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North Dakota Makes Major Changes to Angel Fund System

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For the last several years, North Dakota has operated an "Angel Fund" tax credit program. That program provided tax credits for investors in North Dakota businesses. Recently, there was controversy about that program, including the perception by the legislature that it was being abused through real estate investments. As a result, the North Dakota legislature substantially modified the program, reenacting it as the "Angel Investor" tax credit program during the 2017 legislative session. These new rules went into effect on July 1, 2017.

A comprehensive review of these changes is beyond the scope of this article. However, three key differences are addressed below.

Tax Credit

First, prior law allowed the tax credit to be claimed when the investor made his or her investment into the angel fund. The new credit allows the tax credit only when the angel fund makes an investment in a "qualified business," and the credit rate varies depending on whether the qualified business operates inside of or outside of North Dakota. As a result, investors cannot claim tax credits at the time of their investment into the angel fund, but must wait for the angel fund to make a qualifying investment.

Definition of a Qualified Investment

Second, a "qualified investment" has been defined much more carefully. In particular, a qualified investment is **not** an investment in any company which is a real estate holding company, a company engaged in real estate development, a company deriving its income from sale or lease of real estate, an entity that operates a hotel or any other entity in the hospitality industry, or makes any other similar use of real estate. This definition represents a clear effort by the legislature to prevent use of the angel fund program for real estate investments.

Expanded Requirements

Third, the ongoing investment reporting requirements have been greatly expanded. The new reporting requirements require that angel funds provide the names, addresses and federal identification numbers of their investors and qualified businesses in which they have invested, the amount of the investment attributable to each angel investor, the types of securities received in exchange for the investment, the type of industry in which the qualified business is engaged and any other information that the Tax Department may request. There are also new penalties for failing to file this information, including a potential $10,000 penalty which will be imposed if the report is not filed after a 30-day demand by the Tax Commissioner.

Takeaway

These changes to the program are extensive. It is important that anyone investing or planning to invest in an angel fund review them carefully with their lawyer and tax advisor to make sure that the investment meets the requirements of the new Angel Investor tax credit program. For more information on how these new changes may affect your business or if you have other questions related to obligations under this law, please contact Wayne Carlson, Michael Raum, or Beth Alvine.