Louisiana Angel Investor Tax Credit Enhanced

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On August 20, 2021, the Louisiana Department of Economic Development promulgated revisions to the regulations governing the Louisiana Angel Investor Tax Credit, which now make the tax credit available for investments that are in the form of convertible or subordinate debt. This significant enhancement should help increase the availability of investment capital for qualified Louisiana-based companies.

To qualify for the Angel Investor Tax Credit, a company must be certified by the Louisiana Department of Economic Development as a Louisiana Entrepreneurial Business. To obtain that certification, a company must have its principal business operations in Louisiana, expect greater than 50% of its sales to come from outside Louisiana, have 50 or fewer full-time employees, and have either less than $10 million in gross annual sales or less than $2 million of net worth. The credit is not available for investments in companies primarily engaged in the business of retail sales, real estate, professional services, gaming or gambling, natural resource exploration or extraction, or financial services.

The tax credit is earned when accredited investors (primarily high net worth individuals and entities owned by such individuals) make an investment in a certified Louisiana Entrepreneurial Business. The credit equals 25% of the investment (35% if the investment qualifies for federal Opportunity Zone benefits) and is taken in equal portions over two years to reduce the investor's Louisiana income tax. The credit is also transferrable, which means an investor can sell it if he or she does not have enough Louisiana income tax liability to fully utilize the credit.

Prior to August 20, 2021, the tax credit could be earned only if the investor made an equity investment in the company; that is, purchasing stock in a corporation, a membership interest in a limited liability company, or a limited partnership interest in a limited partnership. Many private investments in start-up and developing companies, however, are in the form of convertible debt. In a convertible debt investment, the investor receives a promissory note from the company, which may be converted into equity in certain circumstances (primarily when the company sells equity in the future). Previously, investors in convertible note transactions could only hope to obtain the tax credit if and when the conversion occurred in the future. But if the company failed before then, as many start-up companies do, the investor was deprived of the credit. This made it harder for companies to raise capital through convertible debt.

By allowing Louisiana Entrepreneurial Businesses to offer the Angel Investor Tax Credit as an incentive for investors to make investments in the form of convertible debt, the new regulations issued on August 20 remedy this problem. The new regulations also allow certain investments in the form of subordinated debt to qualify for the tax credit. Subordinated debt is defined in the regulations as debt that requires no principal payments for at least three years, is not guaranteed by a third party, is not secured by any assets of the company, and is subordinated to all indebtedness and obligations of the company to its general creditors.

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These enhancements to the Angel Investor Tax Credit should help Louisiana companies raise much-needed early stage capital, which in turn should result in job creation and help grow Louisiana's economy.