

NOTICE OF INTENT
Department of Economic Development
Office of the Secretary

Angel Investor Tax Credit Program
(LAC 13: I. Chapter 33)

Under the authority of R.S.47:6020 through 6020.4 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to amend the rules for the administration of the Angel Investor Tax Credit Program.

The purpose of this regulation is to implement legislative changes to the Angel Investor Tax Credit program under R.S. 47:6020 as enacted by Act 22 of the 2020 Special Session of the Louisiana Legislature.

Title 13
ECONOMIC DEVELOPMENT
Part I. Financial Incentive Programs
Chapter 33. Angel Investor Tax Credit Program

§3303. Accredited Investor

A.1.-3...

4. the investment in the Louisiana Entrepreneurial Business must be maintained for three years unless otherwise approved by the Department of Economic Development;

5. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or partnership shall not exceed that person's share of the profits of the LLC.

B.1.-4...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011), amended by Department of Economic Development, Office of the Secretary, LR

§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits

A. ...

1. For calendar year 2011, the department will begin accepting applications on September 1, and for all other calendar years, the department will begin accepting applications on January 1. The allocation of credits for all years will be administered on a first come, first serve basis until the annual three million six hundred thousand dollar cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated.

A1 a.-e

f (i) Any returned reservation credits whose businesses could not provide proof of investment within 120 days, will be allocated when available on a first come, first serve basis until the annual cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated. Returned reservation credits will be made available the sooner of:

(a). the day returned reservation credits exceed the amount of credits requested in applications in line to receive credits the next day; or

(b). the day all 120 day proof of investment periods have expired.

f (ii) ...

g. A business that fails to provide proof of investment on the full reservation amount within 120 days will not be allowed to apply for angel investor credits again for a three month period. The three month period will begin on the day following the end of the 120 day period for proof of investment.

B.- E...

F. The Angel Investor Tax Credit Program has a program cap of three million six hundred thousand dollars in tax credits granted per calendar year. If the department does not grant the entire three million six hundred thousand dollars in tax credits in any calendar year, the amount of residual unused tax credits shall carry forward to subsequent calendar years and may be granted in any year without regard to the three million six hundred thousand dollar per year limitation. No tax credit shall be granted to an investor until the investment has been made in the Louisiana Entrepreneurial Business.

G. For purposes of receiving angel investor tax credits, an investor may not invest more than seven hundred twenty thousand dollars per year per business or more than one million four hundred forty thousand dollars total per business over the life of the program. The credit shall be allowed against the income tax for the taxable period in which the credit is earned and the franchise tax for the taxable period following the period in which the credit is earned. The credits approved by the department shall be granted at the rate of twenty-five percent of the amount of the investment with the credit divided in equal portions for two years.

(1) Except as provided in Paragraph (4) of this Subsection, applications received on or after July 1, 2020, for investments that meet the requirements of Subsection C of this Section and the requirements of 26 U.S.C. 1400Z-1, 1400Z-2, and applicable federal regulations shall be entitled to an enhanced credit in accordance with the provisions of this Subsection.

(2) The amount of the credit granted by the department shall be thirty-five percent of the amount of the investment with the credit divided in equal portions for two years,

(3) In addition to the credit cap provided for in Subsection A, the total amount of credits granted under this Subsection shall not exceed three million six hundred thousand dollars per year for a total program cap of seven million two hundred thousand dollars per year. If the department does not grant the entire three million six hundred thousand dollars in tax credits in any calendar year authorized pursuant to this Subsection, the amount of unused tax credits shall carry forward to subsequent calendar years and may be granted in any year without regard to the three million six hundred thousand dollar annual cap provided for in this Subsection.

(4) To the extent that federal laws and regulations relative to opportunity zones require that business revenues be derived from within the opportunity zone, otherwise eligible business shall be exempt from the requirement that fifty percent or more of sales shall come from out of state as specified in Subsection A.

H. No credits shall be granted or reserved under this program for reservation applications received by the department on or after July 1, 2025.

I. The department has the authority to change the administration of the Angel Investor Tax Credit Program when it is deemed necessary for the effective administration of the program. Notice of any change in administration will be done with 10 day prior notice published on the Department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3196 (December 2011), amended by the Department of Economic Development, Office of Business Development, LR 42:35 (January 2016), amended by Department of Economic Development, Office of the Secretary, L

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCF 170 of the 2014 Regular Legislative Session.

Small Business Statement

The proposed Rule could cause a direct economic impact on small wealth creating Louisiana businesses located in Opportunity Zones designated for the state. Some additional applications could be received and approved over and above the normal level for the program resulting from applying for the opportunity zone enhanced 35% credit. Program credit costs could be greater than what would occur with only a simple program extension baseline. By providing a 35% enhanced credit feature for smaller wealth creating business owners in designated opportunity zones, there could be a considerable impact on receipts and/or income resulting from this rule change.

Public Comments

Interested persons may submit written comments to Robin Porter, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to the LaSalle Building, Office of the Secretary, Eleventh Floor, 617 North Third Street, Baton Rouge, LA 70802. Comments may also be sent by fax to (225) 342-9448, or by email to Robin.Porter@la.gov. All comments must be received no later than close of business day Monday, October 26, 2020.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on Tuesday, October 27, 2020 at 4:00 p.m. in the LaBelle Conference Room at the LaSalle Building, 617 North 3rd Street, Baton Rouge, LA 70802.

Anne G. Villa

Undersecretary

Fiscal and Economic Impact Statement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no impact on expenditures to the Department of Economic Development (LED) as a result of the proposed rules establishing guidelines for the Angel Investor Tax Credit Program. The program's purpose is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses in Louisiana and enlarging the quality jobs available in Louisiana. Administration of the program will be carried out utilizing existing staff and resources at LED. The program only affects state taxes, thus local governmental units are not implicated for implementation costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be reductions in revenues (increased costs) to the State General Fund (Direct) to the extent that investors take advantage of the tax credit pursuant to Act 22 of 2020 IES. The Angel Investor tax credit

shall be granted at 25% of the amount of the investment taken over two years and is capped at \$3.6 M per calendar year, for applications received by July 1, 2025. There is an additional tax credit for those businesses located in designated Opportunity Zones that provides for an enhanced credit of 35%.

Based on LED historical data from FY 14 – FY 19 (excluding abnormally low FY 16 claims), the current program costs an average \$1.6 M - \$2 M annually, with LED not fully awarding the credit cap under the current program. The extension of the program through 2025 will add increasing costs each year relative to the baseline expectation of annually declining costs sometime after FY 23. Based on the program's 24-month delay between credit certification and ability of taxpayers to utilize the credits, the earliest year of potential impact is FY 25, with costs rising each year. Shortening the time frame within which the program credits can be claimed from three years to two years effectively increases costs to the program by approximately \$500,000 annually. The additional cost increases due to the additional tax credits for businesses located in Opportunity Zones is speculative, but may be realized as early as FY 23.

There will be a benefit to state and local governmental units to the extent that an expansion of an existing business and/or new business is established in their municipality and/or parish. The state and local governmental units will benefit from new job creation and the increase in tax revenue as a result of those new jobs. The extent of the impact will be determined by amount of the investment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The modifications to the Angel Investor Tax Credit program could cause a direct economic impact on small wealth creating Louisiana businesses located in Opportunity Zones designated for the state. Some additional applications could be received and approved over and above the normal level for the program resulting from applying for the opportunity zone enhanced 35% credit. Program credit costs could be greater than what would occur with only a simple program extension baseline.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The modifications to the Angel Investor Tax Credit program may impact competition and employment in that the amount of the tax credit has been lowered across the board. However, small business companies who are able to transfer their tax credits under the proposed rules do receive a benefit that was not available previously.