

HOUSE No. 4402

Sections 51, 64 and 98 contained in the engrossed Bill promoting economic growth across the Commonwealth (see House, No. 4377), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see House, No. 4405). August 14, 2014.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to the angel investor tax credit.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith an angel investor tax credit, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby further amended by adding the following subsection:-

3 (t) (1) As used in this subsection, the following words shall have the following meanings
4 unless the context clearly requires otherwise:-

5 “Business”, a profession, sole proprietorship, trade partnership, corporation, general
6 partnership, limited liability company, limited partnership, joint venture, business trust, public
7 benefit corporation, non-profit entity or other business entity.

8 “Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

9 “Qualifying business”, a business which: (a) has its principal place of business in the
10 commonwealth; (b) has at least 50 per cent of its employees located in the business’s principal
11 place of business; (c) has a fully developed business plan that includes all appropriate long-term
12 and short-term forecasts and contingencies of business operations, including research and
13 development, profit, loss and cash flow projections and details of angel investor funding; (d)
14 employs 20 or fewer full-time employees at the time of the taxpayer investor’s initial qualifying
15 investment as provided for in paragraph (2); (e) has a federal tax identification number; and (f)
16 has gross revenues equal to or less than \$500,000 in the fiscal year prior to eligibility.

17 “Qualifying investment”, a monetary investment that is at risk and not secured or
18 guaranteed; provided, however, that a “qualifying investment” shall not include venture capital
19 funds, hedge funds and commodity funds with institutional investors or investments in a business
20 involved in retail, real estate, professional services, gaming or financial services.

21 “Taxpayer investor”, accredited investors, as defined by the United States Securities and
22 Exchange Commission pursuant to section 2(15)(ii) of the Securities Act of 1933, 15 U.S.C.
23 77b(15)(ii) and who is not the principal owner of the qualifying business who is involved as a
24 full-time professional activity.

25 (2) A taxpayer investor who makes a qualifying investment in a qualifying business shall
26 be allowed a credit against the taxes imposed by this chapter in an amount equal to 20 per cent of
27 the amount of the taxpayer’s qualifying investment. A taxpayer investor who makes a qualifying
28 investment in a qualifying business with its principal place of business located in a gateway
29 municipality shall be allowed a credit against the taxes imposed by this chapter in an amount
30 equal to 30 per cent of the amount of the taxpayer’s qualifying investment. Taxpayer investors
31 may invest up to \$125,000 per qualifying business per year with a \$250,000 maximum for each
32 qualifying business. The total of all tax credits available to a taxpayer investor under this
33 subsection and section 38GG of chapter 63 shall not exceed \$50,000 in any 1 tax year.

34 (3) Qualifying investments may be used by a qualifying business for the following
35 purposes: (a) capital improvements; (b) plant equipment; (c) research and development; and (d)
36 working capital. Qualifying investments shall not be used to pay dividends, fund or repay
37 shareholders’ loans, redeem shares, repay debt or pay wages or other benefits of the taxpayer
38 investor.

39 (4) The credits allowed under paragraph (2) may be taken against income tax due in
40 either the tax year of the initial investment or in any of the 3 subsequent taxable years. Any
41 amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the
42 taxpayer investor to any of the 3 subsequent taxable years. If the qualifying business ceases to
43 have its principal place of business in the commonwealth within such 3 year period, the taxpayer
44 investor shall not claim any further credits and shall repay the total amount of credits claimed to
45 the commonwealth.

46 (5) The commissioner of revenue in consultation with the executive office of housing
47 and economic development shall authorize annually for the 4-year period beginning January 1,
48 2015 and ending December 31, 2018, pursuant to this subsection together with said section
49 38GG of said chapter 63, an amount not to exceed \$5,000,000 per year for the credits allowed.

50 (6) The executive office of housing and economic development in consultation with the
51 commissioner of revenue shall authorize, administer and determine eligibility for this tax credit
52 and allocate the credit in accordance with the standards and requirements as set forth in
53 regulations promulgated pursuant to this subsection. The executive office of housing and

54 economic development shall allocate the total available tax credit among as many qualified
55 commonwealth businesses as fiscally feasible with the goal of creating and maintaining jobs in
56 the commonwealth.

57 (7) The commissioner of revenue and the executive office of housing and economic
58 development shall promulgate regulations necessary to carry out this subsection.

59 SECTION 2. Chapter 63 of the General Laws, as appearing in the 2012 Official Edition,
60 is hereby further amended by inserting after section 38FF the following section:-

61 Section 38GG. (a) As used in this subsection, the following words shall, unless the
62 context clearly requires otherwise, have the following meanings:-

63 “Business”, a profession, sole proprietorship, trade partnership, corporation, general
64 partnership, limited liability company, limited partnership, joint venture, business trust, public
65 benefit corporation, non-profit entity or other business entity.

66 “Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

67 “Qualifying business”, a business which: (i) has its principal place of business in the
68 commonwealth; (ii) has at least 50 per cent of its employees located in the business’s principal
69 place of business; (iii) has a fully developed business plan that includes all appropriate long and
70 short term forecasts and contingencies of business operations, including research and
71 development, profit, loss and cash flow projections and details of angel investor funding; (iv)
72 employs 20 or fewer full-time employees at the time of the taxpayer investor’s initial qualifying
73 investment as provided for in subsection (b); (v) has a federal tax identification number; and (vi)
74 has gross revenues equal to or less than \$500,000 in the fiscal year prior to eligibility.

75 “Qualifying investment”, a monetary investment that is at risk and not secured or
76 guaranteed; provided, however, that a qualifying investment shall not include venture capital
77 funds, hedge funds and commodity funds with institutional investors, or investments in a
78 business involved in retail, real estate, professional services, gaming, or financial services.

79 “Taxpayer investor”, accredited investors, as defined by the United States Securities and
80 Exchange Commission pursuant to section 2(15)(ii) of the Securities Act of 1933, 15 U.S.C.
81 section 77b(15)(ii), and who is not the principal owner of the qualifying business who is
82 involved as a full-time professional activity.

83 (b) A taxpayer investor who makes a qualifying investment in a qualifying business shall
84 be allowed a credit against the taxes imposed by this chapter in an amount equal to 20 per cent of
85 the amount of the taxpayer’s qualifying investment. A taxpayer investor who makes a qualifying
86 investment in a qualifying business with its principal place of business located in a gateway
87 municipality shall be allowed a credit against the taxes imposed by this chapter in an amount
88 equal to 30 per cent of the amount of the taxpayer’s qualifying investment. Taxpayer investors

89 may invest up to \$125,000 per qualifying business per year with a \$250,000 maximum for each
90 qualifying business. The total of all tax credits available to a taxpayer investor under this section
91 and subsection (s) of section 6 of chapter 62 shall not exceed \$50,000 in any 1 tax year.

92 (c) Qualifying investments may be used by a qualifying business for the following
93 purposes: (i) capital improvements; (ii) plant equipment; (iii) research and development; and (iv)
94 working capital. Qualifying investments shall not be used to: pay dividends, fund or repay
95 shareholders' loans, redeem shares, repay debt, or pay wages or other benefits of the taxpayer
96 investor.

97 (d) The credits allowed under subsection (b) may be taken against income tax due in
98 either the tax year of the initial investment or in any of the 3 subsequent taxable years. Any
99 amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the
100 taxpayer investor to any of the 3 subsequent taxable years. If the qualifying business ceases to
101 have its principal place of business in in the commonwealth within such 3 year period, the
102 taxpayer investor shall not claim any further credits and shall repay the total amount of credits
103 claimed to the commonwealth.

104 (e) The commissioner of revenue, in consultation with the executive office of housing
105 and economic development, shall authorize annually, for the 4 year period beginning January 1,
106 2015, and ending December 31, 2018, under this section together with subsection (s) of section 6
107 of chapter 62, an amount not to exceed \$5,000,000 per year for the credits allowed.

108 (f) The executive office of housing and economic development, in consultation with the
109 commissioner of revenue, shall authorize, administer and determine eligibility for the tax credit
110 and allocate the credit in accordance with the standards and requirements as set forth in
111 regulations promulgated pursuant to this section. The executive office of housing and economic
112 development shall allocate the total available tax credit among as many qualified commonwealth
113 businesses as fiscally feasible with the goal of creating and maintaining jobs in the
114 commonwealth.

115 (g) The commissioner of revenue and the executive office of housing and economic
116 development shall prescribe regulations necessary to carry out this subsection.

117 SECTION 3. The executive office of housing and economic development and the office
118 of the commonwealth performance, accountability and transparency shall review the
119 Massachusetts angel investor tax credit established by subsection (t) of section 6 of chapter 62 of
120 the General Laws and section 38GG of chapter 63 of the General Laws and report on whether the
121 tax credit achieved the desired outcome and stated public policy purpose and if the tax credit is
122 the most cost effective means of achieving said purpose. The executive office of housing and
123 economic development and the office of commonwealth performance, accountability and
124 transparency shall file a report, together with any recommendations regarding legislative changes
125 to the tax credit or whether the goals of the credit can be better served through other fiscal

126 means, to the secretary of administration and finance, the clerks of the house and senate, the joint
127 committee on revenue, the joint committee on community development and small business and
128 the house and senate committees on ways and means no later than 3 years after implementation
129 of the credit.

130 SECTION 4. Sections 1 and 2 shall be effective for the tax year beginning on or after
131 January 1, 2015.

132 SECTION 5. Sections 1 and 2 are hereby repealed.

133 SECTION 6. Section 5 shall take effect on January 1, 2019.