



Kansas Angel Investor Tax Credit Program

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.

State of Kansas

Calendar Year 2022 Guidelines

1000 SW Jackson Street, Suite 100
Topeka, KS 66612-1354
Phone: (785) 207-4755
Email: kansasangels@ks.gov

Contents

- I. Purpose 3**
- II. Definitions 3**
- III. Qualified Business Application 5**
- IV. Qualified Business Application Review 6**
- V. Angel Investor Registration 7**
- VI. Amount of Tax Credit 8**

I. Purpose

The purpose of the Kansas Angel Investor Tax Credit (KAITC) Act (the 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 (KDC) 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"** mean 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 July 1, 2004, and who seeks high returns through private investments in start-up companies and may seek active involvement in business, such as consulting and mentoring the entrepreneur. 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) **"Angel Investor Tax Credit Certificate"** means a physical or digital certificate issued by KDC 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.
- 3) **"Angel Investor Tax Credit Committee"** or **"Committee"** means a three or more-member panel that reviews Qualified Business applications and presides over appeals of KDC'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 KDC.
- 4) **"Annual Allocation Cap"** means the total tax credits per the Act available to be issued during a calendar year.
- 5) **"Application Fee"** means the fee a business must remit to KDC upon application to become a Qualified Kansas Business and is required each program year such business applies in order for such application to be complete. The amount of the Application Fee is determined by the Department of Commerce, and is non-refundable.
- 6) **"Cash Investment"** means money or Money Equivalents given in consideration for Qualified Securities.
"Certificate Replacement Fee" means the fee required to be received by KDC to obtain a certified copy of an original tax credit certificate. The amount of the Certificate Replacement Fee is determined by the Department of Commerce and is nonrefundable.
- 7) **"Angel Investor Registration"** means the acknowledgment 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.
- 8) **"Approval Letter"** means a letter or written communication from KDC indicating that it has approved a business' application and has designated the business as a Qualified Kansas Business for up to one calendar year. The Determination Letter will include the amount and expiration date of Issuable Tax Credits allocated to the Qualified Kansas Business.
- 9) **"Bioscience Business"** means a business engaged in bioscience as defined in K.S.A. 74-99b83, and amendments thereto
- 10) **"Department of Revenue"** means the Kansas Department of Revenue (KDOR).

- 11) **"Disqualification Letter"** means a letter or written communication from KDC indicating that it has disqualified the Qualified Kansas Business from taking part in the KAITC program. This may lead to a claw-back of any tax credits issued on the company's behalf.
- 12) **"Denial Letter"** means a letter or written communication from KDC indicating that it has denied a business' Qualified Company Application.
- 13) **"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.
- 14) **"In Operations"** means the date of formation of any Kansas Business except where such business is the successor entity of a predecessor entity regardless of the structure of such predecessor entity. For the purposes of this program a successor entity is one which took over activities previously conducted by another entity or organization; took over 25% or more of the fair market value of the net assets of another entity or organization; or was established upon the conversion of an entity from one business structure to another.
- 15) **"Investor Registration Fee"** means the fee required to be paid to KDC by each individual upon their annual registration as an Angel Investor and is required each program year such individual registers as an Angel Investor. The Investor Registration Fee is required in order to submit a complete registration. The amount of the Investor Registration fee is determined by the Department of Commerce and is nonrefundable.
- 16) **"Issuable Tax Credits"** means the amount of tax credits available to be issued for a given calendar year, as determined by KDC after KDC accounts for the Angel Investor Tax Credit Certificates previously issued, the conditional approvals currently in effect, and the Annual Allocation Cap.
- 17) **"Kansas Angel Investor Tax Credit Agreement" or "Agreement"** is a fully executed agreement detailing participation in the KAITC program, requirements, claw-backs, and commitments of both parties.
- 18) **"Kansas Business"** means any business owned by an individual, any partnership, association or corporation domiciled/ Head Quartered 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 sixty (60) percent or more Kansas employees and "substantially all" shall mean eighty (80) percent or more. Commercial domicile is as defined in [K.S.A. 79-3271](#), and amendments thereto.
- 19) **"Money Equivalents"** means, but is not limited to, checks, money orders, and any form of certified funds.
- 20) **"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.

i. **Eligible Trust accounts**, are Revokable Trusts with assets of more than \$5,000,000.

- 21) **"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.
- 22) **"Transferee Registration Fee"** means the fee required to be paid to KDC by any individual registering to receive a transferred tax credit and is required to be paid each program year in which a transfer is requested. The Transferee Registration Fee is required in order to transfer a tax credit certificate. The amount of the Transferee Registration Fee is determined by the Department of Commerce and is nonrefundable.
- 23) **"Qualified Business Application" or "Application"** includes a completed online application form, satisfactory supporting evidence, and application fee submitted by a business requesting KDC find such business to be designated as a Qualified Kansas Business for one calendar year.
- 24) **"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 Approval Letter from KDC approving it as such. The Qualified Kansas Business and/or registered Angel Investor shall provide evidence satisfactory to KDC of the Qualified Cash Investment prior to any issuance of tax credits subject to their availability. All agreements between the Qualified Kansas Business and investor shall be submitted to Commerce for review. Failure to provide all agreements or understandings related to the investment and the provisions of repayment may result in the disqualification of the Kansas Business and the denial or revocation of tax credits.
- 25) **"Qualified Kansas Business"** means a business that has met the criteria of the Angel Investor Tax Credit Act and been issued an Approval Letter.
- 26) **"Qualified Securities"** means a Cash Investment through any form or combination of forms of financial assistance that have been approved in form and substance by KDC. Such forms of financial assistance are:
 - a. Any form of equity, such as:
 1. A general or limited, partnership interest;
 2. Common stock;
 3. Preferred stock, without regard to voting rights, or seniority position, and whether or not convertible into common stock;
 - b. Any Debt Instrument subordinate to the general creditors of the qualified Kansas business debtor that requires no payment from the qualified Kansas business debtor, and that shall convert to some form of equity prior to the qualified Kansas business debtor raising any additional funds.

III. Qualified Business Application

Each business desiring to be designated as a Qualified Kansas Business shall submit to KDC a Qualified Business Application and Application Fee. The Qualified Business Application shall be in the form and substance as required by KDC and shall include the following business information and other information as requested by KDC:

- 1) The name, address, contact information, website, NAICS Code, and taxpayer identification number of the applicant business;
- 2) Certified copies of the organizational documents of the business;

- 3) A Business Plan including a description of the business, the state and date of formation, the business management, the innovative product or service, market plan including the target market and customers, and financial plan of the business;
- 4) A statement of the business innovative and proprietary technology, product or service, emerging business development, implementation, and commercialization of the innovative or proprietary technology and the potential to patent or protect the business' trade secrets;
- 5) A statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created;
- 6) 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;
- 7) A statement of the planned use of proceeds from the sale of qualified securities. A statement of the amount, timing, and projected use of the tax credit investment raised from the proposed sale of qualified securities;
- 8) Management and Ownership including a list of owners, management staff, board of directors, and advisors and their entrepreneurial and business management experience;
- 9) Current and projected employment in Kansas (KCNS-100);
- 10) Financial Statement/Projections;
- 11) Pitch Deck;
- 12) Draft of Security Agreement(s) being offer for Tax Credits. This must include all contemplated agreements to be entered between investors and the business; and
- 13) Any other evidence or information requested by KDC to document the business' status as a Kansas business and/or Qualified Kansas Business.

IV. Qualified Business Application Review

Upon receipt of a completed application including an online Determination Letter Application, its supporting documents, and Application Fee, KDC shall review the materials to determine if the company is a Qualified Kansas Business within 60 days. As part of this review, KDC may request a meeting with representatives of the business. Following such review, KDC shall issue either an Approval Letter or a Denial Letter via email.

- 1) An Approval Letter shall be issued if KDC determines, based upon the completed Qualified Business Application and any additional investigation by KDC's staff that the following criteria are satisfied:
 - A) The business has a reasonable chance of success. For purposes of this factor, KDC 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, KDC 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 making 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 KDC for:

- (i) adequate reporting of business status and progress, financial and employment data including a requirement for an annual report and the right of KDC 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 for up to 10 years following approval;
- 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 marketplaces on or before the date that a qualifying investment is made; and
- J) Additionally, KDC 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.
- K) In no event shall KDC be obliged to consider a business' Qualified Business Application where either:
- (i) the business had already filed two other Qualified Business Applications within the same calendar year, or
 - (ii) the business had already filed three Qualified Business Applications ever.
- 2) A Denial Letter shall be communicated in writing if KDC determines, based upon the Qualified Business Application Review, that the aforementioned criteria have 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 an Approval Letter by KDC, 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 website and remit the Registration Fee to KDC. 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 KDC 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\(a\)](#).

- 1) KDC must approve a Qualified Cash Investment before a Tax Credit Certificate will be issued to an Angel Investor. If KDC determines there is insufficient evidence to approve a Cash Investment, KDC 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 KDC prior to the expiration date of the allocated Issuable Tax Credits as stated in the Qualified Kansas Business' Approval Letter. Documentation of investments must be submitted to KDC within 30 days of the completion of the investment

- 2) All account holders listed on an account used to invest in a Qualified Kansas Business must be Natural Persons, Qualified Investors, and registered as such.
- 3) Upon satisfactory documentation of a Cash Investment in a Qualified Kansas Business and finding that there are remaining Issuable Tax Credits reserved for the Qualified Kansas Business, KDC shall approve and issue a Tax Credit Certificate to the Angel Investor according to the Act. KDC will notify the Qualified Kansas Business and the Kansas Department of Revenue of the issuance of the Tax Credit Certificate.
- 4) Issuance of an Approval Letter as a Qualified Kansas Business does not constitute investment advice and the Qualified Kansas Business may not make any representations based on an Approval Letter that the Kansas Department of Commerce has provided any opinions as to the advisability of an investment in the business

VI. Amount of Tax Credit

For investments made prior to July 1, 2021, 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.

For investments made on or after July 1, 2021, the maximum tax credit allowed is equal to the lesser of \$100,000 or 50 percent of an Angel Investor's Qualified Cash Investment in a single Qualified Kansas Business.

The Qualified Kansas Business will inform KDC, in writing, of the tax credit each Angel Investor shall receive per the Determination Letter. As of tax year 2021 an Angel Investor is limited to \$350,000 in Angel Investor Tax Credit during each tax year.

- 1) Notwithstanding any of the foregoing, the ability to receive an Angel Investor Tax Credit Certificate is subject to the Annual Allocation Cap.
- 2) 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 July 1, 2021, 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 up to \$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 \$250,000 on July 1, 2021, 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 up to \$100,000.
- 3) If investing in a qualified company as a permitted entity investor, the following documents are required to be submitted within 30 days of the qualified investment.
 1. Copy of the entity's operating agreement / Documentation of Trust;

2. Copy of the entity's capitalization table
3. Copy of the cashed check/wire from the individual members to the permitted entity investor.
 - a. Each investment in the LLC (entity) will need to come from the member's personal account. (No other entity accounts, such as LLC, Trust, IRA)
4. Copy of the cashed check/wire from the LLC (entity) to the Qualified Kansas Business

All members of the permitted entity investor must qualify as an Accredited Angel Investor in their individual capacity and each must register as an angel investor and remit the associated investor registration fee. Tax credits will be issued to each individual member based on such member's ownership of the permitted entity (or in accordance with distributions as detailed in the entity's operating agreement).

VII. Transferring Angel Investor Tax Credit Certificates.

- 1) As of July 1st, 2021: If the Angel Investor is without a current tax liability at the time of the investment in a qualified Kansas business, does not reasonably believe that they will owe any such tax for the current taxable year, and makes a cash investment in a qualified security of a qualified Kansas business, such Angel Investor shall be deemed to acquire an interest in the nature of a transferable credit limited, for tax year 2021 and all tax years thereafter, to an amount up to 50% of their cash investment. This interest may be transferred to any natural person whether or not such person is then an investor and be claimed by the transferee as a credit against the transferee's Kansas income tax liability beginning in the year the Tax Credit was originally issued. 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. Documentation of any credit acquired by transfer shall be provided by the investor in the manner required by the director of taxation.
- 2) The Transferee will have to file amended tax returns from the original year the tax credit was issued if taxes have already been filed for that year and any years thereafter.
- 3) The Transferee must register as such to be considered eligible for Tax Credit Transfer
- 4) The Transferor shall provide a [Kansas Tax Clearance](#) to KDC to prove no current Kansas State Tax Liability owed.

VIII. Miscellaneous Provisions.

- 1) Maintaining Status as a Qualified Kansas Business:
 - a. A Kansas Business shall have the burden of proof to demonstrate to KDC that it is and continues to be a Qualified Kansas Business. The business shall have the obligation to notify KDC immediately of any changes affecting the KAIRC 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 KDC 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, KDC shall issue a Disqualification Letter and the Qualified Kansas Business may be required to repay to KDC the tax credits in an amount equal to the Angel Investor Tax Credit Certificates issued.
- 2) Denial and Disqualification Letter Appeals Process:
 - a. A business, which is issued either a Denial or Disqualification Letter by KDC, shall have 15 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 15 days from the issuance of such letter, the Denial or Disqualification Letter shall be treated as a final determination constituting final agency action by KDC.

- b. To appeal the decision resulting in the issuance of either a Denial or Disqualification Letter, the business must request an informal hearing in front of the Committee contesting such decision by filing a written request with KDC 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 business or to provide information.
- c. After the informal hearing, the Committee shall vote on whether the Denial or Disqualification Letter should be rescinded. A rescinded Denial Letter shall be replaced by the issuance of an Approval Letter. A rescinded Disqualification Letter shall be treated as if it had never been issued. To rescind a letter, at least two-thirds majority of 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 Denial Letter:

- a. In lieu of appealing a Denial Letter, a business may submit another Qualified Business Application after 90 days have passed since the issuance of the Denial Letter

4) No Obligation to Consider:

- a. In no event shall KDC be obliged to consider a business' Qualified Business Application where either:
 - (i) the business has already filed two other Qualified Business Applications within the same calendar year, or
 - (ii) the business has already filed three Qualified Business Applications ever.

5) 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 KDC 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) Annual Jobs and Wages for Kansas and out of State Jobs
 - (v) Annual Gross Revenue
 - (vi) Annual Capital Investment into Kansas
 - (vii) Any additional information as KDC may require pursuant to this Act.

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.

- 6) Issuance of Angel Investor Tax Credit Certificates with respect to Cash Investments made prior to January 1, 2005, or after December 31, 2026:
 - 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, 2026.
- 7) Confidentiality and Liability Concerns:
 - a. The portions of documents and other materials submitted to KDC that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the Department of Commerce. For the purposes of this act, such portions of documents and other materials mean 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. KDC, 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 KDC, their employees, or their agents.
 - c. Pursuant to K.S.A. 75-6104, KDC, 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.
 - d. [2019 HB2223](#): Evaluation and Transparency of Economic Development Programs and Tax Incentives