

1       AN ACT relating to economic development incentives.

2       *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3           ➔Section 1. KRS 141.396 is amended to read as follows:

4       (1) As used in this section:

5           (a) "Authority" has the same meaning as in KRS 154.20-230;

6           (b) "Qualified investor" has the same meaning as in KRS 154.20-230;

7           (c) "Qualified small business" has the same meaning as in KRS 154.20-230; and

8           (d) "Taxpayer" means an individual subject to the tax imposed by KRS 141.020,  
9           who has either:

10           1. Received a credit from the authority pursuant to KRS 154.20-236; or

11           2. Received a credit through a valid transfer allowed under this section  
12           from a qualified investor that was originally awarded the credit.

13       (2) For taxable years beginning on or after January 1, 2015, there is hereby created the  
14           angel investor tax credit. The credit shall be nonrefundable, and shall apply against  
15           the tax imposed by KRS 141.020. The ordering of the credit shall be as provided in  
16           KRS 141.0205.

17       (3) A qualified investor may seek a credit by applying to the authority pursuant to KRS  
18           154.20-236.

19       (4) The maximum amount of credit that may be claimed by a taxpayer in any taxable  
20           year shall not exceed fifty percent (50%) of the total amount of credit awarded or  
21           transferred to the taxpayer.

22       (5) Any amount of credit that a taxpayer is unable to utilize during a taxable year may  
23           be carried forward for use in a succeeding taxable year for a period not to exceed  
24           fifteen (15) years. Any amount of credit not used within fifteen (15) years shall be  
25           lost. No amount of credit may be carried back by any taxpayer.

26       (6) The credit shall not apply to any liability a taxpayer may have for interest, penalties,  
27           past due taxes, or any other additions to the taxpayer's tax liability. The holder of

1           the credit shall assume any and all liabilities and responsibilities of the credit.

2   (7) A credit may be transferred by a qualified investor to any individual taxpayer. A  
3           qualified investor making a transfer shall give written notice to the department and  
4           shall provide any other information required by the department, in the manner  
5           prescribed by the department. Any transferred credit shall be subject to the original  
6           timeframes and requirements established by this section and KRS 154.20-230 to  
7           154.20-240 as if held by the qualified investor.

8   (8) To receive the credit, a taxpayer shall claim the credit on his or her return in the  
9           manner prescribed by the department.

10   (9) The department shall recapture any portion, or the full amount, of a credit upon  
11           notification from the authority that a recapture is required pursuant to KRS 154.20-  
12           240.

13   (10) In order for the General Assembly to evaluate the fulfillment of the purposes stated  
14           in KRS 154.20-232, the department and the Cabinet for Economic Development  
15           shall work jointly to submit the following information to the Interim Joint  
16           Committee on Appropriations and Revenue on or before May 1, 2019, and each  
17           May 1 thereafter, related to each taxable year that an angel investor credit is  
18           claimed on a return:

19       (a) The number of qualified small businesses certified by the authority;

20       (b) The demographics of each qualified small business, including:

21           1. The net worth of the qualified small business;

22           2. The qualified activity the qualified small business is actively and  
23                principally engaged in within the Commonwealth;

24           3. The number of employees of the qualified small business;

25           4. The location of the assets and operations~~assets, operations, and~~  
26                employees} of the qualified small business; and

27           5. The aggregate amount of qualified investments received by the qualified

1 small business;

- (c) A list detailing each qualified investor certified by the authority, the amount of investment made by each qualified investor, the date each qualified investment is made by the qualified investor, and the amount of tax credit awarded each investor;
- (d) By taxable year, the amount of tax credit claimed by each investor and the amount of credit available to be claimed in future taxable years;
- (e) The number of qualified small businesses that are active, inactive, or closed that have received qualified investments;
- (f) The number of qualified small businesses that have established a location in the Commonwealth and the number that have expanded operations, the number and location of each new job created, a description of each development of new products and technologies in the Commonwealth, and the field of operation for that growth, including knowledge-based, high-tech, or research and development; and
- (g) The total amount of tax credit awarded for each fiscal year.

(11) If either the department or the Cabinet for Economic Development does not currently have the data to fulfill the reporting requirement of subsection (10) of this section, the department and the cabinet shall work jointly to obtain the data in an expedient manner to provide the report on or before the May 1, 2019, report date.

➔ Section 2. KRS 154.20-234 is amended to read as follows:

- (1) The requirements for small businesses, investors, and investments to be qualified for participation in the Angel Investor Program are as follows:
  - (a) To be certified as a qualified small business, the business shall demonstrate to the authority that it is an entity which, at the time the small business requests certification:
    1. Has a net worth of ten million dollars (\$10,000,000) or less or net

1 income after federal income taxes for each of the two (2) preceding  
2 fiscal years of three million dollars (\$3,000,000) or less;

3 2 Is actively and principally engaged in a qualified activity within the  
4 Commonwealth, or will be actively and principally engaged in a  
5 qualified activity within the Commonwealth after the receipt of a  
6 qualified investment by a qualified investor;

7 3. Has no more than one hundred (100) full-time employees;

8 4. Has more than fifty percent (50%) of its assets and operations~~assets, operations, and employees~~ located in the Commonwealth; and

9 5. Has at no time received an aggregate amount of qualified investments  
10 that has allowed qualified investors to receive more than one million  
11 dollars (\$1,000,000) in angel investor credits;

12 (b) To be certified as a qualified investor, an individual investor shall demonstrate  
13 to the authority that he or she:

14 1. Is an individual natural person who may utilize a single-member limited  
15 liability company to make the investment as long as the individual  
16 natural person is the owner and the limited liability company is a  
17 disregarded entity;

18 2. Qualifies as an accredited investor pursuant to Regulation D of the  
19 United States Securities and Exchange Commission, 17 C.F.R. sec.  
20 230.501, in effect as of the date the individual investor requests  
21 certification;

22 3. Does not hold in excess of twenty percent (20%) ownership interest in,  
23 and is not employed by, the qualified small business prior to making the  
24 qualified investment in that qualified small business;

25 4. Is not closely related to an individual who holds in excess of twenty  
26 percent (20%) ownership interest in, or who is employed by, the

27

1 qualified small business prior to making the qualified investment in that  
2 qualified small business. For purposes of this subparagraph, "closely  
3 related" means any of the following in relation to the owner or owners  
4 or spouse of the owner or owners:

5                   a. Parents or grandparents;

6                   b. Children or their spouses; or

7                   c. Siblings or their spouses; and

8        5. Seeks a financial return from the investment made in the qualified small

9                   business; and

10 (c) To be certified as a qualified investment, the investment shall:

15 (2) In consideration for the qualified investment, the qualified investor shall receive an  
16 equity interest, or a near equity interest, such as a simple agreement for future  
17 equity, or "SAFE agreement", or a convertible debt instrument in the qualified  
18 small business.

19 (3) The authority may establish additional requirements and guidelines for the efficient  
20 implementation and administration of the Kentucky Angel Investment Act and to  
21 carry out its purposes.

22 ➔Section 3. KRS 154.20-240 is amended to read as follows:

23 (1) On or before February 1 of the calendar year succeeding the year in which a credit  
24 was awarded, and continuing for four (4) years thereafter, a qualified small business  
25 that has received a qualified investment shall file an annual report with the  
26 authority.

27 (2) (a) This report shall demonstrate that the small business:

- 1        1. Continues to have more than fifty percent (50%) of its assets and  
2                operations~~assets, operations, and employees~~ in the Commonwealth;
- 3        2. Has at no time received an aggregate amount of qualified investments  
4                that has allowed qualified investors to receive more than one million  
5                dollars (\$1,000,000) in credits; and
- 6        3. Continues to be actively and principally engaged in a qualified activity.

7        (b) The report shall also provide additional information related to the success of  
8                the small business attributable to the investment, including but not limited to:

- 9                1. New jobs created;
- 10                2. Increased sales or other economic activity conducted;
- 11                3. The degree of other private investment attracted; and
- 12                4. Any other information requested by the authority.

13        (3) If a qualified small business either:

- 14                (a) Fails to submit the report mandated by this section in any year; or
- 15                (b) Fails to meet any of the criteria listed in subsection (2)(a) of this section at  
16                any time during any year of the reporting period;

17                the authority shall notify the department, which shall recapture any portion, or the  
18                full amount, of the credit awarded for qualified investments in that qualified small  
19                business from the qualified investor that received the credit award or any taxpayer  
20                receiving the credit through a valid transfer. Any amounts collected from the  
21                recapture shall be deposited in the general fund.

22        (4) If a qualified small business becomes insolvent and ceases operations at any time  
23                before the final required annual report is due, it shall file a written report with the  
24                authority attesting to that fact and shall thereafter be exempt from the annual report  
25                required by this section, and credits awarded and already claimed for qualified  
26                investments in that qualified small business shall not be subject to any recapture.  
27                Any credits not claimed as of the date the company became insolvent and ceased

1 operations shall be considered expired and shall not be claimed.

2 ➔Section 4. KRS 154.20-254 is amended to read as follows:

3 As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

4 (1) "Affiliate" means any person or entity who directly or indirectly, through one (1) or  
5 more intermediaries, controls or is controlled by or is under common control with  
6 another person or entity;

7 (2) "Agreement" means an investment fund agreement entered into pursuant to KRS  
8 154.20-255(5) by the authority and an investment fund manager on behalf of the  
9 investment fund, the investment fund manager, and any investor in the investment  
10 fund;

11 (3) "Amended application" means a document submitted by an investment fund  
12 manager, in a form acceptable to the authority and on behalf of an investment fund,  
13 for the purpose of increasing the aggregate amount of available tax credits;

14 (4) "Applicant" means any person or entity who has not received approval from the  
15 authority as an investment fund manager, but who has submitted or will submit an  
16 application to the authority for approval as an investment fund manager;

17 (5) "Authority" means the Kentucky Economic Development Finance Authority or its  
18 designee;

19 (6) "Cash contribution" means an investment of money by an investor in an investment  
20 fund under the terms of KRS 154.20-250 to 154.20-284;

21 (7) "Committed cash contribution" means a legally binding agreement by an investor to  
22 make a cash contribution in an amount set forth in a written agreement between an  
23 investor and an investment fund;

24 (8) "Commonwealth" means the Commonwealth of Kentucky;

25 (9) "Credit" means a nonrefundable credit for investors against state tax liability  
26 allocated and granted by the authority pursuant to KRS 154.20-258 for qualified  
27 investments made by approved investment funds;

- 1       (10) "Entity" means any corporation, limited liability company, business development
- 2                   corporation, partnership, limited partnership, sole proprietorship, association, joint
- 3                   stock company, receivership, trust, professional service organization, or other legal
- 4                   entity through which business is conducted;
- 5       (11) "Financial institution" means "financial institution" as defined in KRS 136.500(10)
- 6                   and includes savings and loan associations, savings banks, and similar institutions
- 7                   subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;
- 8       (12) "Insurance company" means any insurance company subject to the taxes imposed
- 9                   by KRS 136.320, 136.330, or 304.3-270;
- 10      (13) "Investment fund" means any entity that is organized by an investment fund
- 11                   manager in compliance with applicable state and federal securities laws and
- 12                   regulations, and is approved by the authority to make qualified investments
- 13                   pursuant to KRS 154.20-256;
- 14      (14) "Investment fund manager" means any person or entity that has been approved by
- 15                   the authority to manage one (1) or more investment funds authorized under the
- 16                   provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all
- 17                   applicable federal and state regulations;
- 18      (15) "Investor" means any person or entity, including financial institutions and insurance
- 19                   companies, that is subject to state tax liability and that makes a cash contribution or
- 20                   a committed cash contribution to an investment fund in accordance with the
- 21                   provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of
- 22                   violating any of Kentucky's tax laws within the past ten (10) years;
- 23      (16) "Knowledge-based" has the same meaning as in KRS 164.6011;
- 24      (17) "Nonprofit entity" means an investor that is exempt from federal income tax under
- 25                   Section 501(c) of the Internal Revenue Code of 1986, as amended;
- 26      (18) "Qualified activity" has the same meaning as in KRS 154.20-230;
- 27      (19) "Qualified investment" means an investment of at least ten thousand dollars

1       (\$10,000) in a small business by an investment fund, in compliance with applicable  
2       state and federal securities laws and regulations, seeking a financial return based  
3       upon that consideration. In consideration for the qualified investment, the  
4       investment fund shall receive an equity interest in the small business, such as a  
5       general or limited partnership interest, common or preferred stock with or without  
6       voting rights and without regard to seniority position, forms of subordinate or  
7       convertible unsecured debt, or both, with warrants, rights, or other means of equity  
8       conversion attached; and

9       (20) "Small business" means any entity which at the time a qualified investment is made  
10      by an investment fund:

11       (a) 1. Has a net worth of five million dollars (\$5,000,000) or less or net  
12           income after federal income taxes for each of the two (2) preceding  
13           fiscal years of three million dollars (\$3,000,000) or less; or  
14           2. Is a knowledge-based business, as shall be prescribed by the  
15           commissioner of the Department of Commercialization and Innovation,  
16           and has a net worth of ten million dollars (\$10,000,000) or less;

17       (b) Is actively and principally engaged in a qualified activity within the  
18           Commonwealth, or will be actively and principally engaged in a qualified  
19           activity within the Commonwealth after the receipt of a qualified investment  
20           by an investment fund;

21       (c) Has no more than one hundred (100) employees; and

22       (d) Has more than fifty percent (50%) of its assets and operations~~assets, operations, and employees~~ located in Kentucky.