

Invest Ohio: New Ohio tax credit enacted to encourage investment in Ohio

Ohio has enacted an Ohio income tax incentive for investing in certain approved Ohio small business entities where the investor makes the “qualifying investment,” holds the investment for the required holding period, and the approved investee small business entity makes a specified investment or expenditure that is at least as great as the investment made by the investor. The *Invest Ohio* program is to be administered by the Ohio Department of Development (ODOD) or its successor entity. Prior to making an investment, the investor should ensure that the investee entity is a “small business enterprise” that will be approved by ODOD or its successor entity and should understand the required holding period for such investment.

The administrative procedures of Invest Ohio are being developed now, but this Alert provides a road-map of how the program should work. While there are other details, the major elements are as follows:

1. The “qualifying investment” of money made on or after July 1, 2011 must be used to acquire capital stock or other equity interest in a “small business enterprise.”
2. A “small business enterprise” must be small enough (assets may not exceed \$50 million under GAAP, or annual sales may not exceed \$10 million); and must have a required number of Ohio employees subject to Ohio income tax withholding (at least 50 full-time equivalent employees in Ohio, or more than half of the employees of the enterprise are employed in Ohio).
3. The “small business enterprise” must reinvest the “qualifying investment” into certain specified investments, which may include new property and other assets. Interestingly, the law seems to allow compensation for retained employees to meet the definition of the type of re-investment that the “small business enterprise” may make.
4. The investor must hold the investment for either two years (if the investment is made prior to July 1, 2013) or five years (if the investment is made on or after July 1, 2013).
5. In the event that a credit is approved, the amount of the credit that may be claimed is computed as ten (10) percent of the qualifying investment amount, and may be taken with respect to the tax year that includes the last day of the holding period of the qualifying investment. A carry-forward provision allows the credit to be carried forward for seven (7) years.
6. In any state fiscal biennium, an eligible investor may not apply for small business investment certificates representing intended investment amounts in excess of \$10 million.
7. The Director of Development or the successor entity shall not issue small business investment certificates in a total amount that would cause the tax credits claimed in any state fiscal biennium to exceed \$100 million.

At this point, it is unclear exactly which Ohio agency will administer the Invest Ohio program, but it is possible that it will be a newly created entity -- the Ohio Development Services Agency (DSA). The Ohio Department of Development is in the process of being reorganized into two separate entities -- JobsOhio and DSA. JobsOhio is a nonprofit corporation that will be responsible for the attraction, retention and expansion of businesses in Ohio as well as the crafting of incentive packages on behalf of the State. DSA is a yet-to-be created state agency that will focus on customer service and provide state oversight of JobsOhio. The reorganization process is expected to be completed in January 2012.

Definitions and requirements

“Small business enterprise” and related terms:

- Size
 - Assets may not exceed \$50 million under GAAP, or
 - Annual sales may not exceed \$10 million.
- Employees
 - At least fifty full-time equivalent employees in Ohio for whom the enterprise is required to withhold Ohio income tax, or
 - More than one-half the enterprise’s total number of full-time equivalent employees employed anywhere in the United States are employed in Ohio and are subject to Ohio withholding tax.
- Matching investment
 - Within six months of the qualifying investment, the small business enterprise must invest the qualifying investment in one or more of the following:
 - Tangible personal property, other than motor vehicles operated on public roads and highways, used in business and physically located in Ohio from the time of its acquisition by the enterprise until the end of the investor’s holding period;
 - Motor vehicles operated on public roads and highways if, from the time of acquisition by the enterprise until the end of the investor’s holding period, the motor vehicles are purchased in Ohio, registered in Ohio under Chapter 4503 of the Revised Code, are used primarily for business purposes, and are necessary for the operation of the enterprise’s business;
 - Real property located in Ohio that is used in business from the time of its acquisition by the enterprise until the end of the holding period;
 - Intangible personal property, including patents, copyrights, trademarks, service marks, or licenses used in business primarily in Ohio from the time of its acquisition by the enterprise until the end of the holding period;
 - Compensation for new employees of the enterprise for whom the enterprise is required to withhold income tax under section 5747.06 of the Revised Code, not including increased compensation for owners, officers, or managers of the enterprise. For this purpose, compensation for new employees includes compensation for newly-hired or retained employees.
- Holding period for investor
 - The investor must not dispose of his investment in the small business enterprise prior to the expiration of the required holding period.
 - For qualifying investments made on or after July 1, 2011, but before July 1, 2013, the two-year period beginning on the day the investment was made;
 - For qualifying investments made on or after July 1, 2013, the five-year period beginning on the day the investment was made.

Process for approval of small business enterprise and issuance of tax credit certificate

The details of the application process are still unknown, as ODOD is in the process of developing guidelines for how the Invest Ohio program will operate. Certain reporting requirements must be made in order to confirm that the small business enterprise meets the parameters required under the Invest Ohio program. Before the end of the applicable holding period of the investment, each small business enterprise, upon the request of the director of development, must provide records or other evidence satisfactory to the director that the enterprise meets the size, employee, and reinvestment provisions required. Any eligible investor that makes a qualifying investment in a small business enterprise on or after July 1, 2011, may apply to the director of development to obtain a small business investment certificate from the director. Alternatively, a small business enterprise may apply on behalf of eligible investors to obtain the certificates for those investors.

Ohio income tax credit that is allowed, if approved by ODOD

If the ODOD or successor entity issues a "small business investment certificate," the certificate entitles the certificate holder to receive a non-refundable tax credit against the Ohio income tax. If the certificate holder is a pass-through entity, the certificate entitles the entity's equity owners to receive their distributive or proportionate shares of the credit. Such certificates are not transferable.

The credit equals the amount of the taxpayer's qualifying investment as indicated on the certificate multiplied by ten percent. If the credit exceeds the amount of tax otherwise due for the taxable year, the excess may be carried forward and applied against the tax due for not more than seven succeeding taxable years. The credit shall be claimed for the taxpayer's taxable year that includes the last day of the holding period of the qualifying investment.

Conclusion

The details of this program are still being developed. If you have questions about how this program may benefit you or your company, please contact:

Stephen K. Hall
614.458.0026
shall@mcdonaldhopkins.com

Thomas M. Zaino
614.458.0030
tzaino@mcdonaldhopkins.com

Richard C. Farrin
614.458.0035
rfarrin@mcdonaldhopkins.com

or any of our multistate tax or government affairs attorneys by clicking on the Multistate Tax Practice link below:

Multistate Tax Practice

Businesses must be vigilant and careful in managing their state and local tax liabilities and exposures. This can be a daunting task. We provide a broad range of state and local tax services to our clients, including tax planning, tax controversy, real estate tax abatement and exemption, and tax policy advocacy. With attorneys who have worked both inside and outside government agencies, our multistate tax team leverages its knowledge and experience for the benefit of our clients.