InvestOhio

InvestOhio is a new tool to infuse much needed capital into Ohio's small businesses, helping them create jobs. The nearly 900,000 small businesses in Ohio are one of the backbones of the state's economy. InvestOhio encourages investors to actively support these small businesses, sparking growth and improving Ohio's competitive position. The program, administered by the Ohio Department of Development in collaboration with the Ohio Department of Taxation, is expected to generate at least $1 billion in new private investment in Ohio small businesses by 2013.

FREQUENTLY ASKED QUESTIONS

I. Investor

A. Qualifications

1. Is it true that a C-Corporation (which is not subject to Ohio income tax) cannot qualify for the credit?
   Yes. The credit is available to (1) individuals, (2) estates, (3) trusts subject to the income tax, and (4) pass-through entities in which a direct or indirect interest is held by (1), (2) or (3).
2. May an S-Corporation (which is not itself subject to Ohio income tax, but whose shareholders are subject to Ohio income tax) pass the credit through to its shareholders?
   The credit may be passed through to those shareholders subject to the Ohio income tax.
3. Could an owner of an S-Corporation who invests additional money into an S-Corporation that he owns, in order to keep the business running, qualify for the credit?
   Yes.
4. Will a non-resident shareholder who owns 100 percent of an Ohio Sub-S be eligible for this credit? The shareholder does file an Ohio income tax return.
   Yes, but the non-resident will need to opt-out of the composite return and instead, file the individual Ohio income tax return.
5. Can the investor contribute borrowed funds to the eligible small business and be eligible for the credit? For example, if I am a sole proprietor of an eligible small business, and I borrow money in my name personally (i.e. through a home equity loan on my residence) to purchase additional assets for the business, would I qualify for the credit?
   Yes. The investment must be a cash investment but there is no limitation on the source of the cash.
6. I am an owner in an S-Corporation that is an eligible small business. I borrow money personally and contribute it to my S-Corporation for the purchase of equipment; will this investment qualify for the credit?
   Yes, if you made an equity investment which was documented as such and the S-Corporation then made the purchase of the equipment.
7. Say I have an equity ownership in an LLC or S-Corporation that qualifies as a small business. I receive a distribution from the business but immediately reinvest the distribution back into the business for the

acquisition of new equipment. Would this investment qualify for the credit?

Yes, if there was truly a distribution and a taxable event occurred.

8. It states that a qualifying investment must be made by an individual, estate or trust. What if the investment was made by an S-Corporation or LLC that is owned by individuals and trusts?

   R.C. 122.86(A)(3) defines "eligible investor" as "an individual, estate, or trust...or a pass-through entity in which such an individual, estate, or trust holds a direct or indirect ownership or other equity interest." Therefore, the S-Corporation or LLC would qualify.

II. Small Business Enterprise

A. Eligibility

1. Must an entity have at least 50 full-time equivalent employees in Ohio, or may entities with fewer than 50 employees be eligible?

   There is an alternative 2-prong employee test. For businesses with a large number of employees, the business must have at least 50 employees in Ohio, regardless of the total percentage. For businesses with fewer than 50 employees in Ohio, the Ohio employment must be at least 50 percent of its total employment.

2. With respect to qualification as a "small business enterprise", if this is a new entity, when do full-time employees have to be employed? (i.e. often the investment dollars will precede the hiring of employees)

   To become an eligible small business enterprise, the business must meet the full-time employee test at the time the investor makes the investment.

3. Do I understand correctly when I hear that an investor may NOT invest in any Ohio C-Corporation in order to receive this credit, because Ohio C-Corporations do not pay Ohio Income Tax?

   This is not correct. A C-Corporation can qualify as a small business enterprise. However, since the nonrefundable tax credit is only available to those who are subject to the Ohio income tax, the individual investor, especially a nonresident, will need to have Ohio taxable income. It is possible that an investment in a C-Corporation may not produce Ohio taxable income.

4. Would an Ohio company, holding Ohio real estate for rent but having no employees qualify?

   No.

5. If a business has more than 10 million in sales but less than 50 million in assets, does it still qualify for InvestOhio credit?

   Yes.

6. In determining an entity's eligibility, can an employer's spouse/children/other direct relatives qualify as full-time equivalent employees? For example, say I am a sole proprietor whose only full-time employee is my son. I want to invest in additional equipment for my business. Would my business be eligible for the credit (assuming the asset and sales thresholds were met)?

Yes, so long as you can show that the relative is having income tax withheld from the wages received.

7. I am the 100 percent owner of an S-Corporation and I am also the only full-time employee of the S-Corporation. If I invest additional money into my company for the purchase of equipment, will I be eligible for the credit (assuming the asset and sales thresholds are met)?

   Yes, so long as you can show that you are having income tax withheld from the wages you receive.

B. Investment Use

1. Does the acquisition of 100 percent of an existing business count as a qualifying investment?

   No. Acquiring a 100 percent interest is not an investment in the Small Business Enterprise; rather it is a transaction with a third party who has the existing 100 percent ownership.

2. If the acquisition is structured as an asset acquisition, it would appear to meet the "qualifying" investment criteria – as qualifying assets have been purchased from both a tax and a legal perspective. What is Ohio's position on this?

   A "qualifying investment" is determined from the investor's perspective. An asset acquisition does not convey an equity interest in the business entity, therefore it will not qualify.

3. If the acquisition is structured as a stock acquisition, it would not, on its surface, appear to meet the qualifying investment criteria – unless the actual stock would be considered an intangible asset. What is Ohio's position on this?

   A "qualifying investment" is determined from the investor's perspective. A stock acquisition does not make an equity interest in the business entity. It is a transaction with a third party, and therefore it will not qualify.

4. If the acquisition is a stock acquisition from a legal perspective, an election can be made under IRC Sec. 338 to treat the purchase as an asset acquisition for federal income tax purposes. Ohio follows IRC Sec. 338 for income tax purposes – so in theory, the acquisition would be an asset acquisition (and thus a "qualifying investment") for Ohio income tax purposes. What is Ohio's position on this?

   It will not qualify.

5. What would be the result if the owners of an existing business contributed $1 million to the existing business and that business subsequently purchased another existing business (at that point, a subsidiary)? How, if at all, would the answers to the above questions change if this occurred?

   While the contribution of $1 million would be a qualifying investment, the purchase of a subsidiary is not one of the delineated investments in R.C. 122.86(A)(1)(c).

6. What is meant by "the purchase of stock or equity interest"? If someone is the 100 percent owner of an entity and they make an additional $1 million investment into the entity for an expansion project, additional stock is typically not issued. While this seems to be within the spirit of the program, it is not clear whether this constitutes the "purchase of stock or an equity interest". What is Ohio's position on this?

An investment by an individual in his/her sole proprietorship will qualify as "the purchase of stock or equity interest."

7. I have two companies that I think are eligible but I am not certain. One has $20 million in sales and 100 employees, 85 of whom are in Ohio. The second in a start-up company with five employees and less than $1 million in sales. Neither company has assets exceeding $ 50 million. Are investments in these companies eligible for the tax credit?
   Investments in both companies are eligible for the tax credit.
8. If I contribute $1 million to an LLC (owned solely by me) and then purchase an apartment building in Ohio for $1 million, does this qualify for the 10 percent credit? The LLC has no employees and no other assets.
   Because the LLC does not have any employees that are subject to income tax withholding, the $1 million investment will not qualify.
9. If a partner in a partnership acquires the interest of a retiring partner, would this investment qualify for the credit?
   No. The individual must make an investment in the partnership itself.
10. If the business spends the additional investment made on intangibles, does that include all intangibles (such as goodwill, customer or vendor lists, non-compete agreements, etc.), or only the intangibles notes on today's slide presentation (patents, copyrights, trademarks, licenses)?
    Just the intangibles on the list are included.
11. If there is a partnership that has two partners, and they each contribute funds to the partnership for the purchase of farmland, assuming they meet the other requirements would this qualify for the credit?
    Yes.
12. Would the acquisition of an equity interest in an existing eligible small business automatically qualify for the credit, or does it only apply to the extent that the investor purchases additional assets or hires additional employees for the business?
    The investor needs to make a new equity investment after July 1. 2011 and then they would only qualify for the credit to the extent that the small business enterprise made the appropriate purchases within six months of the investments.
13. If an eligible small business uses temporary financing to make an equipment acquisition and subsequently pays off this temporary financing with an additional equity investment from an individual owner, will this investment be eligible for the credit?
    No. The small business is not using the equity investment to purchase equipment; it is using it to pay off a loan.

III. Process

A. Application

1. Must the investment be made after the certification/application is approved, or can the paperwork be done after the fact? If the latter, is there a time limit to apply for the credit?
   The investment can be made first with the paperwork to follow. However, the investor runs the risk that the tax credit pool may be depleted or that the business does not qualify as a Small Business Enterprise.

2. Will application process be on an asset by asset basis, a project by project basis, or will a full year of asset acquisitions be allowed as qualified?
   The application process is on an investment by investment basis.
3. Say an LLC is a qualified small business with 50 investors. Investors agree to contribute additional capital to purchase new equipment. Who should prepare the investment application and qualification paperwork? Should the LLC prepare it, or does each of the investors need to prepare their own individually?
   While each individual could apply separately, the LLC can apply on behalf of each of the investors.

B. Certificate

1. The credit is a dollar-for-dollar reduction in the tax liability for that entity, not simply a reduction in taxable income - correct?
   The tax credit is a dollar for dollar reduction in the taxable income of the INVESTOR, not the Small Business Enterprise.
2. The credit is not available against the Commercial Activity Tax, is it?
   The credit is only available against the Ohio income tax and the credit is non-refundable. Any unused amount may be carried forward for seven years.
3. Is this credit separate and distinct from the Technology Investment Tax Credit?
   Yes, but both credits cannot be claimed on the same investment.