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NOTICE 21-13

ANGEL INVESTOR CREDIT

(JULY 19, 2021)

During the 2021 Legislative Session Senate Bill 66 was passed and signed into law. The bill revises the Kansas Angel Investor Tax Credit Act (Act) by: (1) amending applicable definitions; (2) increasing program tax credit amounts and annual program limits; (3) extending the sunset on the program from tax year 2021 to tax year 2026; and (4) removing certain program restrictions.

Definitions

Section 1 of the bill amends K.S.A. 74-8132(i) to change the definition of "qualified securities" with respect to the use of debt instruments as qualifying forms of investment. Debt instruments permitted to be used as a form of investment include any debt that:

- Is subordinate to the creditors of the qualified Kansas business receiving the investment;
- Requires no payment by such qualified Kansas business debtor; and
- Will convert to some form of equity before the qualified Kansas business debtor raises any additional funds.

Tax Credit Limits

Section 2 of the Bill amends K.S.A. 74-8133 to make the following changes to limits on tax credit dollar amounts:

- Subsection (a) is amended to change the maximum value of the tax credit from "equal" to 50 percent, to "up to" 50 percent of the qualifying investment; and

- Subsection (b) is amended to increase single-year tax credit amounts:
  From $50,000 to $100,000 for a single Kansas business; and
  From $250,000 to $350,000 for a single qualified investor;

- Subsection (b) is also amended to set annual tax credit limits at $6.0 million in tax years 2021 and 2022, with a $500,000 increase each tax year after that through tax year 2026:
  Any unused tax credits for a given year will be carried over for issuance in future tax years until tax year 2026.

Transfer of Credits

Section 2 of the Bill also amends K.S.A. 74-8133 to make the changes to the transfer of credits. The amended language, formerly found in subsection (e), now in subsection (d), provides:

> (d) Any investor ~~who has not owed any Kansas income tax under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the immediate past three taxable years~~ *without a current tax liability at the time of the investment in a qualified Kansas business*, who does not reasonably believe that it will owe any such tax for the current taxable year and who makes a cash investment in a qualified security of a qualified Kansas business shall be deemed to acquire an interest in the nature of a transferable credit limited, *for tax year 2021 and all tax years thereafter*, to an amount ~~equal~~ *up* to 50% of this cash investment. This interest may be transferred to any natural person ~~of net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the effective date of this act,~~ whether or not such person is then an investor and be claimed by the transferee as a credit against the transferee's Kansas income tax liability beginning in the year provided in subsection (a). No person shall be entitled to a refund for the interest created under this section. Only the full credit for any one investment may be transferred and this interest may only be transferred one time. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer shall be provided by the investor in the manner required by the director of taxation.

Program Sunset

Section 2 of the bill amends K.S.A. 74-8133(b) to extend the sunset on the angel investor tax credit from tax year 2021 to tax year 2026.

Restrictions on Investments and Investors

Section 2 of the bill amends K.S.A. 74-8133 to remove or modify certain restrictions on investments and investors:

- Subsection (d), which prohibited a credit for investments in Venture capital companies, has been stricken.

- Subsection (e) has been amended to provide that in order to receive a transferable credit, an investor must have no current tax liability at the time of investment, rather than no tax liability for the preceding three years;

- Subsection (e) has also been amended to provide the recipient of a transferable credit will not need to be an accredited investor as defined by federal regulation (17 C.F.R. section 230.501(a)); and

Clawback Provision

Section 3 of the Bill amends K.S.A. 74-8136(g) to modify the clawback provision in the Act. Currently, any business receiving financial assistance under the Act is required to make repayment to the Kansas Department of Commerce if the business ceases to be a qualified business or moves its operations outside of Kansas within ten years. The bill now also requires bioscience businesses (i.e. a business engaged in bioscience as defined in K.S.A. 74-99b83, and amendments thereto) to meet these qualifications for a minimum of ten years and any other business (i.e. a business that is approved and certified as a qualified Kansas business as provided in K.S.A. 74-8134, and amendments thereto) to meet these qualifications for five years

Section 3 of the Bill amends K.S.A. 74-8136(h) to provide that if an investment was made lawfully, investors will not lose any tax credits if the business in which the investment was made were to lose its designation as a qualified business.

General Information

For general information about the Kansas Angel Investor Tax Credit, you can visit the Kansas Department of Commerce website at: https://www.kansascommerce.gov/program/taxes-and-financing/kaitc-program-details/

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about this Notice, please contact:

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