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Colorado's Advanced Industry Investment Tax Credit: Reducing the Risk of Investing in Colorado Startups

Insight — 06/25/2019

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OVERVIEW: Colorado investors can reduce the risk of investing in Colorado startups in certain “advanced industries” by utilizing the Advanced Industry Investment Tax Credit (“AITC”) program. The AITC is an effort by the Colorado state legislature to increase the flow of capital to startups and other early-stage companies which operate in advanced industries by reducing investor risk. The AITC reduces investor risk by providing investors an immediate return on a portion of their investment in the form of a state income tax credit.

Investors who make a “qualified investment” in a “qualified small business” and who timely submit a complete application to the Colorado Office of Economic Development and International Trade (“OEDIT”) are eligible to receive the AITC. The AITC provides for a state income tax credit in the amount of 25% of each qualified investment in a qualified small business (30% if the qualified small business is located in a rural or economically distressed area (per the applicable Colorado Enterprise Zone standards)). The amount of the tax credit for a single qualified investment cannot exceed \$50,000. AITCs can be claimed through 2022, although there is a \$750,000 annual limit on the amount of tax credits that OEDIT can issue under the AITC program.

QUALIFIED INVESTMENT: A qualified investment is an investment that meets the following requirements:

- the investment is an equity security (i.e., common or preferred stock, an interest in a partnership or LLC, a convertible debt investment, or a security that is convertible into an equity security);
- the investment is at least \$10,000, with the potential maximum tax credit amount of \$50,000;
- the investor and its affiliates do not hold more than 30% of the voting power of the qualified small business immediately prior to making the investment; and
- the investor and its affiliates hold less than 50% of the voting power of the qualified small business immediately after making the

investment.

QUALIFIED SMALL BUSINESS: A qualified small business is a business entity (i.e., not an individual) that meets the following requirements:

- the entity is in an advanced industry (i.e., Advanced Manufacturing, Aerospace, Bioscience, Electronics, Energy and Natural Resources, Infrastructure Engineering, and Information Technology);
- the entity has its headquarters in Colorado or has at least 50% of its employees based in Colorado; and
- the entity has previously received third-party investments of less than \$10 million (for all debt and equity received since formation and not including grants), annual revenues of less than \$5 million, or has been actively operating and generating revenue for less than 5 years.

OTHER REQUIREMENTS: An investor can only earn one AITC per investment in a qualified small business. In order to be eligible, an investor must also:

- submit an application that includes proof of funding through the OEDIT application portal in the calendar year and within 90 days from the initial date the funds are sent to the qualified business (tranche investments must be made within the same calendar year);
- claim the AITC on the same Colorado income tax form for the same year the qualified investment is made; and
- not be investing through a C-corporation.

A Colorado company or investor that wants to take advantage of the AITC can fill out pre-certification documentation in advance of an investment that is eligible for the AITC.

If you have questions about claiming the AITC, please contact Mike Dill, Sarah Haradon, or the appropriate member of your Holland & Hart team.

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