

## 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 of the Angel Investor Tax Credit Program, to better align the rules with current administrative practices and to clarify eligibility for convertible and other types of subordinate debt.

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

#### §3301. General

A – B. ...

C. Effective date of the 2021 Angel Investor Tax Credit Program rule changes.

1. The provisions of the 2021 rule changes shall apply to applications filed after the date of promulgation, detailed in the Louisiana Register published on (Month) 20, 2021, except for the provisions of Section 3303 codifying current administrative practice.

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

#### §3302. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6020 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

*Angel Pool*- a group of persons including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of an accredited investor.

*Certification* – certification by the department recognizing the company as an eligible Louisiana Entrepreneurial Business.

*Department*- the Department of Economic Development

*LEB* - Louisiana Entrepreneurial Business

NAICS—North American Industrial Classification System.

*Opportunity Zone*- a community development program established by Congress in the Tax Cuts and Jobs Act of 2017 defined as a population census tract that is a low-income community that is designated as a qualified opportunity zone.

*Professional Services*- occupations requiring specialized education, knowledge, labor, judgment or are predominantly mental or intellectual in nature; and which may require the holding of a professional license. Professional services firms may engage in activities which include, but are not limited to, architecture, engineering, legal services and accounting.

*Qualified Investment*- a cash investment into a Louisiana Entrepreneurial Business by an Accredited Investor which may be in the form of equity, convertible debt, or other types of subordinate debt as approved by the department. Only the initial principal amount of any debt investment is eligible for the credit.

*Reservation Letter*- letter issued by the department provisionally indicating the dollar amount of credits which their investors may be eligible to receive if proof of qualified investment can be shown.

*Subordinate debt*- shall mean (i) by its terms requires no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the LEB or any other person; and (iii) is subordinated to all indebtedness and obligations of the LEB to its general creditors.

*Tax Credit Certification Letter*- letter issued by the department certifying the dollar amount of Angel Investor Tax Credits earned by an investor for a particular tax year.

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

### **§3303. Accredited Investor**

A. An *accredited investor* shall meet the definition established by Rule 501 in Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933, which may include but not be limited to the following:

A1 – A3 ---

A4. the qualified investment in the Louisiana Entrepreneurial Business must be maintained for three years unless otherwise approved by the Department of Economic Development;

A5-B4 ...

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 47:37 (January 2021).

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

A. The following rules shall be applicable to qualified investments by accredited investors in Louisiana entrepreneurial businesses.

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.

a. Upon receipt of an application for the reservation of credits, the department will send the business a reservation letter indicating the dollar amount of credits which their investors are entitled to receive if proof of qualified investment can be shown.

b. Each business applicant will have to decide on their application if they are willing to accept a prorated credit amount should their application be received on the day the cap is reached. The business will also have to determine what percentage of proration they will accept. If the business does not indicate in their application a willingness to accept a prorated credit amount at the percentage of proration available on the day the cap is reached, their application will be deemed to have been received the day following the day in which the cap was reached.

c. Proof of a qualified investment must be provided to the department within 120 days from the date of the reservation letter. The department will accept the subscription agreement as required by the Securities and Exchange Commission as proof of investment.

d. If proof of a qualified investment ~~is~~ is made within the requisite 120 day period, the department will issue a tax credit certification letter to the investor.

i. The tax credit certification letter will include the investor's name, address, Louisiana taxpayer identification number and the amount of the credit. The tax credit certification letter will include a breakdown of which years and in what amounts per year the credit will be claimed.

ii. The Louisiana Department of Revenue will receive a copy of the tax credit certification letter for purposes of verification of the credits.

e. If proof of qualified investment is not provided to the Department within the requisite 120 day period, the angel investor tax credits which had been reserved for that company's investors will be added to the remaining available annual credit cap.

f. Any returned reservation credits whose businesses could not provide proof of qualified 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:

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

ii. the day all 120-day proof of qualified investment periods have expired.

iii. the timeline for proof of qualified investment will be the same 120 day period as mentioned above.

g. A business that fails to provide proof of qualified 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 qualified investment.

B. All applications for the reservation of credits shall be made on a form prescribed by the department. All applications for the reservation of credits shall be submitted to the department electronically to an email address specified by the department on its website. An application fee shall be submitted with all applications for reservation of credits. The application fee shall be equal to 0.5 percent (0.005) times the total anticipated tax incentive for the investors with a minimum application fee of \$500 and a maximum application fee of \$15,000, payable to Louisiana Department of Economic Development.

C. A qualified investment earns tax credits in the calendar year in which the qualified investment is made. The request for the reservation of credits for a qualified investment must be made in the same year in which the qualified investment is made. In order to earn credits under this program, a qualified investment can be made no earlier than 30 days prior to the reservation of credits.

D. The angel investor tax credits should be claimed on the investor's income and corporation franchise tax returns in accordance with the statutory requirements of R.S. 47:6020(D)(3).

E. Transfers of the angel investor tax credits will be allowed in compliance with R.S. 47:6020(F).

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 qualified 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 qualified 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 qualified 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 35 percent of the amount of the qualified 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 \$3,600,000 per year for a total program cap of \$7,200,000 per year. If the department does not grant the entire \$3,600,000 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 \$3,600,000 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 50 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, LR 47:37 (January 2021), amended by Department of Economic Development, Office of the Secretary, LR

### **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 for investors newly eligible to participate in the program, however, even if the utilization of the credit increases slightly, the program cost is limited to the annual program cap.

### **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 Thursday, June 24, 2021.

### **Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on Friday, June 25, 2021 at 10:00 a.m. in the Griffon Conference Room at the Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

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

The proposed rule change is not anticipated to result in any direct material effect on governmental expenditures or savings for state or local governmental units. The Louisiana Department of Economic Development (LED) intends to administer the program with existing resources and personnel.

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

The proposed rules broaden the definition of investment to include convertible notes and other similar investment instruments as eligible for angel investor tax credits ("AITC"). Convertible notes are a common investment vehicle for early-stage startups and are currently eligible for the AITC upon conversion to equity. The rule change would be applicable to new applicants after the effective date of promulgation. As such, this change will not have an impact in the first two years because an investor can not claim any tax credits for 24 months after the investment has been certified by LED. There *may* be a slight decrease in revenue starting in FY25, as adding convertible notes as eligible investments prior to conversion to equity may open the program to more investors. However, because the Angel Credit is dependent on the number

and size of deals, it is not possible to predict with precision any change to the program cost. Importantly to note, even if utilization of the credit increases due to the allowance of convertible notes prior to conversion to equity, the program cost is limited by the annual program cap of \$3.6 million.

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

The modifications to the AITC could cause a direct economic impact for investors newly eligible to participate in the program, however, even if the utilization of the credit increases slightly, the program cost is limited to the annual program cap.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will continue to gain competitively over companies that do not receive the program's benefits.