

KANSAS ANGEL TAX CREDIT GUIDELINES

- a) These are guidelines with respect to the Kansas Angel Investor Tax Act (the “Act”), as codified at K.S.A. 74-8131 – K.S.A. 74-8137, effective January 1, 2005 as amended.
- b) Purpose. The purpose of the Kansas Angel Investor Tax Credit Act 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 are job and wealth creating enterprises, by granting tax credits against Kansas income tax liability of investors investing in these businesses. The Kansas Angel Investor Tax Credit Act shall be administered by KTEC with the primary goal of encouraging individuals to provide seed-capital financing for emerging, Kansas businesses engaged in the development, implementation and commercialization of innovative technologies, products and services.
- c) Definitions. The following definitions are applicable to these guidelines:
- 1) “Angel Investor” and “Investor” means 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. 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.
 - 2) “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.
 - 3) “Angel Investor Tax Credit Certificate” means a physical certificate issued by KTEC which evidences an Investor’s right to: (i) take a tax credit against its own Kansas tax liability, (ii) transfer the certificate to a third party.
 - 4) “Angel Investor Tax Credit Committee” or “Committee” means a three-member panel that presides over appeals of KTEC’s decisions with respect to the original or continued designation of a business as a Qualified Kansas Business. The Committee shall consist of the Chief Investment Officer of KTEC (or a designee of the President of KTEC) and two other representatives of KTEC as designated by KTEC’s board of directors.

- 5) "Annual Allocation Cap" means the \$6 million in tax credits that are allowed in 2008 and each calendar year thereafter through 2016.
- 6) "Cash Investment" means money or Money Equivalents given in consideration for Qualified Securities.
- 7) "Angel Investor Registration" means the application whereby the applicant registers as a Qualified Investor.
- 8) "KTEC" means the Kansas Technology Enterprise Corporation, a public instrumentality created pursuant to K.S.A. 74-8101, and amendments thereto.
- 9) "Bioscience Business" means what is reflected in K.S.A. 2006 Supp. 74-99b83, and amendments thereto.
- 10) "Department of Revenue" means the Kansas department of revenue.
- 11) "Determination Letter" means a letter issued by KTEC indicating that it has approved a business's Determination Letter Application for one calendar year.
- 12) "Disqualification Letter" means a letter issued by KTEC indicating that it has denied a business's Determination Letter Application.
- 13) "Determination Letter Application" means the application submitted by a business requesting that KTEC find such business to be designated as a Qualified Kansas Business for one calendar year.
- 14) "Innovative and Proprietary Technology, Product or Service" means an exclusively owned technology, product or service that is new, never been done, experienced, or created before. Businesses not included in this definition are: (A) Any service provider set forth in K.S.A. 17-2707, and amendments thereto; (B) the business of banking, savings and loan or lending institutions, credit or finance, or financial brokerage or investments; (C) the provision of professional services, such as legal, accounting or engineering services; (D) governmental, charitable, religious or trade organizations; (E) the ownership, development, brokerage, sales or leasing of real estate; (F) insurance; (G) construction or construction management or contracting; (H) business consulting or brokerage; (I) any business engaged primarily as a passive business, having irregular or noncontinuous operations, or deriving substantially all of the income of the business from passive investments that generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of which is to immunize an investor from risk of loss; (J) any Kansas certified capital formation company; and (K) any

activity that is in violation of the law: and (L) any business raising money primarily to purchase real estate, land or fixtures.

- 15) "Issuable Tax Credits" means the amount of tax credits available to be issued for a given calendar year, as determined by KTEC, after KTEC accounts for the Angel Investor Tax Credit Certificates previously issued, the conditional approvals currently in effect and the Annual Allocation Cap. The balance of unissued tax credits may be carried over for issuance in future years until 2016.
- 16) "Kansas Business" means any for profit or not for profit 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. For purposes of this Act, "primarily" shall mean more than fifty percent and "substantially all" shall mean more than eighty percent. Commercial domicile is as defined in K.S.A. 79-3271, and amendments thereto.
- 17) "Money Equivalents" means, but is not limited to, checks, money orders, and any form of certified funds.
- 18) "Product" means any product, device, technique or process, which is or may be developed or marketed commercially. However, "product" does not refer to basic research but shall apply to such products, devices, techniques or processes that have advanced beyond the theoretical stage and are in a prototype or practice stage.
- 19) "Qualified Cash Investment" means a Cash Investment in the Qualified Securities of a Qualified Kansas Business.
- 20) "Qualified Kansas Business" means a business that has been issued a Determination Letter.
- 21) "Qualified Securities" means a Cash Investment through any one or more forms of financial assistance that have been approved in form and substance by KTEC. Such forms of financial assistance are:
 - A) Any form of equity, such as.
 - (i) A general or limited, partnership interest.
 - (ii) Common stock.

- (iii) Preferred stock, with or without voting rights, without regard to seniority position, and whether or not convertible into common stock.
- (iv) An interest in a limited liability corporation.
- (v) Any form of subordinate or convertible debt, or both, with warrants or other means of equity conversion attached.

B) A debt instrument, such as a note or debenture that is secured or unsecured, subordinated to the general creditors of the debtor and requires no payments of principal, other than principal payments required to be made out of any future profits of the debtor, for at least a seven year period after commencement of such debt instrument's term.

22) "Revocation Letter" means a letter issued by KTEC indicating that KTEC has determined that a business no longer shall be designated as a Qualified Kansas Business.

d) Determination Letter Application. Each business desiring to be designated as a Qualified Kansas Business shall submit a Determination Letter Application with KTEC. The Determination Letter Application shall be in form and substance as required by KTEC and shall include at least all of the following items.

- 1) The name, address, and taxpayer identification number of the business.
- 2) Certified copies of the organizational documents of the business.
- 3) Evidence supporting the business's status as a Kansas Business.
- 4) A business plan, including a description of the business and the management, product, market and financial plan of business.
- 5) A statement of the emerging business's development, implementation, and commercialization of the Innovative and Proprietary Technology, Product or Service, including the potential to patent or protect the business's trade secrets.
- 6) A statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created.
- 7) A description of the Qualified Securities to be issued, the consideration to be paid for the Qualified Securities, the amount of any tax credits requested and the earliest year in which the tax credits may be redeemed.

- 8) A statement of the amount, timing and projected use of the proceeds to be raised from the proposed sale of Qualified Securities.
 - 9) Such other information as KTEC may request, such as the background checks of the business's directors and/or officers, and the names, addresses and social security number numbers of all Investors who may qualify for the tax credit. Such list of Investors who may qualify for the tax credits shall be amended as new Qualified Securities are sold or as any information on the list shall change.
- e) Determination Letter Application Review. KTEC shall initially review the Determination Letter Application. As part of this review, KTEC may request a meeting with representatives of the business. Following such review, the Committee will review the application and issue its recommendation to KTEC. After the recommendation is considered, KTEC shall issue either a Determination Letter or a Disqualification Letter.
- 1) A Determination Letter shall be issued if KTEC determines, based upon the Determination Letter Application and any additional investigation by KTEC's staff, that the following criteria have been or shall be satisfied:
 - A) The business has a reasonable chance of success. For purposes of this factor, KTEC shall consider the fact that the Act is designed to assist emerging Kansas Businesses.
 - B) The business has the reasonable potential to create measurable employment within the state. For purposes of this factor, KTEC shall consider the fact that the Act is designed to assist emerging Kansas Businesses.
 - C) The business has an Innovative and Proprietary Technology, Product or Service.
 - D) The existing owners of the business and other founders have made or are committed to make a substantial financial and time commitment to the business.
 - E) The securities to be issued and purchased are Qualified Securities.
 - F) Binding commitments have been made by the business to KTEC for adequate reporting of financial data, including a requirement for an annual report, or, if required by the board of directors of KTEC, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business and the right of KTEC to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets.

- G) The business is a Kansas Business.
 - H) Businesses that are not Bioscience businesses must have been in operation for less than 5 years; bioscience businesses must have been in operation for less than 10 years and have less than five million dollars in revenue.
 - I) The business must not have ownership interests including, but not limited to, common or preferred shares of stock that can be traded by the public via a stock exchange, electronic exchange, bulletin board or other public market place on or before the date that a qualifying investment is made
 - J) KTEC 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.
- 2) A Disqualification Letter shall be issued if KTEC determines, based upon the Determination Letter Application and any additional investigation by KTEC's staff, that the aforementioned criteria has not been satisfied.
- f) Angel Investor Registration. A Qualified Cash Investment in a business made by an Investor after said business has received a Determination Letter may entitle the Investor to tax credits under the Act. Each Investor having made such a Qualified Cash Investment, which desires such tax credits, shall complete an Angel Investor Registration with KTEC. Each Investor must complete the Angel Tax Investor Registration in each calendar year an Angel Tax Credit is sought. The Angel Investor Registration shall be in form and substance as required by KTEC and shall include the name, address, and social security number of the Investor.
- 1) KTEC shall approve an Angel Investor Registration if it determines that there has been a Qualified Cash Investment as evidenced by a copy of the check to the business & a copy of the signature page indicating an investment has been made and that there are Issuable Tax Credits. KTEC shall notify the Qualified Kansas Business, the Investor, and the Department of Revenue of such approval and will then issue an Angel Investor Tax Credit Certificate to the Investor.
 - 2) If KTEC determines that there has not been a Qualified Cash Investment, then KTEC shall notify the Investor of such determination. Angel Investor Registration will be suspended indefinitely until the Investor provides sufficient evidence of such Qualified Cash Investment having been made.

g) Amount of credit.

- 1) A tax credit shall be equal to the lesser of \$50,000 or 50 percent of an Angel Investor's Qualified Cash Investment in a single business. Additionally, for each tax year, an Angel Investor shall not be entitled to claim tax credits under this Act for more than \$250,000
- 2) Notwithstanding any of the foregoing, the ability to receive an Angel Investor Tax Credit Certificate is subject to the Annual Allocation Cap.

h) Utilization and transferring of Angel Investor Tax Credit Certificates.

- 1) If the Angel Investor has owed income_tax under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated or K.S.A. 40-252 for the past three taxable years and who reasonably believes that it will owe any such tax for the current year, such Angel Investor may utilize the credit against such Angel Investor's own Kansas tax liability by filing a K-30 with the Angel Investor's Kansas income tax return for the tax year in which the Qualified Cash Investment was made. Any credit not used in such tax year 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 share of the Permitted Entity Investor. Owners of the Permitted Entity Investor must be natural persons to receive a tax credit.
- 2) Any investor that has not owed income tax for the immediate past three taxable years under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated and who does not believe that it will owe any such tax for the current taxable year that 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 to an amount equal 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 date of this act whether or not such person is then an investor and be claimed by this investor as a credit against the investor'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. Transfer documentation including transferee: name, address, SSN, Qualified Cash Investment and transferor: name, address, SSN and qualified investment must be submitted to KTEC with the original Angel Investor Tax Credit Certificate. The transferee must register on the Kansasangels.com website as an accredited investor. A new Angel Tax Credit Certificate will be issued to the transferee and the Department of Revenue will be notified of said transfer. The transferee must claim a tax

credit in the tax year that the original investment was made. If that original investment date is beyond the three year statute of limitations, a refund cannot be given for any tax years closed by the statute of limitations.

i) Miscellaneous provisions.

1) Maintaining status as a Qualified Kansas Business.

- A) A Kansas Business shall have the burden of proof to demonstrate to KTEC that it is and continues to be a Qualified Kansas Business. The business shall have the obligation to notify KTEC in a timely manner of any changes affecting either the qualifications of the business or the eligibility of Investors to claim a tax credit for Cash Investment in a Qualified Security. The notification shall be made in writing and be received by KTEC within 30 days from the time the business becomes or should have become aware of a change in qualification.
- B) Each Qualified Kansas Business for which Angel Investor Tax Credit Certificates have been issued shall report the following to KTEC on an annual basis.
 - (i) The name, address and social security number of each investor who has made a Qualified Cash Investment and has been issued an Angel Investor Tax Credit Certificate for such investment during the preceding year and all other preceding years.
 - (ii) The amounts of the Qualified Cash Investments by each Investor and a description of the Qualified Securities issued in consideration of such Qualified Cash Investments.
 - (iii) The name, address and social security number of each transferee of an Angel Investor Tax Credit Certificate who acquired such Angel Investor Tax Credit Certificate by transfer from the original Angel Investor.
 - (iv) Any additional information as the corporation may require pursuant to this act.
- C) Upon loss of the designation as a Qualified Kansas Business, KTEC shall issue a Revocation Letter and the business shall repay financial assistance to KTEC, in an amount determined by KTEC. Each Qualified Kansas Business that has been issued a Revocation Letter shall enter into a repayment agreement with KTEC specifying the terms of such repayment obligation. KTEC shall provide a copy of the repayment agreement to the Kansas Department of Revenue. "Financial assistance" as used in

this provision means the face amount of Angel Investor Tax Credit Certificates issued to such business's Investors under this Act.

2) Appeals Process.

- A) A business, which is issued either a Disqualification Letter or a Revocation Letter by KTEC, shall have 30 days from the issuance of such letter to appeal the decision resulting in the issuance of such letter. If no such appeal is made within 30 days from the issuance of such letter, the letter shall be treated as a final determination constituting final agency action by KTEC.
- B) To appeal the decision resulting in the issuance of either a Disqualification Letter or a Revocation Letter, the business must request an informal hearing in front of the Committee contesting such decision by filing a written request with KTEC which sets forth the basis for objecting to the decision. The purpose of such hearing shall be to review and reconsider all facts and issues that underlie the decision. The Committee shall hold an informal hearing with the business and shall issue a written final determination thereon. The informal hearing shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. The rules of evidence shall not apply to the informal hearing and no formal record shall be made, except at the request and expense of the business. The business may bring to the informal hearing an attorney and any other person to represent the Investor or to provide information.
- C) After the informal hearing, the Committee shall vote on whether the letter should be rescinded. A rescinded Disqualification Letter shall be replaced by the issuance of a Determination letter. A rescinded Revocation Letter shall be treated as if it had never been issued. To rescind a letter, at least two members of the Committee must vote in favor of rescinding. The Committee shall issue a written final determination within 60 days of the date of the request for informal hearing unless the parties agree in writing to extend the time for issuing such final determination. A final determination issued within or after 60 days, with or without extension, constitutes final agency action subject to administrative review by the State Board of Tax Appeals. In the event that a written final determination is not rendered within 60 days, the business may appeal to the State Board of Tax Appeals at any time provided that a written extension of time is not in effect.

- 3) Alternative to Appealing a Disqualification Letter.
 - A) In lieu of appealing a Disqualification Letter, a business may submit another Determination Letter Application after 90 days have passed since the issuance of the Disqualification Letter.
 - B) In no event shall KTEC be obliged to consider a business's Determination Letter Application where either:
 - (i) The business had already filed two other Determination Letter Applications within the same calendar year, or
 - (ii) The business had already filed three Determination Letter Applications.
- 4) Issuance of Angel Investor Tax Credit Certificates with respect to Cash Investments made prior to January 1, 2005 or after December 31, 2016. Angel Investor Tax Credit Certificates shall not be issued under this Act with respect to any Cash Investments made to a business before January 1, 2005 or after December 31, 2016.
- 5) Confidentiality and liability concerns.
 - A) The portions of documents and other materials submitted to KTEC that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the president of KTEC. For the purposes of this act, such portions of documents and other materials means any customer lists, any formula, compound, production data or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce or compound an article of trade, or, any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.
 - B) Neither KTEC, the Committee, their employees, nor their agents shall not be held liable for any trade secrets or other confidential information that may be disseminated to third parties except in the case of gross negligence or fraudulent activity on the part of the Committee, KTEC, their employees, or their agents.
 - C) Pursuant to K.S.A. 75-6104, neither KTEC, the Committee, their employees, nor their agents shall be held liable for any damages to any person making an investment under this Act. Neither KTEC, the Committee, their employees, nor their agents shall be held

liable for any decisions it may make regarding a business's status as a Qualified Kansas Business.

j) Examples.

- 1) EXAMPLE 1: An Angel Investor, which is subject to taxation under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated, makes a direct Qualified Cash Investment of \$50,000 on March 1, 2006 when there are Issuable Tax Credits. The Angel Investor shall be issued an Angel Investor Tax Credit Certificate evidencing a tax credit available to be used in the amount \$25,000.
- 2) EXAMPLE 2: An Angel Investor subject to taxation under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated makes a direct Qualified Cash Investment of \$150,000 on March 1, 2006 when there are Issuable Tax Credits. The Investor shall be issued an Angel Investor Tax Credit Certificate evidencing a tax credit available to be used in the amount \$50,000.