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Client Alert: InvestOhio Program to Provide Tax Incentives for Investing in Ohio Small Businesses

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Ohio Substitute House Bill 153 (H.B. 153), Ohio's Biennial Budget Bill, includes language that establishes the InvestOhio program. This program provides an attractive incentive to individuals or pass-through entities that invest in certain "small business enterprises" in Ohio. The purpose of this alert is to summarize the basic provisions of the InvestOhio program and the incentives associated with the program.

General Description of Tax Credit

InvestOhio provides for non-refundable Ohio income tax credits for investors in certain Ohio "small business enterprises," with unused portions of the credit carried forward for up to seven years. The credit is equal to 10% of total "qualifying investment" made, but the total credits that may be claimed by any one investor is limited to \$1 million in each fiscal biennium. In addition, the amount of credits issued by the Director of Development in any fiscal biennium is limited to \$100 million, which equates to investments of \$1 billion. The credits are provided on a first-come, first-served basis in each biennium.

"Small Business Enterprise" Defined

In order to qualify as a "small business enterprise," an entity must satisfy three requirements. First, at the time of the qualifying investment, the enterprise's total assets may not exceed \$50 million, or its total sales may not exceed \$10 million. Second, the enterprise must employ at least 50 full-time equivalent employees for which Ohio income taxes are withheld, or more than half of the enterprise's total full-time equivalent employees employed in the United States must be employed in Ohio. Finally, within six months after a qualifying investment is made in the entity, the entity must invest an amount at least equal to the amount of the qualifying investment in Ohio-based tangible personal property, business motor vehicles purchased and licensed in Ohio, Ohio-based real property, Ohio-based intangible personal property or compensation to new employees (other than increased compensation to owners, officers or managers) for whom Ohio income tax is withheld.

Investor Eligibility

To qualify for the tax credit, investors must make an investment to acquire capital stock or another equity interest in a small business enterprise on or after July 1, 2011. That investment may not be directly or indirectly derived from a federal or an Ohio grant or loan. In addition, investors must hold the investment for a required holding period before a tax credit certificate can be issued. For qualifying investments made between July 1, 2011 and June 30, 2013, the required holding period is two years. For qualifying investments made after June 30, 2013, the required holding period is five years. The tax credit certificate is issued by the Director of Development after the expiration of that holding period.

The biennial Budget Bill must be signed by Governor Kasich by June 30, 2011, and the provisions that establish the InvestOhio program will go into effect approximately 90 days later. Vorys will continue to track the progress of InvestOhio.

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