

TAXES MATTER WHEN INVESTING IN EMERGING BUSINESSES

Introduction to tax programs in place to encourage private investment.

July 15, 2010 @

Workshop: “How To Be A Better Angel Investor”

Organized by Launchfn (Launch Funding Network)



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Mac’s experience includes primarily assisting startups, small companies and entrepreneurs in the technology, real estate, and financial services industries. He has counseled numerous companies about tax credits available at both the state and federal levels. He serves in the tax leader role with GH&I’s technology industry group.

Taxes matter

- **Business Structure matters**
 - The type of business structure (C Corp., S Corp., LLC, Partnership) greatly affects the potential impact on the investor.
- **Tax Credits matter**
 - Affect business operation decisions
 - Affect individual investment decisions
- **Exit matters**
 - When the business has gone well
 - Section 1202 Exclusion of Gain
 - Section 1045 Rollover of Gain
 - When the business has failed
 - Section 1244 Loss on Small Business Stock

Business Structure matters

- **C-Corporations**
 - Credits and tax benefits utilized at entity level
 - Increase of internal cash-flow for operations or dividends
- **Flow Through Entities**
 - S-Corporations, Partnerships, LLCs
 - Credits and tax benefits pass to shareholders/partners/members
 - Increase ROI directly to shareholders/partners/members

Tax Credits matter...

- **Credits Affecting Business Operating Decisions**
 - Industry Based Credits (What)
 - Entertainment Industry Credit
 - Location Based Credits (Where)
 - Employer's Jobs Tax Credit/Manufacturer's Investment Tax Credit
 - Location can increase potential available credit
 - Business Operations Credits (How)
 - Tele-Working Credit
 - Research & Development Credits
 - Green Energy Credits

Tax Credits matter

- **Credits Affecting Investment Decisions**
 - Industry Based Credits (What)
 - Georgia Angel Investors Credit – Business must be primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services or research and development.
 - Entertainment Industry Credit
 - Passive Activity Credit Limitations
 - Credits are generally limited to tax impact of passive activities

Exit matters...

- **“Begin with the end in mind.”**
- Partial Exclusion For Gain From Certain Small Business Stock – IRC § 1202
 - 50% Exclusion
 - 75% exclusion for stock acquired between 2/17/2009 and 12/31/2010
 - Possible 100% exclusion for stock acquired between 3/16/2010 and 12/31/2011
 - 5 Year Holding Period

Exit matters...

- Rollover Of Gain From Qualified Small Business Stock To Another Qualified Small Business Stock – IRC §1045
 - Investor cannot be a C-corporation
 - Investor must sell the stock
 - Holding period of more than six months
 - 60 days to rollover

Exit matters

- Losses On Small Business Stock – IRC §1244
 - Up to \$50,000 (\$100,000 for joint returns) of loss on disposition of qualifying small business stock can be treated as an ordinary loss versus a capital loss.
 - Stock must have been originally issued to the investor
 - Must have been issued for money or property, not exchanged
 - §1244 Treatment does not flow-through from S-Corporations to their shareholders.