PART H: INVESTMENTS/CONTRIBUTIONS TO OTHER ENTITIES INCENTIVES

50. COMMUNITY DEVELOPMENT CORPORATION INVESTMENT CREDIT

South Carolina Code §12-6-3530 provides a tax credit against South Carolina income tax, bank tax, or insurance premium tax for a business investing in a community development corporation or community development financial institution. The amount of the credit is 33% of the investment (see exceptions below). The total credit that may be claimed by all taxpayers is $1 million in one calendar year and $5 million for all calendar years. Any carryforward of credit must be used before the taxable year that begins on or after 10 years from the date of the acquisition of stock or other equity interest that is the basis for the credit. The credit is claimed on Form TC-14, "Community Development Tax Credit."

The South Carolina Community Economic Development Act, contained in South Carolina Code Chapter 43, Title 34, defines "community development corporation" and "community development financial institution." "Community development corporation" is defined, in part, as a nonprofit corporation which is chartered pursuant to South Carolina Code Chapter 31, Title 33, is tax exempt under Internal Revenue Code §501(c)(3), and has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development.

"Community development financial institution" is defined, in part, as an organization that has a primary mission of promoting community development by providing credit, capital, or development services to small businesses or home mortgage assistance to individuals, and is not an agent or instrumentality of the United States, or of a state or political subdivision of a state, and does not maintain an affiliate relationship with any of them.

The following requirements apply to the credit:

1. The community development corporation or community development financial institution must be certified by the South Carolina Department of Commerce at the time the investment is made.
2. A taxpayer must obtain a certificate from the South Carolina Department of Commerce certifying the amount and qualification of the investment.
3. Banks and financial institutions chartered by the state may invest up to 10% of their total capital and surplus in a community development corporation or community development financial institution.

4. The taxpayer must file with the Department of Revenue the form issued by the Department of Commerce certifying the stock or other equity interest.

Exceptions to the amount of credit eligible to be claimed include:

1. The credit is not allowed if the taxpayer claims a charitable contribution deduction under Internal Revenue Code §170 for the investment in a community development financial institution.
2. If stock or another equity interest that is the basis for the tax credit is redeemed within 5 years of the date acquired, the credit must be repaid with the tax return for the period in which the redemption occurred.
3. One community development corporation or community development financial institution may not receive more that 25% of the total tax credits authorized in any one calendar year.
4. If the total amount of tax credits claimed by all taxpayers exceeds the limitations, the South Carolina Department of Commerce will determine the credits on a pro rata basis.

NOTE: **The provisions of this credit terminate on June 30, 2020**.

51. VENTURE CAPITAL INVESTMENT

"The Venture Capital Investment Act of South Carolina" contained in Title 11, Chapter 45, is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina. The South Carolina Venture Capital Authority ("Authority") will choose "designated investor groups" that will have the power and authority to borrow funds from lenders and invest those funds in South Carolina businesses.

At the time a loan is made to a designated investor group, the Authority will issue a tax credit certificate to each "Lender." South Carolina Code §11-45-30(10) defines a Lender as "a banking institution subject to the income tax on banks under Chapter 11 of Title 12, an insurance company subject to a state premium tax liability under Chapter 7 of Title 38, a captive insurance company regulated under Chapter 90 of Title 38, a utility regulated under Title 58, or a financial institution with proven experience in state based venture capital transactions, pursuant to guidelines established by the Authority."

The Authority is authorized to establish guidelines governing the procedures for the issuance, transfer and redemption of the tax credit certificates and related tax credits. The certificates shall state the amounts, year, and conditions for redemption and describe the procedures for redemption and transfer of the tax credit certificates. Once the loan is made by the Lender, the certificate is binding on the Authority and the state and may not be modified, terminated or rescinded. However, redemption of the tax credit represented by a certificate is subject to compliance with conditions and procedures set forth on the certificate.

Once redeemable, the tax credit may be used to offset the following taxes: (1) income taxes under Chapter 6, Title 12, (2) bank taxes under Chapter 11, Title 12, (3) savings and loan net income tax liability under Chapter 13, Title 12, (4) license fees and taxes under Chapters 20 or 23, Title 12; (5) insurance premium taxes under Chapter 7, Title 38, or (6) other tax liability under Title 38. There are special provisions for pass-through entities that hold a tax credit certificate. The amount of the tax credit issued to a Lender is limited to the Lender's principal loan amount together with required interest. The use of tax credits by an insurance company does not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that Chapter.

The credits carry forward indefinitely. The tax credits may be transferred to others who are able to use the credit to offset one of the above listed taxes by following the procedures described on the tax credit certificate. No more than $20 million in tax credit certificates are redeemable for any one year; however, any certificates issued in one year, but carried forward and redeemed in a subsequent year, do not count against the total.

For returns filed with the Department of Revenue, the credit is claimed on Form TC-26, "Venture Capital Investment Credit."

NOTE: Questions should be addressed to the Authority at 803-737-0627.

52. PALMETTO SEED CAPITAL CREDIT

South Carolina Code §12-6-3430 provides a credit against income or bank taxes imposed under Title 12, or insurance premium taxes imposed under Chapter 7 of Title 38 for qualified investments in the Palmetto Seed Capital Corporation or the Palmetto Seed Capital Fund Limited Partnership, as defined in South Carolina Code §41-44-10. The credit is equal to the lesser of: (a) all qualified investments during the tax year multiplied by 30%, plus any credit carryover or (b) 50% of all qualified investments during all tax years multiplied by 30%.

NOTE: Chapter 44, Title 41, containing the Palmetto Seed Capital Fund Limited Partnership, is repealed once the President of the Palmetto Seed Capital Corporation certifies to the Secretary of State that remaining investments of the private sector limited partners of the Palmetto Seed Capital Fund Limited Partnership have been liquidated Taxpayers should check with the Palmetto Seed Fund Capital Corporation and its representatives to see if qualifying investments are still being accepted.

53. INDUSTRY PARTNERSHIP FUND TAX CREDIT

South Carolina Code §12-6-3585 provides a taxpayer a credit against income taxes under Chapter 6 of Title 12, bank taxes under Chapter 11 of Title 12, license fees under Chapter 20 of Title 12, or insurance premium taxes under Chapter 7 of Title 38, or any combination of them, for qualified contributions to the Industry Partnership Fund at the South Carolina Research Authority, or designated affiliates, or both, pursuant to South Carolina Code §13-17-88(E). Any unused credit may be carried forward for 10 years from the end of the tax year in which the qualifying contribution is made. The credit is claimed on Form TC-36, "Industry Partnership Fund Credit."

The credit is equal to 100% of the taxpayer's qualified contributions to the Industry Partnership Fund, subject to the following limitations:

1. The use of the credit is limited to the taxpayer's applicable income, bank, license, or premium tax for the tax year after the application of all other credits.

2. The maximum credit is $2 million for a single taxpayer and $6 million for all taxpayers.

3. For purposes of determining a taxpayer's entitlement to the credit in years the maximum amount for all taxpayers is exceeded, those taxpayers that made contributions intended to be qualified contributions earlier in the applicable tax year than other taxpayers must be given priority entitlement to the credit. The South Carolina Research Authority is required to certify to taxpayers who express a bona fide intention of making qualified contributions as to whether the taxpayer will be entitled to priority.

Other credit provisions include:

1. A taxpayer who claims the Industry Partnership Fund tax credit may not take a deduction for the qualified contribution which gives rise to the credit. A contribution is not a qualified contribution if it is subject to conditions or limitations regarding the use of the contribution.

2. A taxpayer is an individual, corporation, partnership, trust, bank, insurance company, or other entity having a state income or insurance premium tax or license fee liability who have made a qualified contribution.

3. The South Carolina Research Authority will furnish a form to the taxpayer identifying its qualified contributions.

4. The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation, but unused credits may be transferred and continued by the succeeding corporation.

5. A corporation or partnership may assign its rights to its unused credit to another corporation or partnership if it transfers all, or substantially all, of the assets of the corporation or partnership, or the assets of a trade or business or operating division of the corporation or partnership to another corporation or partnership.

54. ANGEL INVESTOR CREDIT

a. Basics of the Credit

The High Growth Small Business Job Creation Act of 2013, Title 11, Chapter 44, provides an income tax credit to encourage certain investors ("angel investors") to invest in early stage, high growth, and job creating businesses. The credit is 35% of the investor's qualified investment in a qualified business, subject to certain limitations.

An "angel investor" is an accredited investor as defined by the United States Securities and Exchange Commission (see, www.sec.gov/answers/accred.htm) who is:

1. An individual subject to South Carolina income taxes imposed by Chapter 6, Title 12; or

2. A pass-through entity (*i.e.*, a partnership, S corporation, or a limited liability company taxed as a partnership) formed for investment purposes which (a) has no business operations, (b) does not have committed capital under management over $5 million, and (c) is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as an angel investor. South Carolina Code §11-44-30(1) and (4).

To qualify for the credit, the investment must be made in a "qualified business." A "qualified business" is a business that:

1. Is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development, or is a business providing services listed in South Carolina Code §12-6-3360(M)(13)(*i.e.,* definition of a "qualified service related facility" for purposes of the jobs tax credit).
2. Is not substantially engaged in: (a) retail sales, (b) real estate or construction, (c) professional services, (d) financial brokerage, investment activities, or insurance, (e) natural resource extraction, (f) gambling, or (g) entertainment, amusement, recreation, or athletic or fitness activity for which an admission fee is charged. The Act provides rules for establishing when a business is substantially engaged in one of these activities.
3. Is a corporation, limited liability company, or partnership that has its headquarters located in South Carolina at the time the investment was made and for the entire time the qualified business benefits from the angel investor tax credit. Headquarters is defined in South Carolina Code §11-44-30(2).
4. Has had in any completed fiscal year before registration, gross income as determined in accordance with the Internal Revenue Code of $2 million or less on a consolidated basis.
5. Was organized not more than 5 years before the qualified investment was made.
6. Is registered with, and certified by, the Secretary of State as a qualified business at the time application is made to the Secretary. Once the Secretary approves the registration, the business is certified for 12 months.
7. Employs 25 or fewer people in South Carolina at the time it is registered as a qualified business.

See, South Carolina Code §11-44-30(5).

b. Approval Process for the Credit

An accredited investor seeking to claim the credit must submit an application to the Department for tentative approval of the credit. The deadline for submitting applications to the Department is December 31 of the year the investment is made.[1] By January 31 of the year

[1] For additional information see South Carolina Information Letter #15-22.

after the application is submitted, the Department will notify each investor of the credits tentatively approved and allocated to each investor. The total credit allowed is $5 million for all investors in any calendar year. If the credit amounts on timely filed applications exceed $5 million, then the credit is allocated to the investors on a pro rata basis. South Carolina Code §§11-44-70 and 11-44-50(1).

The Application can be found at the Department's website www.dor.sc.org under Forms, Tax Credits, SC SCH TC-56A.

c. Credit Use and Limitations

The credit is 35% of the qualified investment in the qualified business. The investor may use 50% of the credit in the year the qualified investment is made and 50% in the tax year after the qualified investment is made. The aggregate amount of credit for an individual for all qualified investments in a tax year is $100,000, not including carry forward credits. Any unused credit can be carried forward for 10 years from the end of the year in which the qualified investment is made. South Carolina Code §§11-44-40, 11-44-50(2) and 11-44-30(3). The credit is claimed on SC SCH TC-56.

d. Other Rules Pertaining to the Credit

1. *Allocation of Credit Allowed a Pass-through Entity.* For any pass-through entity making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the pass-through entity must be allocated the credit in the same manner as the proportionate shares of income or loss of the pass-through entity. Allocation rules are provided in South Carolina Code §11-44-40(C).

2. *Transfer and Sale of the Credit*. The credit may be sold, exchanged or transferred one time to any taxpayer. The credit may be transferred by the angel investor to: (1) to his heir and legatees upon death of the angel investor; (2) to a spouse, or (3) incident to a divorce. A taxpayer to whom the credit has been transferred can use the credit for the tax year the transfer occurred and carryforward unused amounts. The transferred credit cannot be used more than 10 tax years after it was originally issued. South Carolina Code §11-44-50(4), (5) and (6).

3. *Gain or Loss on Sale of Qualified Investments.* If the angel investor has a net capital gain on the sale or exchange of the capital assets that were eligible for the credit, then the amount of net capital gain eligible for South Carolina's 44% net capital gain deduction in South Carolina Code §12-6-1150 must be reduced as provided in South Carolina Code §11-44-65(B). If an angel investor taxpayer recognizes a net capital loss on the sale or exchange of capital assets that were eligible for the credit, then the angel investor must increase his South Carolina income as provided in South Carolina Code §11-44-65.

4. The Department has issued SC Revenue Ruling #14-6 which provides an overview of the credit and also provides, in a question and answer format, answers to many of the issues have arisen in connection with the qualification for, and claiming of, the credit.

e. Expiration of the Credit

The High Growth Small Business Job Creation Act of 2013 is repealed on December 31, 2019. Any carryforward of credit will continue to be allowed until the 10 year period is completed.