PA House Finance Committee Hearing
June 5th, 2024

Testimony of Brian Kennedy, SVP for Operations and Government Affairs - Pittsburgh Technology Council

Good morning Chairman Samuelson, Chairman Greiner, and members of the Committee. My name is Brian Kennedy, and I serve as the Senior Vice President for Operations and Government Affairs at the Pittsburgh Technology Council. Our organization is a regional trade association representing nearly 1,000 member companies from southwestern Pennsylvania.

The technology, advanced manufacturing, and biotechnology industries in our region contribute more than $27 billion to our annual payroll and account for nearly one in four jobs in southwestern Pennsylvania's economy.

I want to extend my gratitude for the opportunity to discuss House Bill 2226, introduced by Representative Friel. I am here to express our strong support for this legislation for two main reasons.

1. **Boosting Competitiveness:**

Since 1991, Pennsylvania has had one of the nation's most restrictive policies on the treatment of net operating losses (NOLs). While most states align with the federal rule, allowing up to 80 percent of losses to be carried forward, Pennsylvania limits NOLs to 40 percent of a company's qualified losses. This policy significantly impacts capital-intensive industries, especially manufacturing and technology sectors.

Why is NOL tax policy important? It is crucial for industries with cyclical sales cycles, such as manufacturers, to have thoughtful NOL policies to manage their tax liabilities effectively. Restricting NOLs and maintaining a high corporate net income (CNI) rate makes Pennsylvania less attractive for major manufacturing and technology firms, which are vital for a robust middle class. Only two states, including Pennsylvania, impose such limitations.

On a local level, and more germane to HB 2226, our NOL policies deter early-stage companies from establishing in Pennsylvania when they could choose neighboring states with more favorable conditions. For instance, New Jersey uses NOLs as an economic development tool, enhancing its appeal to new ventures.

2. **A Powerful Economic Development Tool:**

New Jersey's Business Tax Certificate Transfer Program, commonly known as its NOL program, allows businesses to sell unused credits to other taxpayers. This $75 million program, significantly larger than Pennsylvania's Ben Franklin Technology Development program, for example, boosts New Jersey's technology and biotechnology sectors by providing non-dilutive capital for R&D and personnel.

Key features of this program include:

- Eligibility for businesses in technology or biotechnology.
- Applicability to small businesses, generally defined as having fewer than 224 employees in New Jersey.
- A set-aside of $15 million for "innovation zones" and businesses owned by women or minorities.

On average, the NOLs transferred through sales amount to about $3.1 million per company, providing substantial non-dilutive capital that can attract companies to the state. This program is a competitive challenge for southeastern Pennsylvania. By passing HB 2226, Pennsylvania can create a similar tool to attract startups, particularly from neighboring states on our western border.

For these reasons—enhancing competitiveness and supporting our region's small businesses and startups—we urge you to adopt this important legislation.

However, we recommend an amendment to adjust the established sale price for the credit, currently set at 80 percent of the credit's value. In Pennsylvania, we have an active market for other credits, such as the R&D tax credit, which typically sells at 90 percent or higher.

Thank you for your consideration.