

## InvestOhio Creates Tax Credit to Benefit Small Businesses - Do you Qualify?

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Governor John Kasich recently signed Executive Order 2011-28K, adopting provisions of the Ohio Administrative Code to implement a new tax incentive program commonly known as InvestOhio (the "Program") enacted by the Ohio Legislature to stimulate new equity investment in Ohio small businesses. The Program permits certain taxpayers who invest up to \$10 million in eligible Ohio small businesses to claim a 10 percent income tax credit at the end of the holding period provided the investment is held for the applicable holding period.

Administered by the Ohio Department of Development (the "Department") in connection with the Ohio Tax Commissioner, the Program may award up to \$100 million in tax credits during the state fiscal biennium that ends on June 30, 2013. The Program provides a non-refundable personal income tax credit to investors who invest new cash equity (which may be borrowed funds) into Ohio small businesses provided that the small business uses that investment for permitted expenditures within six months of receipt. In order to claim the credit, the investor must retain the equity investment for two years (the "Holding Period"), and the small business must likewise retain the assets that were acquired with the investment for the Holding Period.

Eligible investors include individuals, estates, trusts and pass-through entities (such as S corporations, partnerships and limited liability companies) in which persons subject to the Ohio personal income tax are beneficiaries, shareholders, partners or members. Shareholders of Ohio C corporations may also qualify for the credit under the Program if the shareholders have Ohio taxable income.

### Do You Qualify?

In order to qualify as a small business under the Program, the business enterprise must satisfy all of the following requirements:

- at the time of the investment, the business assets do not exceed \$50 million or its sales do not exceed \$10 million annually;
- the business employs at least 50 full-time equivalent employees in Ohio or more than 50 percent of the business' total number of full-time equivalent employees employed in the U.S. are employed in Ohio (and, in either case, subject to Ohio income tax withholding requirements); and

- the business, within six months after the investment, uses the investment to acquire qualified assets (generally, business real and personal property located in Ohio and delineated intangible personal property such as intellectual property) or to compensate new employees.

## **How Does Your Business Participate in the Program?**

Procedurally, in order to claim the credit, several steps are mandated under the Program:

1. Both the investor and the small business must register for the Program through the Ohio Business Gateway (“OBG,” an electronic platform) to obtain a user ID number. The registration period began on November 14, 2011.
2. The investor and small business must negotiate the terms of the investment, including the date thereof, and responsibility for applying to the Program.
3. The responsible party must apply to participate in the Program through the OBG beginning the first week of December, 2011 to obtain a transaction ID number. Please note that the timing of the application has legal significance as credits are awarded under the Program in chronological order.
4. The investor must make the investment on or about the date indicated in the application and provide evidence of the investment to the Department.
5. The small business must use the investment to make qualified acquisitions within six months and provide evidence of the acquisitions to the Department.
6. Both the investor and the small business must retain ownership of, respectively, the equity investment and the qualified property during the Holding Period and provide evidence of that fact to the Department.

If the investor and the small business have completed the foregoing, the investor may claim the credit at the end of the Holding Period.

If your business or you may be able to utilize this new tax incentive, please call any member of Dinsmore’s Tax Group to further discuss the details relating to this Program.