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HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 386

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE ECONOMIC DEVELOPMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 29, Chapter 50 of the Delaware Code by adding a new Subchapter IX as shown by
2 underlining as follows:

3 Subchapter IX. First State Angel Investment Tax Credit Program

4 § 5099A. Legislative findings; authorization.

5 The General Assembly finds that the growth of small businesses in the State results in increased job opportunities for
6 Delaware residents, produces more spending in the State and increases tax bases. Existing or new small businesses and
7 recently displaced Delaware employees beginning new businesses can provide significant economic benefits to the State
8 provided they can obtain sufficient equity financing to carry them from start-up through the initial development phases of a
9 business. In order to encourage the increased availability of risk equity capital to these enterprises, the Delaware Economic
10 Development Office through the First State Angel Investment Council ("the Council") is authorized to establish criteria for,
11 and issue, certifications of eligibility for investors qualifying for the First State Angel Investment Tax Credit Program.

12 § 5099B. Composition of the Council.

13 The Council shall be comprised of 5 members as follows: 1 appointed by the Director of the Delaware Economic
14 Development Office; 1 appointed by the Secretary of Finance and 3 appointed by the Governor, 1 from each county. Each
15 appointee must have knowledge and experience related to the Program's purpose. Each appointee will serve a term of 2
16 years.

17 § 5099C. Eligibility for tax credits.

18 The Council shall, by rules and regulations, establish the First State Angel Investment Tax Credit Program ("the
19 Program"), which shall provide for qualification of businesses to receive investment from individuals obtaining tax credit
20 certification under the Program and for the certification of qualified investments by individuals for tax credits under § 1116

21 of Title 30. The Council shall by rule or regulation set forth qualifications for participation in the Program in accordance
22 with §§ 5097 and 5098 of this title and may issue rules or regulations relating to such other matters as, in the judgment of
23 the Council, are necessary or desirable to further the purposes of the Program, not inconsistent with the provisions of this
24 subchapter. Rules or regulations issued under this subchapter shall have the force and effect of law.

25 § 5099D. Qualification of businesses seeking investment under the Program.

26 Without limitation, the requirements for qualifying for receipt of investment capital under the Program shall include the
27 following:

28 (1) Businesses may apply to the Council for investment under the Program provided:

29 a. Such business had annual gross revenues of \$5,000,000 or less during the full 12-month period
30 immediately preceding the date on which it filed its application for investment;

31 b. Such business has assets not exceeding \$2,000,000;

32 c. Such business commenced operation no more than 3 years prior to its submitting its application;

33 d. Such business must maintain operations in this State and must have at least 2 full-time employees;

34 e. The investment qualified for certification under this subchapter must be expended on plant, equipment,
35 research and development or acquisition of inventory or raw materials (provided the plant or equipment is to be installed,
36 the research and development to occur and the inventory or raw materials to be accumulated, in Delaware) or for such other
37 purpose as, in the Council's discretion, promotes the purposes of the Program; and

38 f. Such application is made in such form and at such time as the Council may by regulation prescribe.

39 (2) No owner of more than 30% of the voting interests in the business nor such owner's spouse, parents, siblings,
40 or children shall be eligible for tax credit under this subchapter for investment in such business. For purposes of this
41 subdivision, ownership by the spouse, parents, siblings, or children of an owner shall be attributed to such owner for
42 purposes of determining whether such owner owns more than 30% of the voting interests in the business.

43 (3) Applications for businesses seeking investment qualifying under this subchapter shall be subject to approval
44 as follows:

45 a. Business applications shall be reviewed by the Council which shall evaluate such applications based on
46 criteria the Council establishes through its rulemaking authority; and

47 b. Based on such review, the Council will determine, by majority vote, whether to approve the
48 application.

49 § 5099E. Certification of individuals for tax credits.

50 Without limitation, the requirements for qualifying for certification of individuals' investments for tax credits under the
51 Program shall include the following:

52 (1) Individuals may apply for tax credit certification provided:

53 a. Such individual's investment is in a business approved to receive such investment under § 5099D of
54 this title;

55 b. Such investment must be not less than \$25,000 or more than \$50,000 in any 1 business; provided that
56 this paragraph shall not limit an applicant from making other investments in the business for which a tax credit is not
57 requested; and

58 c. Such application shall be made in such form and at such time as the Council may by regulation
59 prescribe;

60 (2) Applications by individuals for investment tax credit certification shall not be approved to the extent that:

61 a. The investment is in excess of 25% of the actual investment made during any tax year;

62 b. Total shares of voting stock received in exchange for investment certified for tax credits under this
63 subchapter exceed 30% of the voting shares of stock outstanding in the business qualifying for investment under the
64 Program;

65 (3) No investment in any business shall be certified:

66 a. Unless other investments in the same business qualifying for certification under this subchapter along
67 with said investment amount in the aggregate to at least \$25,000; or

68 b. If such investment along with all investments in the same business already certified under this
69 subchapter exceed \$150,000;

70 (4) No application shall be approved for any investment under whose terms the investor obtains a return of the
71 principal invested at any time prior to the end of 5 years from the date of the investment or under whose terms the
72 investment is not at risk in the qualifying business. Notwithstanding this subdivision, the investor may transfer an
73 investment at any time and may transfer any unused tax credits certified under this subchapter but only as part of the
74 transfer of the investment and only so long as the transferor and transferee of the unused credits meet whatever reporting
75 requirements may be established by the Director of Revenue or the Council, or both; and

76 (5) The Council may not issue in the aggregate more than \$2,000,000 in tax credit certifications nor may it issue
77 any certifications after December 31, 2014.

78 § 5099F. Revocation of qualification or certification.

79 (a) The Council may, after notice and an opportunity for a hearing, revoke any business' qualification for receipt of
80 investments under the Program if the Council finds:

81 (1) Any material representation made by the business or by any person on behalf of such business in connection
82 with an application under this subchapter was false when made; or

83 (2) The application otherwise violates any conditions established for such application by the Council.

84 If any such qualification is revoked, the business and any person making application on behalf of said business shall be
85 required immediately to pay the State the full amount of any tax credit certifications authorized for investment in said
86 business whether or not such certificates have yet been used to obtain tax credits, plus a penalty of 100% the amount of
87 such certificates. The validity of tax credit certifications issued for investment in such business shall not be affected by
88 revocation of qualification of said business for participation in the Program.

89 (b) The Council may, after notice and an opportunity for a hearing, revoke any tax credit certification issued under the
90 Program if the Authority finds:

91 (1) Any material representation made by the applicant for such certification in connection with an application
92 under this subchapter was false when made; or

93 (2) The application otherwise violates any conditions established for such application by the Council.

94 If any such certification is revoked, the applicant shall be required immediately to repay the State the full amount of any tax
95 credit taken under § 1116 of Title 30 as well as a penalty of 100% of such credit. In the event the applicant has transferred
96 unused credits to a transferee, the applicant shall be liable for repayment of the full amount of the certifications plus 100%
97 thereof as penalty. Unless a transferee knew of the falsity of facts represented by the applicant at the time the transferee
98 obtained an interest in unused tax credits, the validity of such unused credits shall not be affected by the revocation of the
99 applicant's certification.

100 (c) The Council is authorized to require that any application or such other document as it requires to be filed with the
101 Authority be submitted under penalties of perjury.

102 (d) Notwithstanding § 581 of Title 30, the Director of Revenue may disclose tax return information of any applicant to
103 the Council whenever the Council notifies the Director of Revenue that such information is necessary or desirable for any
104 determination required under this subchapter. The Council may not further disclose any information received under this
105 subsection except to the extent necessary for the Council to carry out the duties specified in this subchapter.

106 (e) The Council shall not disclose to any person, other than in compliance with a proper judicial order or as required by
107 law, any information contained on any application for qualification for investment other than to any applicant for tax credit
108 certification, provided the business applicant authorizes such disclosure, and to the Director of Revenue.

SYNOPSIS

This Act will allow expanded early stage investment of capital into targeted Delaware businesses, thereby assisting in the creation of jobs. The Act provides tax credits for investments into targeted small businesses that have been certified by the First State Angel Investment Council (FSAIC). The FSAIC will review applications submitted by small businesses meeting the eligibility requirements. A qualified investor may then make an investment into the qualified small business and receive a tax credit for Delaware income tax.

The FSAIC is authorized to grant \$500,000 of state income tax credits within a period of two years from the passage of the Act. This will potentially generate \$2.5 million of private investment into qualified small businesses and if the average size of an investment is \$50,000, there will be fifty Delaware small businesses that will receive investments which will help create new jobs in the state which will foster additional economic activity including more personal income tax revenue for the state.