by the secretary, are most likely to
23 provide the greatest economic benefit to the state. The secretary may issue
24 whole or partial tax credits based on an assessment of the qualified
25 businesses. The secretary may consider numerous factors in such
26 assessment, including, but not limited to, the quality and experience of the
27 management team, the size of the estimated market opportunity, the risk
28 from current or future competition, the ability to defend intellectual
29 property, the quality and utility of the business model and the quality and
30 reasonableness of financial projections for the business.

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

43 (c) The secretary shall transmit annually to the governor, the standing

1 committee on commerce of the senate and the standing committee on
2 commerce, labor and economic development of the house of
3 representatives a report, based upon information received from each
4 qualified Kansas business for which tax credits have been issued during
5 the preceding year, describing the following: (1) The manner in which the
6 purpose, as described in this act, has been carried out; (2) the total cash
7 investments made for the purchase of qualified securities of qualified
8 Kansas businesses during the preceding year and cumulatively since the
9 inception of this act; (3) an estimate of jobs created and jobs preserved by
10 cash investments made in qualified securities of qualified Kansas
11 businesses; and (4) an estimate of the multiplier effect on the Kansas
12 economy of the cash investments made pursuant to this act.

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

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

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

29 (g) At the end of the 120-day period, if the qualified Kansas business
30 is still not in substantial compliance, the secretary shall send a notice of
31 loss of designation to the business, the secretary of the department of
32 revenue and to all known investors in the business. Loss of designation of
33 a qualified Kansas business shall preclude the issuance of any additional
34 tax credits with respect to this business and the secretary shall not approve
35 the application of such business as a qualified Kansas business. Upon loss
36 of the designation as a qualified Kansas business or if a *bioscience*
37 business loses its designation as a qualified Kansas business under this act
38 by moving its operations outside Kansas within 10 years after receiving
39 financial assistance under this act *or a qualified Kansas business that is*
40 *not a bioscience business loses its designation as a qualified Kansas*
41 *business under this act by moving its operations outside Kansas within*
42 *five years after receiving financial assistance under this act*, such business
43 shall repay such financial assistance to the department, in an amount

1 determined by the secretary. Each qualified Kansas business that loses
2 such designation shall enter into a repayment agreement with the secretary
3 specifying the terms of such repayment obligation.

4 (h) Angel investors in a qualified Kansas business ~~shall be entitled to~~
5 ~~keep all of the tax credits claimed~~ under this act.

who lawfully make an investment

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

not have tax credits disallowed solely due to the business
losing its designation as a qualified Kansas business

9 Sec. 4. K.S.A. 74-8132, 74-8133 and 74-8136 are hereby repealed.

10 Sec. 5. This act shall take effect and be in force from and after its
11 publication in the statute book.