Georgia: Lawmakers update the Angel Investor Tax Credit program

David M. Kall | Thursday, July 7, 2016

The state of Georgia has a robust entrepreneur community. For example, **The Ritz Group**, "where creativity meets capital," is a 30-year non-profit networking organization that connects entrepreneurs and investors who are dedicated to growing new businesses, creating new jobs, and positioning Georgia as the leader in economic growth.

Similarly, **Gathering of Angels**, an Atlanta-based network of angel investors, offers a funding source after an entrepreneur has "exhausted [his] personal savings and tapped out family and good friends to boot strap [a] new venture…" These Angels provide "needed rocket fuel to launch and then grow your business."

Beyond these private pathways to venture capital, the state offers funding in the form of an angel investor tax credit. In finding that entrepreneurial businesses contribute significantly to the state's economy, Georgia's General Assembly crafted the Angel Investor Tax Credit program to accomplish the following:

- Encourage investment in early stage, innovative, wealth-creating businesses;
- Enlarge the number of high quality, high paying jobs, both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;
- Expand the economy of Georgia by enlarging its base of wealth-creating businesses; and
- Support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

On May 2, 2016, the Georgia Department of Revenue issued Notice IT-2016-2 (Notice). The Notice makes the necessary amendment to **Georgia Rule 560-7-8-.52** to conform the program to updated law, and enacting some administrative changes.

The Department of Revenue issued the Notice after lawmakers enacted **House Bill 237** to extend the Peach State's existing Angel Investor Tax Credit (Credit), which went into effect last July. Thus, a qualified investor that made or makes a qualified investment directly in a qualified business in calendar year 2011 through and including 2018 can receive a tax credit for 35 percent of the amount invested, commencing on January 1 of the second year following the year in which the qualified investment was made.

A qualified business is defined as a corporation, limited liability company, or a general or limited partnership located in Georgia that satisfies the following criteria:

- Was organized no more than three years before the qualified investment was made;
- Was headquartered in Georgia at the time the investment was made, and has maintained the headquarters for the entire time the qualified business benefited from the tax credit;
- Employed or employs 20 or fewer people in Georgia at the time it registered as a qualified business;
- Has had no more than $500,000 of consolidated gross annual revenue;
- During its existence, has not obtained more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments;
- Has not utilized the personal exemptions tax credit described in Code Section **48-7-40.26** relating to tax credits for film, video, or digital production in Georgia;
- Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, or research and development; and
- Does not engage substantially in retail sales, real estate or construction, professional services, gambling, natural resource extraction, financial, brokerage or investment activities, insurance, or Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

Total aggregate credit caps on investments made by qualified investors or pass-through entities are set as follows:

> “(a) For investments made in calendar year 2011 and claimed and allowed in taxable year 2013, $10 million;
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> (b) For investments made in calendar year 2012 and claimed and allowed in taxable year 2014, $10 million;
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> (c) For investments made in calendar year 2013 and claimed and allowed in taxable year 2015, $10 million;
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> (d) For investments made in calendar year 2014 and claimed and allowed in taxable year 2016, $5 million;
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> (e) For investments made in calendar year 2015 and claimed and allowed in taxable year 2017, $5 million;
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> (f) For investments made in calendar year 2016 and claimed and allowed in taxable year 2018, $5 million;
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> (g) For investments made in calendar year 2017 and claimed and allowed in taxable year 2019, $5 million; and
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> (h) For investments made in calendar year 2018 and claimed and allowed in taxable year 2020, $5 million.
> ”

Qualified investment

Generally speaking, a “qualified investment” is a qualified investor’s investment of cash in a qualified business for common or preferred stock, or an equity interest, or a purchase for cash of qualified subordinated debt in a qualified business, as long as the investment funds were not or cannot be raised as a result of other tax incentive programs.

Qualified investor

The term “qualified investor” means an accredited investor, as defined by the United States Securities and Exchange Commission, who is:

1. An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by Georgia statute; or
2. A pass-through entity owned by individual persons, which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than $5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as a qualified investor.

Conditions

In addition to the timing provision precluding the tax credit in the same year that the investment is made, the following conditions apply:

- The maximum credit allowed to an individual qualified investor or pass-through entity in any given year is $50,000;
- The amount of the credit may not exceed the investor’s tax liability;
- The investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit; and
- The credit is not transferable except to the investor’s heirs and legatees upon death, or to the investor’s spouse in the event of a divorce.

To apply for the tax credit, **Form IT-QI-AP** must be postmarked between September 1 and October 31 of the year in which the tax credit will be claimed.

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