

Rules

RULE

Department of Economic Development Office of the Secretary

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

The Department of Economic Development, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and in accordance with R.S. 47:6020 through 6020.4 and 36:104, hereby amends the following Sections of the regulations for the Angel Investor Tax Credit Program.

The Department of Economic Development, Office of the Secretary, has found a need to amend the rules regarding the regulation of the Angel Investor Tax Credit Program pursuant to R.S. 47:6020 through 6020.4, and the State needs to provide for the growth and stability of Louisiana's entrepreneurial business environment by making available ready sources of capital necessary to support this environment. This program is intended to provide economic benefits to Louisiana-based investors who will make new investments or increase their existing investment in Louisiana-based economic development projects that will create and/or retain jobs for Louisiana citizens; and 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 expanding the economy of the state, enlarging the quality of jobs available in Louisiana. Without these rules, the State of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 33. Angel Investor Tax Credit

§3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2005 (Act 400 of 2005; La. 47:6020 through 6020.4, the provisions of which shall hereinafter be referred to as "Act 400") 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 expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 400. For the purposes of this Rule, the "secretary" shall be either the Secretary of Economic Development or his designee.

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); LR 32:1594 (September 2006).

§3303. Accredited Investor

A. An *Accredited Investor* shall be defined as:

1. an Angel Pool (which may be a Limited Liability Corporation or Limited Liability Partnership, as provided below) as determined by the Secretary, all of whose participants shall be Accredited Investors;
2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;
3. a person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;
4. 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. Angel Pools may receive certification from the secretary upon showing;

1. the proposed pool of investors is organized solely for the purposes of making angel investments;
2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in deal reviews as well as post investment review of company performance;
3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;
4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

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); LR 32:1594 (September 2006).

§3305. Louisiana Entrepreneurial Business

A. A Louisiana Entrepreneurial Business shall be defined as those businesses approved by the Secretary under Act 400 and that meet the following requirements:

1. A business shall provide the Secretary with a business plan that includes all appropriate long and short term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 400 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than fifty percent of its sales will be from outside of Louisiana;

c. that the business is to operate as a person defined as an "employer" within the meaning of La. R.S. 51:2453(1)(b)(i) through (v), (c), and (d), and in Section 1105.A.1 through A.5 of the Quality Jobs Rules.

2. The secretary shall also find that the business is not a business primarily engaged in the business of retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds.

3. Such other findings by the Secretary as shall be consistent with Act 400, provided that under no circumstances shall the secretary's certification of the applicant as a Louisiana Entrepreneurial Business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Approval of the secretary shall be obtained upon application by letter that submits the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 400 addressed to the Secretary of Economic Development, Post Office Box 94185, Baton Rouge, LA 70802-9185. Upon receipt, the Secretary shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana Entrepreneurial Business. The secretary's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year from the date of the secretary's letter. The certification may be extended for additional one year periods upon application to the secretary showing that the business continues to be an entrepreneurial business within the meaning of the act and these rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the Secretary or his representative. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 400 and these rules with respect to the administration of the credits.

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); LR 32:1594 (September 2006).

§3307. The Angel Investor Tax Credit

A. The following rules shall be applicable to investments by Accredited Investors in Louisiana Entrepreneurial Businesses.

1. By January 31 of each year, Louisiana Entrepreneurial Businesses certified by the Secretary shall, by affidavit of its Chief Financial Officer, provide the secretary with the list of those Accredited Investors, the Louisiana taxpayer identification number of the Accredited Investors and the amount of their investment in accordance with the statute and these Rules, who have invested in the business provided that the business shall report up to and no more than \$2,000,000 total for the calendar year 2005 that shall have been invested by Accredited Investors in the

manner prescribed by Act 400 in order to obtain a tax credit for the Accredited Investors of no more than \$1,000,000 total for the tax year ending the previous December 31.

2. All tax credit amounts reported to the Secretary shall be fully credited to the Accredited Investor unless the total of all such investments shall exceed \$10,000,000 and the total of such credits shall exceed \$5,000,000 in which case the Secretary shall prorate the total amount of investment and tax credits earned and advise each Accredited Investor of the amount of his credit for the tax year ending December 31, no later than February 28 of the following year.

3. The secretary shall provide the Accredited Investor with all other necessary and appropriate certificates as provided by statute and as shall assist the Department of Revenue in its determination of applicability of the credit. No credit certificates shall be issued until after a determination has been made as to whether or not there is a necessity for prorating of the credits as provided above. When issued, the certificates shall include the Louisiana taxpayer identification number of the Accredited Investor.

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 32:229 (February 2006); LR 32:1595 (September 2006).

Michael J. Olivier
Secretary

0609#048