

# KANSAS ANGEL INVESTOR TAX CREDIT GUIDELINES

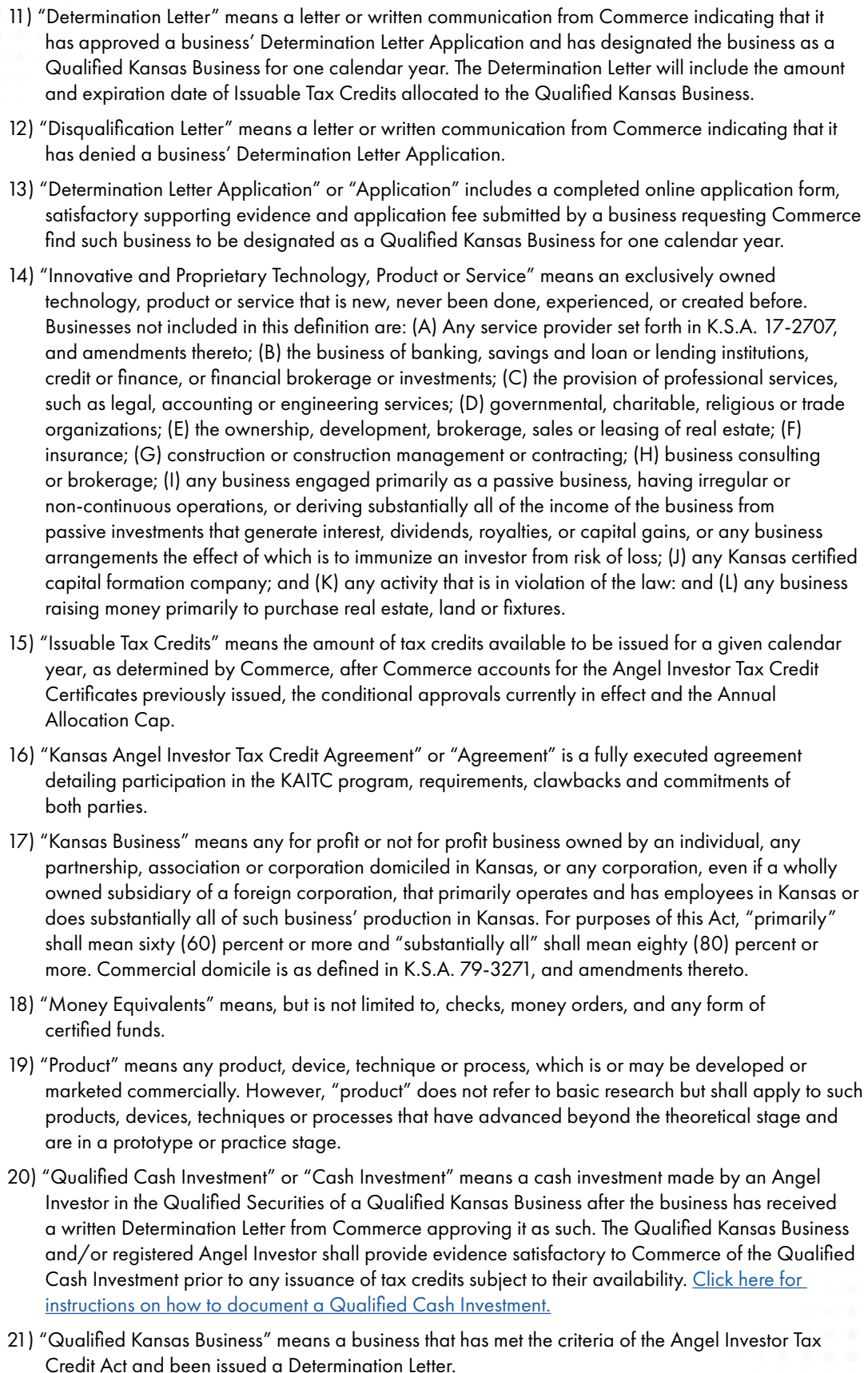



The following are guidelines for the Kansas Angel Investor Tax Credit Act (the "Act"), as codified by the Kansas Statutes Annotated or [K.S.A. 74-8131 to K.S.A. 74-8137](#), as amended.

**I. PURPOSE.** The purpose of the Kansas Angel Investor Tax Credit (KAITC) 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 KAITC Program shall be administered by the Kansas Department of Commerce 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.

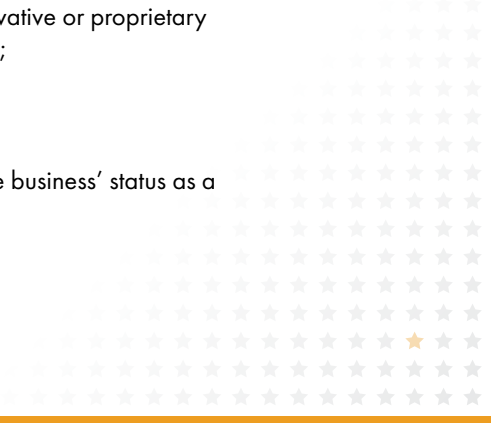
**II. DEFINITIONS.** The following definitions are applicable to these Guidelines:

- 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 and who seek high returns through private investment in emerging qualified Kansas businesses. 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 Commerce 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 Commerce's decisions with respect to the original or continued designation of a business as a Qualified Kansas Business. The Committee shall consist of representatives of Commerce as designated by the secretary of Commerce.
- 5) "Annual Allocation Cap" means the total tax credits per the Act available to be issued during a calendar year.
- 6) "Application Fee" is determined by the Department of Commerce, required to be received by Commerce for a complete application, and non-refundable.
- 7) "Cash Investment" means money or Money Equivalents given in consideration for Qualified Securities. 8) "Angel Investor Registration" means the acknowledgement by the investor of the requirements to be a high net worth individual per the KAITC Act and online registration as a Qualified Investor including payment of registration fee.
- 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.

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- 11) "Determination Letter" means a letter or written communication from Commerce indicating that it has approved a business' Determination Letter Application and has designated the business as a Qualified Kansas Business for one calendar year. The Determination Letter will include the amount and expiration date of Issuable Tax Credits allocated to the Qualified Kansas Business.
  - 12) "Disqualification Letter" means a letter or written communication from Commerce indicating that it has denied a business' Determination Letter Application.
  - 13) "Determination Letter Application" or "Application" includes a completed online application form, satisfactory supporting evidence and application fee submitted by a business requesting Commerce 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 non-continuous 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 Commerce, after Commerce accounts for the Angel Investor Tax Credit Certificates previously issued, the conditional approvals currently in effect and the Annual Allocation Cap.
  - 16) "Kansas Angel Investor Tax Credit Agreement" or "Agreement" is a fully executed agreement detailing participation in the KAITC program, requirements, clawbacks and commitments of both parties.
  - 17) "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 primarily operates and has employees in Kansas or does substantially all of such business' production in Kansas. For purposes of this Act, "primarily" shall mean sixty (60) percent or more and "substantially all" shall mean eighty (80) percent or more. Commercial domicile is as defined in K.S.A. 79-3271, and amendments thereto.
  - 18) "Money Equivalents" means, but is not limited to, checks, money orders, and any form of certified funds.
  - 19) "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.
  - 20) "Qualified Cash Investment" or "Cash Investment" means a cash investment made by an Angel Investor in the Qualified Securities of a Qualified Kansas Business after the business has received a written Determination Letter from Commerce approving it as such. The Qualified Kansas Business and/or registered Angel Investor shall provide evidence satisfactory to Commerce of the Qualified Cash Investment prior to any issuance of tax credits subject to their availability. [Click here for instructions on how to document a Qualified Cash Investment.](#)
  - 21) "Qualified Kansas Business" means a business that has met the criteria of the Angel Investor Tax Credit Act and been issued a Determination Letter.

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- 22) "Qualified Securities" means a Cash Investment through any one or more forms of financial assistance that have been approved in form and substance by Commerce. Such forms of financial assistance are:
- A) Any form of equity, including:
    - (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; and
    - (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 from any future profits of the debtor, for at least a seven year period after commencement of such debt instrument's term.
- 23) "Registration Fee" is 1) determined by the Department of Commerce; 2) required to be received by Commerce to complete registration as an Angel Investor; and 3) non-refundable.
- 24) "Revocation Letter" means a letter or written communication from Commerce indicating that Commerce has determined that a business shall no longer be designated as a Qualified Kansas Business.
- 25) "Certificate Replacement Fee" is 1) determined by the Department of Commerce; 2) required to be received by Commerce to obtain a certified copy of an original tax credit certificate; and 3) nonrefundable.


**III. DETERMINATION LETTER APPLICATION.** Each business desiring to be designated as a Qualified Kansas Business shall submit to Commerce a Determination Letter Application and Application Fee. The Determination Letter Application shall be in a form and substance as required by Commerce and shall include the following business information:

- 1) The name, address, contact information, web site, NAICS Code, taxpayer identification number and requested tax credits;
  - 2) A business description including state and date of incorporation, innovative product/service, proprietary technology, target market/customers, and planned use of tax credit investment. A statement of the amount, timing and planned use of the tax credit investment raised from the proposed sale of qualified securities;
  - 3) Management and Ownership including a list of: Owners, management staff, board of directors and advisors and their entrepreneurial and business management experience;
  - 4) Current and projected employment in Kansas;
  - 5) Business Plan Executive Summary and Business Plan including a description of the business, its management, product or service, market plan, financial model, a statement of the emerging business' development, implementation, and commercialization of the innovative or proprietary technology and the potential to patent or protect the business' trade secrets;
  - 6) Financial Statement/Projections;
  - 7) Articles of Incorporation; and
  - 8) Any other evidence or information requested by Commerce to document the business' status as a Kansas business and/or Qualified Kansas Business.
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**IV. DETERMINATION LETTER APPLICATION REVIEW.** Upon receipt of a completed application including an online Determination Letter Application, its supporting documents and Application Fee, Commerce shall review the materials to determine the company as a Qualified Kansas Business within 45 days. As part of this review, Commerce may request a meeting with representatives of the business. Following such review, Commerce shall issue either a Determination Letter or a Disqualification Letter via email.

- 1) A Determination Letter shall be issued if Commerce determines, based upon the completed Determination Letter Application and any additional investigation by Commerce's staff that the following criteria are satisfied:
  - A) The business has a reasonable chance of success. For purposes of this factor, Commerce 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, Commerce shall consider the fact that the Act is designed to assist emerging Kansas Businesses;
  - C) The business has an innovative and/or 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 Commerce for:
    - (i) adequate reporting of business status and progress, financial and employment data including a requirement for an annual report and the right of Commerce to record and publish normal and customary information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets; and
    - (ii) access to the Qualified Kansas Business' pertinent financial and operational records to administer the KAITC Program;
  - G) The business is a Kansas Business;
  - H) The business does not have annual gross revenues of more than \$5 million in the tax year prior to application. Upon application, Bioscience businesses must demonstrate they have been in operation for less than 10 years and all other businesses must demonstrate operations of less than five years;
  - I) The business does 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; and
  - J) Additionally, Commerce may consider numerous other 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 communicated in writing if Commerce determines, based upon the Determination Letter Application Review, that the aforementioned criteria has not been satisfied.  
Note: Application Fee is non-refundable.

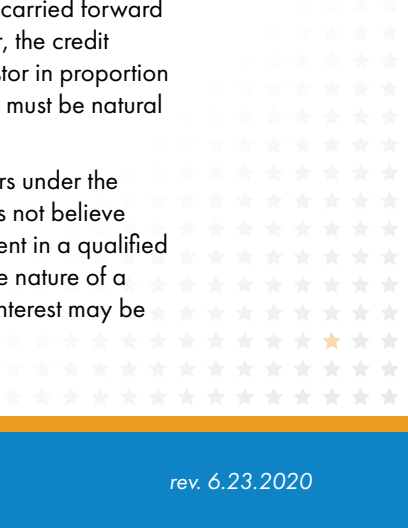
**V. ANGEL INVESTOR REGISTRATION.** A Qualified Cash Investment by an Investor made after a Qualified Kansas Business has received a Determination Letter by Commerce, may entitle the Angel Investor to tax credits under the Act. Each Investor making a Qualified Cash Investment for tax credits must register as an Angel Investor on the KAITC web site at [kansasangels.com](http://kansasangels.com) and remit the Registration Fee to Commerce. Registration as an Angel Investor must occur in each calendar year a tax credit is sought. The Angel Investor registration shall be as required by Commerce and include the name, address, and social security number of the Investor. The Angel Investor shall certify it meets the requirements of the Act per K.S.A. 74-8132(a).

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- 1) Commerce must approve a Qualified Cash Investment before a Tax Credit Certificate will be issued to an Angel Investor. If Commerce determines there is insufficient evidence to approve a Cash Investment, Commerce shall notify the Qualified Kansas Business or Angel Investor of such determination. Any tax credit issuance will be suspended until the Qualified Kansas Business or Angel Investor provides satisfactory evidence of a Qualified Cash Investment. Such evidence shall be submitted to Commerce
  - 2) Upon satisfactory documentation of a Cash Investment in a Qualified Kansas Business ([click here for instructions on how to document a Qualified Cash Investment](#)) and finding that there are remaining Issuable Tax Credits reserved for the Qualified Kansas Business, Commerce shall approve and issue a Tax Credit Certificate to the Angel Investor according to the Act. Commerce will notify the Qualified Kansas Business and the Kansas Department of Revenue of the issuance of the Tax Credit Certificate.
  - 3) Issuance of a Determination Letter as a Qualified Kansas Business does not constitute investment advice and the Qualified Kansas Business may not make any representations based on a Determination Letter that the Kansas Department of Commerce has provided any opinion as to the advisability of an investment in the business.

#### **VI. AMOUNT OF TAX CREDIT.**

- 1) The maximum tax credit allowed is equal to the lesser of \$50,000 or 50 percent of an Angel Investor's Qualified Cash Investment in a single Qualified Kansas Business. The Qualified Kansas Business will inform Commerce, in writing, the tax credit each Angel Investor shall receive per the Determination Letter. An Angel Investor is limited to \$250,000 in Angel Investor Tax Credit during each tax year.
- 2) Notwithstanding any of the foregoing, the ability to receive an Angel Investor Tax Credit Certificate is subject to the Annual Allocation Cap.
- 3) Examples:
  - A) 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, 2016 when there are Issuable Tax Credits reserved for the Qualified Kansas Business. Upon satisfactory evidence of the Cash Investment, the Angel Investor shall be issued an Angel Investor Tax Credit Certificate in the amount \$25,000.
  - B) 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, 2016 when there are Issuable Tax Credits reserved for the Qualified Kansas Business. Upon satisfactory evidence of the Cash Investment, the Angel Investor shall be issued an Angel Investor Tax Credit Certificate in the amount \$50,000.

#### **VII. UTILIZING AND TRANSFERRING ANGEL INVESTOR TAX CREDIT CERTIFICATES.**

- 1) If the Angel Investor has owed income tax under the provisions of article 32, chapter 79 of K.S.A. 40-252 for the past three taxable years and who reasonably believes that he/she will owe any such tax for the current year, such Angel Investor may utilize the credit against its own Kansas tax liability by filing a K-30 along with their 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
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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 the 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. [Please click here for instructions on how to transfer KAITC tax credits.](#) The Department of Revenue will be notified to confirm eligibility of a tax credit transfer and a new Angel Tax Credit Certificate will be issued to the transferee. 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.

## **VIII. MISCELLANEOUS PROVISIONS.**

### 1) Maintaining Status as a Qualified Kansas Business:

- A) A Kansas Business shall have the burden of proof to demonstrate to Commerce that it is and continues to be a Qualified Kansas Business. The business shall have the obligation to notify Commerce immediately of any changes affecting the KAITC Agreement, 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 Commerce within 10 business days from the time the business becomes or should have become aware of a change in qualification.
- B) Upon loss of the designation as a Qualified Kansas Business, Commerce shall issue a Revocation Letter and the Qualified Kansas Business may be required to repay to Commerce the tax credits in an amount equal to the Angel Investor Tax Credit Certificates issued.

### 2) Disqualification and Revocation Letter Appeals Process:

- A) A business, which is issued either a Disqualification Letter or a Revocation Letter by Commerce, 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 Disqualification or Revocation Letter shall be treated as a final determination constituting final agency action by Commerce.
- 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 Commerce 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 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 Disqualification or Revocation 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 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.

### 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 Commerce be obliged to consider a business' 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) Annual Reporting of a Qualified Kansas Business:
- A) Each Qualified Kansas Business for which Angel Investor Tax Credit Certificates have been issued shall report the following to Commerce 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 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 Commerce may require pursuant to this Act.
  - (v) Failure to comply with the reporting requirements may result in loss of designation as a Qualified Kansas Business and/or adversely affect program eligibility in future years.
- 5) Issuance of Angel Investor Tax Credit Certificates with respect to Cash Investments made prior to January 1, 2005 or after December 31, 2016:
- A) 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.
- 6) Confidentiality and Liability Concerns:
- A) The portions of documents and other materials submitted to Commerce that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the KAITC Program Manager. 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) Commerce, its employees or agents and the Angel Investor Tax Credit Committee 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 Commerce, their employees, or their agents.
- C) Pursuant to K.S.A. 75-6104, Commerce, its employees, agents and/or the Angel Investor Tax Credit Committee shall not be held liable for any damages to any person making an investment under this Act or any decisions regarding the status of a business as a Qualified Kansas Business.