

# Guidelines:

## Kentucky Angel Investment Act

September 2020

These Guidelines provide an overview of the Kentucky Angel Investment Act program. For a full discussion of the program requirements, refer to KRS 154.20-230 through 240. As with many state administered tax incentive programs, any inducements offered under this program are negotiated by Cabinet for Economic Development officials and subject to approval by the Kentucky Economic Development Finance Authority (KEDFA).

The purpose of the Kentucky Angel Investment Act program is to encourage capital investment, create new jobs and foster the development of new products and technologies by encouraging individual investors to make investments in innovative Kentucky small businesses with high growth potential. Qualified individual investors making qualified investments in qualified small businesses may be eligible for tax credits through this program.

The Cabinet does not provide financial screening of the companies or individuals involved in the program and limits its certification to the statutory parameters for a Qualified Investor, Qualified Small Business and Qualified Investment per KRS 154.20-230 through 240. Cabinet staff will not perform due diligence on the small businesses and cannot guarantee any return on investment.

### Incentive

Qualified Investors making Qualified Investments in an enhanced incentive county may be eligible for a tax credit of up to 40% of the confirmed investment amount. Qualified Investors making Qualified Investments in non-enhanced counties may be eligible for a tax credit of up to 25% of the confirmed investment amount. Enhanced status is determined by the principal location of the Qualified Small Business receiving the investment. See <https://ced.ky.gov/kyedc/pdfs/KBIEnhancedCounties.pdf> for a current enhanced counties map.

### Key Program Definitions

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| Qualified Investor | <ul style="list-style-type: none"> <li>• Is an individual, natural person certified by KEDFA as a Qualified Investor for the calendar year in which the investor plans to make an investment and request credits;</li> <li>• Qualifies as an accredited investor pursuant to Regulation D of the United States Securities and Exchange Commission, 17 CFR sec 230.501, in effect as of the date the individual investor requests certification (see <a href="http://www.sec.gov/fast-answers/answers-accredhtm.html">www.sec.gov/fast-answers/answers-accredhtm.html</a> for accredited investor qualification criteria);</li> <li>• Does not hold in excess of a 20% ownership interest in, and is not employed by, a Qualified Small Business in which the investor makes an investment and seeks an angel investor tax credit;</li> <li>• Seeks a financial return from legitimate investments in Qualified Small Businesses; and</li> <li>• Is not closely related to any owners, or spouses of owners, who hold in excess of a 20% ownership interest in, or individuals who are employed by, a Qualified Small Business in which the investor makes an investment and seeks an angel tax credit.             <ul style="list-style-type: none"> <li>○ For purposes of this program, “closely related” means parents or grandparents, children or their spouses, or siblings or their spouses.</li> </ul> </li> </ul> |
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## Key Program Definitions

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| <p><b>Qualified Small Business</b></p> | <ul style="list-style-type: none"> <li>• Has been certified by KEDFA as a Qualified Small Business for the year in which it plans to accept Qualified Investments;</li> <li>• Is registered and in good standing with the Kentucky Secretary of State and possesses all licenses and registrations required to legally operate in Kentucky;</li> <li>• Has no more than 100 full-time employees;</li> <li>• EITHER: 1) Has a net worth of \$10,000,000 or less OR 2) Has net income after federal income taxes for each of the two (2) preceding fiscal years of \$3,000,000 or less;</li> <li>• Has more than 50% of its assets, operations and employees located in the Commonwealth of Kentucky;</li> <li>• Has at no time received an aggregate amount of Qualified Investments that has allowed Qualified Investors to receive more than \$1,000,000 in angel investor tax credits for investments in the business; and</li> <li>• Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a Qualified Investment by a Qualified Investor.             <ul style="list-style-type: none"> <li>○ For purposes of this program, “qualified activity” means a knowledge-based activity that is related to the new economy focus areas of the Office of Entrepreneurship including, but not limited to: bioscience, environmental and energy technology, health and human development, information technology and communications, and materials science and advanced manufacturing. A qualified activity does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment fund managers, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that KEDFA determines in its discretion to be against the public interest or the purposes of the Kentucky Angel Investment Act, or in violation of any law.</li> </ul> </li> </ul> |
| <p><b>Qualified Investment</b></p>     | <ul style="list-style-type: none"> <li>• Is approved by KEDFA for a potential tax credit prior to transferring control of the invested funds to a Qualified Small Business;</li> <li>• Is offered and executed in compliance with applicable state and federal securities laws and regulations;</li> <li>• Is a cash investment of at least \$10,000 made by a Qualified Investor in a Qualified Small Business;</li> <li>• Is an investment that transfers control of cash funds to the Qualified Small Business in exchange for an equity ownership interest in the Qualified Small Business within the 80 calendar days or December 31, whichever comes first, immediately after KEDFA approval of the Qualified Investor’s planned investment; and</li> <li>• Is supported by adequate documentation, as determined by KEDFA, which is received by KEDFA within the 80 calendar days or December 31, whichever comes first, immediately after KEDFA approval of the Qualified Investor’s planned investment.             <ul style="list-style-type: none"> <li>○ The Qualified Investor is responsible for verifying that documentation is received by KEDFA within the required timeframe. Examples of supporting documentation include, but are not necessarily limited to: investment agreements, proof of transfer of eligible investment funds, and proof of receipt of equity ownership interest by the Qualified Investor. Investor and business names on documents must match application names.</li> </ul> </li> </ul>  |



| <h3 style="text-align: center;">Certification and Tax Credit Process - Investor</h3>   | <h3 style="text-align: center;">Certification Process – Small Business</h3>   |
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| <ul style="list-style-type: none"> <li>• Individual investor completes and submits the Qualified Investor certification application and fee to KEDFA for certification as a Qualified Investor for the year of planned investment (a new certification application is required for each calendar year in which an investor wants to make an investment and claim a tax credit)</li> <li>• If investor meets eligibility requirements, KEDFA staff certifies the investor as a Qualified Investor for the requested calendar year</li> <li>• Qualified Investor identifies a small business in which he/she wants to make an investment (if the business is not already certified as a Qualified Small Business for the year in which the investor plans to make an investment, business will need to submit a Qualified Small Business application per the process at right)</li> <li>• Qualified Investor completes and submits the Qualified Investment certification application and fee to KEDFA detailing the planned investment, but does not transfer control of investment funds to the Qualified Small Business prior to KEDFA approval of the planned investment (note: two separate applications - Qualified Investor and Qualified Investment - must be submitted by the investor, and common information on both applications must match)</li> <li>• KEDFA staff reviews Qualified Investment applications in the order in which they are received. If eligible for tax credit consideration, and if tax credits are available, the investment is presented at a KEDFA board meeting for recommended approval of the planned investment and reservation of a maximum potential tax credit amount (KEDFA meetings are usually held on the last Thursday of the month, except for a combined November/December meeting)</li> <li>• If the planned investment is approved by KEDFA, the Qualified Investor will be promptly notified after the board meeting that he/she may proceed with making the planned investment</li> <li>• Qualified Investor must make the Qualified Investment (transfer control of the investment funds to the Qualified Small Business) and provide acceptable proof/documentation of the Qualified Investment to KEDFA within 80 calendar days or December 31, whichever comes first, immediately following the date of KEDFA approval of the planned investment (failure to either make a Qualified Investment or ensure KEDFA receives investment documentation within the required timeframe will result in forfeiture of the right to claim a tax credit for the investment)</li> <li>• If KEDFA staff verifies that the Qualified Investor completed a Qualified Investment and documentation was received by KEDFA within the required timeframe, the investor will receive a tax credit confirmation letter and may request a state income tax credit in accordance with <a href="#">KRS 141.396</a> (per <a href="#">KRS 154.20-240</a>, tax credits may be recaptured if the business does not maintain compliance)</li> </ul> | <ul style="list-style-type: none"> <li>• Small business completes and submits the Qualified Small Business certification application and fee to KEDFA for the calendar year in which it wants to be qualified (a new application is required for each year the business wants to be certified)</li> <li>• KEDFA staff reviews the application for eligibility. If the business meets certification eligibility requirements, KEDFA requires that the business complete a Qualified Small Business Agreement setting forth program terms and conditions (while certification is annual, only one agreement is required unless business changes necessitate a new agreement)</li> <li>• All Qualified Small Businesses that receive a Qualified Investment will be required to provide an annual report to KEDFA staff for 5 years after the year in which the Qualified Investment was received (business must maintain program compliance to preserve angel tax credits for investors)</li> </ul> |



## Tax Credit Caps

There are three tax credit caps applicable to this program: (1) total angel tax credits available per calendar year; (2) maximum angel tax credits that can be awarded to an individual investor each calendar year; and (3) maximum angel tax credits that can be awarded for investments in the same Qualified Small Business.

KEDFA can award an overall maximum of \$3,000,000 per calendar year in angel tax credits. Because of the limit on tax credits, some otherwise eligible applications may not receive a tax credit. A Qualified Investment application submission date will be posted on the Cabinet's angel web page listed below prior to the date when KEDFA will start accepting Qualified Investment applications. Qualified Investment applications received on or after the designated submission start date will be processed in the order in which they are received until all available tax credits have been awarded.

Individual investors are limited to a maximum of \$200,000 in angel tax credits per calendar year.

If one or more Qualified Investors receive cumulative angel tax credits totaling one million dollars (\$1,000,000) as a result of Qualified Investments in any single Qualified Small Business, additional investments in the business will not be eligible for angel tax credits.

## Claiming, Transfer and Recapture of Angel Investor Tax Credits

Angel investor tax credits awarded through this program are non-refundable and may be claimed against the Qualified Investor's Kentucky individual income tax. The credit may be claimed beginning with the taxable year in which the credit is awarded. Unused credits may be carried forward up to fifteen (15) years.

After award of angel investor tax credits to the Qualified Investor making application for the credits, the Qualified Investor may transfer all or part of the tax credit to any individual taxpayer, subject to providing information required by the Kentucky Department of Revenue to ensure an eligible transfer.

Qualified Small Businesses receiving Qualified Investments are subject to a five (5) year reporting requirement. As per [KRS 154.20-240](#), if a business does not remain compliant with program requirements, investors in the business may be subject to recapture of awarded tax credits. If the business becomes insolvent and ceases operations, credits claimed prior to shutdown are not subject to recapture if the business files a compliant closing report, but unclaimed credits will be considered expired and not eligible for claiming.

## Application Forms and Fees

The Qualified Investor and Qualified Small Business application forms are available online at <https://ced.ky.gov/KAITC> during eligible certification submission periods. Both the Qualified Investor and Qualified Small Business applications require a new application for each calendar year in which certification is sought. The Qualified Investor and Qualified Small Business application submission period will begin before the start of each calendar year. A twenty-five dollar (\$25) application fee applies to both applications. Neither of these applications is a direct request for angel investor tax credits, but both are required before eligibility of a planned investment can be determined.

The Qualified Investment application is available on the angel website listed above, but will not be accepted prior to the Qualified Investment application submission date posted on the website. A fee of \$500 applies for applications requesting up to \$50,000 in angel tax credits. Applications requesting more than \$50,000 in angel tax credits will incur a \$1,000 application fee. Qualified Investment applications received by KEDFA prior to the submission date and time specified on the website will be returned without being processed.

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