PUBLICATION

Spotlight on Louisiana: Revival of State's Angel Investor Tax Credit Program

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The Louisiana business community hopes that the Louisiana Legislature's revival of the Angel Investor Tax Credit Program, Louisiana Revised Statutes 47:6020 (the "AITC Program"), will provide a boost to economic growth among early stage businesses. On June 21, Louisiana lawmakers approved House Bill 597, which brings back the AITC Program that had expired at the end of 2009 after having been in effect since 2005. As explained below, the revived AITC Program does, however, come with a few more requirements and limitations that may reduce or eliminate its benefit to some. The revived AITC Program requires Louisiana Governor Bobby Jindal's signature to become effective. House Bill 597 has been enrolled and sent to the Governor for his signature, and it is expected that Governor Jindal will sign the bill into law before the July 4th holiday.

Benefit of the Credit

Similar to the old AITC Program, the revived Program offers the private investor a tax credit in exchange for investment in certain early stage wealth-creating businesses located in Louisiana. This AITC Program, like the old, also allows the investor to use each $1.00 of tax credit earned to satisfy $1.00 of his/her/its Louisiana income or franchise liability. However, under this AITC Program, the amount of the tax credit is reduced from 50% of investment to 35%. The old AITC Program offered a refundable credit meaning that any credits that the investor claimed in excess of his/her/its tax liability the State would refund to him/her in cash. The revived AITC Program does away with the refundable credit, but allows the investor to transfer by sale to other Louisiana taxpayers any credits that the investor does not claim against his/her/its tax liability or that exceed his/her/its tax liability. As with the old AITC Program, the revived AITC Program allows the investor to carry unused credits forward for 10 tax years and, if the investor is an entity taxed on a pass-through basis, to allocate the credits to its owners.

Requirements and Limitations to Consider

There are a host of requirements and limitations applicable to the AITC Program that may prevent some Louisiana investors and businesses from taking advantage of it. Some of these restrictions and limitations are being introduced for the first time under the revived AITC Program. Under both the old and the revived Programs, the credits earned with respect to a particular investment are paid out to the investor in equal installments over 5 years. But, under the revived Program, the payout doesn't begin until 24 months after the date on which the State certified the amount of the investment. The revived version also adds two recapture provisions. First, the tax credits will be recaptured if at the close of any calendar year during the five-year period beginning with the first year in which the State certified the credits the business in which the investment was made is not domiciled in Louisiana. Second, the tax credit will also be recaptured if at the close of any calendar year during the three-year period beginning with the first year in which the State certified the credits the investor transfers its ownership interest in the business.

As under the old AITC Program, the revived AITC Program provides that an investment in a business will qualify for the tax credits only if the business is domiciled in Louisiana, has less than 50 employees, has gross sales of less than $10 million, has a net worth of less than $2 million, has its principal business operations in Louisiana, derives more than 50% of its sales from outside Louisiana, and prior to the investment was approved by the State. Businesses engaged primarily in retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration or financial services did not qualify under the old program and do not qualify under the new program. Like the old Program, the revived version permits the State to grant credits to an investor on only up to $1 million of investment per year per business and on only up to $2 million of total investment per business. The revived Program retains the overall cap of $5 million on the amount of credits that will be granted by the State in any calendar year. What concerns some who intend to participate in this revived Program is the statutory language that provides the Louisiana Department of Economic Development by rule will establish a method of allocating the cap among eligible investors, including on a first-come, first-served basis. Under the old AITC Program, the Department allocated the credits on a proportional basis, which some believe is a more equitable allocation method.

Other requirements and limitations that the revived AITC Program retains from the old Program include the prohibition against secured or guaranteed investments and against investments funded by illegal activity, the requirement that the investor be accredited (not as determined by the Department of Economic Development, as under the old Program, but as determined under Regulation D of the Securities Act of 1933), and the prohibition against an investor acquiring 50% or more of the business in which he/she invests.

Without further legislative action, the revived AITC Program will terminate on July 1, 2015.

Conclusion

In connection with other credits that are thriving in Louisiana, such as the Film and Entertainment credits and the New Markets Tax Credits, the revived Angel Investor Tax Credit should have a positive impact on the development of start-up businesses in Louisiana. The requirements and limitations, particularly the $5 million cap, may prevent this Program from having as much of an impact as some of the other Louisiana credit programs but should not prevent it from reaching its full potential.

If you would like to discuss strategies for earning and maximizing your benefit from, or have questions about, the Louisiana Angel Investor Tax Credit Program, please contact any of the attorneys from either the Firm's Tax Department or Emerging Companies Team.