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Angel Investor Tax Credit v. CAPCO: More Bang for the Buck?

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Angel Investor Tax Credit v. CAPCO: More Bang for the Buck?

I. INTRODUCTION—LOUISIANA'S BUSINESS CLIMATE

Louisiana has traditionally performed poorly in attracting businesses, increasing jobs, and retaining the state's talented and intelligent youth. Even though Louisiana has the highest percentage of native born residents in the United States, it loses many more people to other states than it attracts.[1] Consequently, it is one of the slowest growing states in the country in terms of population.[2] Louisiana is one of only two southern states with more people moving out than moving in.[3] A loss of 75,000 citizens due to domestic migration was experienced over the most recent five-year period reported by the Census Bureau.[4] The population flight has been further exacerbated by Hurricanes Katrina and Rita. Those citizens who were previously committed to a life in Louisiana, but who were forced to leave temporarily, are discovering that the grass may actually be greener on the other side of the Sabine River. A loss of this many citizens, regardless of the cause, corresponds to a loss of desperately needed revenues for the state.

A large portion of this migration can be attributed to job opportunities in Louisiana that are inferior to those of neighboring states. No doubt, the "brain drain" suffered by Louisiana has been a disconcerting problem. Convincing Louisiana's youth to stay and pursue higher education in the state has been difficult. Trying to hold onto young people after graduation has been even harder. Louisiana's poor business climate, particularly lacking in high-paying and diverse job opportunities, is partly to blame for this phenomenon.

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1. United States Census Bureau, Census Report 2000, *available at* http://www.census.gov/census2000/states/la.html.

2. *Id.* West Virginia is the other state meeting this criteria. *Id.*

3. *Id.*

4. *Id.*

This comment will compare and contrast the two attempts of the Louisiana Legislature to turn around the state's economic outlook. Section II introduces Louisiana's innovative first attempt at stimulating venture capital investments, the CAPCO Program, and follows with an outline of some of the program's problems. Section III details the newly enacted Angel Investor Tax Credit and compares it with CAPCO while noting improvements as well as shortcomings. Finally, Section IV questions the need for such tax credit programs as a stimulus for Louisiana's economy and recommends some alternatives.

II. THE FIRST EFFORT AT STIMULATING GROWTH—CAPCO PROGRAM

In 1983, the Louisiana Legislature, recognizing the need to address the problems facing the state, implemented a tax incentive program to help jumpstart the state's economy. The Louisiana Capital Companies Tax Credit Program ("CAPCO Program") was designed to assist in the formation and expansion of new businesses, thus creating new jobs in the state.[5] This new program was intended to help provide venture capital to qualified Louisiana businesses by providing tax incentives to investors in capital companies who would distribute the needed capital.[6] Louisiana became an innovator with the CAPCO Program, as it was the first state in the country to attempt to encourage a venture capital community in such a manner. Since Louisiana's action in 1983, many other states have followed suit, instituting their own versions of the certified capital company program.[7]

A. How It Works

The Louisiana CAPCO Program, as it currently exists, operates in the following manner. Any person is entitled to a tax credit

5. LA. REV. STAT. ANN. § 51:1922 (2003).

6. *Id.*; *id.* § 51:1924.

7. COLO. REV. STAT. ANN. § 10-3.5-101 *et seq.* (2006); FLA. STAT. ANN. § 288.99 *et seq.* (West Supp. 2004); GA. CODE ANN. § 48-18-2 (repealed 2004); TEX. INS. CODE ANN. § 4.51 *et seq.* (Supp. 2004–2005); WIS. STAT. ANN. § 560.30 *et seq.* (Supp. 2004).

equal to thirty-five percent of their cash investment in the certified capital fund of a certified Louisiana capital company (termed a "CAPCO").[8] Insurance companies get an even better deal, receiving a one hundred percent credit against their premium tax liability for their investment in a certified Louisiana capital company, but they have to take the credit in equal portions over ten years.[9] The term "certified Louisiana capital company" is defined by the legislature as a legal entity, whether for-profit or non-profit, whose primary business activity is the investment of cash for the purpose of acquiring equity in, or providing financing assistance as a licensed business and industrial development corporation to, qualified Louisiana businesses in need of capital for survival, expansion, new product development, or other similar business purposes, and is certified as meeting the program's criteria.[10]

Louisiana has strict requirements for continuing certification of a CAPCO's investment pools as certified capital. To be initially certified as a CAPCO, the company must have had an initial capitalization of $200,000 or greater.[11] To continue certification, a CAPCO must follow a set schedule for making qualified investments from each of its investment pools. Within three years of the investment date for each investment pool, at least fifty percent of the pool must be invested, with at least thirty percent invested in qualified investments.[12] Five years from the investment date, eighty percent of the pool must be invested, with at least fifty percent of the pool invested in qualified investments.[13]

The program also places limitations on what is a "qualified investment" by a CAPCO. The investment must further or attempt to further economic development within Louisiana.[14] It must either be a cash investment resulting in equity in a qualified Louisiana business or an amount to provide cash financial assistance to a qualified Louisiana business through a licensed

8. LA. REV. STAT. ANN. §§ 51:1924(A)–(B)(1) (2003).
9. *Id.* § 22:1068(E)(1)(a) and (3); *id.* § 51:1924(A).
10. *Id.* § 51:1923(3).
11. *Id.*
12. *Id.* § 51:1926(A)(1).
13. *Id.* § 51:1926(A)(2).
14. *Id.* § 51:1923(12).

Louisiana business and industrial development corporation.[15] A qualified investment also may be: an equity investment or a debt investment maturing within five years from the origination of the debt investment in an approved qualified venture fund;[16] an equity or a debt investment in an approved Louisiana based economic development infrastructure project;[17] or an equity or a debt investment in an approved qualified technology fund.[18] The CAPCO statutes expressly exclude the following from being a qualified investment for continuing certification purposes: investments in businesses primarily engaged in oil and gas exploration and development, gaming, real estate development for resale, banking, lending (with a few exceptions), insurance, or professional services provided by accountants, lawyers, or physicians;[19] investments in associates of certified Louisiana CAPCOs;[20] any portion of a CAPCO's investments in qualified Louisiana businesses that exceeds fifteen percent of its total certified capital;[21] qualified investments that are already claimed by another Louisiana CAPCO;[22] and reciprocal investments or loans made between certified CAPCOs.[23]

"Qualified Louisiana businesses," the intended beneficiaries of the CAPCO Program, are businesses that meet each of the following requirements at the time of investment or as the direct result of investment.[24] First, the business must: (1) primarily operate or perform substantially all of its production in Louisiana or be headquartered in Louisiana with a substantial portion of its assets located in Louisiana; (2) be in need of capital; (3) be in retail, product manufacturing, processing, or assembly, research and development, or providing services; and (4) have at least eighty percent of its employees receiving eighty percent of its

15. *Id.* § 51:1923(12)(a).
16. *Id.* § 51:1923(12)(b).
17. *Id.* § 51:1923(12)(c).
18. *Id.* § 51:1923(12)(d).
19. *Id.* § 51:1926(A)(3)(a).
20. *Id.* § 51:1926(A)(3)(b).
21. *Id.* § 51:1926(A)(3)(c).
22. *Id.* § 51:1926(A)(3)(d).
23. *Id.* § 51:1926(A)(3)(e).
24. *Id.* § 51:1923(13)(a).

payroll domiciled in Louisiana.[25] Second, the business's net worth, together with its affiliates, must not exceed $18 million.[26] Third, the business and its affiliates must not have more than $6 million in average annual net income.[27] Fourth, no more than 500 employees may work for the business and its affiliates.[28] If a business is classified as a qualified Louisiana business upon the first investment by a CAPCO, it retains the classification for each subsequent qualified investment by that CAPCO.[29]

A CAPCO may be decertified, either voluntarily or involuntarily. If the CAPCO fails to meet the requirements of the program, particularly by failing to follow the investment schedule and failing to make qualified investments, it is subject to involuntary certification.[30] If the only violation is that one of the CAPCO's investment pools is not following the investment schedule, only the noncomplying investment pool is decertified.[31]

If a CAPCO or one of its investment pools is involuntarily decertified, some of the associated tax credits may be subject to repayment or forfeiture. If the CAPCO or one of its investment pools was never in compliance with the investment schedule, meaning it never met the year three investment requirement, all income and premium tax credits already claimed must be repaid and any remaining credits are forfeited.[32] If the CAPCO or investment pool complied with the third-year requirement in the investment schedule, but failed to meet the fifth-year investment requirement, only insurance premium tax credits that have or will be claimed after the third year from the investment date must be repaid or forfeited.[33] Decertification of the CAPCO after it has fully complied with the investment schedule does not result in any credit repayment or forfeiture.[34]

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25. *Id.* § 51:1923(13)(a)(i).
26. *Id.* § 51:1923(13)(a)(ii).
27. *Id.* § 51:1923(13)(a)(iii).
28. *Id.* § 51:1923(13)(a)(iv).
29. *Id.* § 51:1923(13)(b).
30. *Id.* § 51:1927(B).
31. *Id.*
32. *Id.* § 51:1927(C)(1).
33. *Id.* § 51:1927(C)(2) and (3).
34. *Id.* § 51:1927(C)(4).

Voluntary decertification may be accomplished at any time by sending written notice and remitting to the Department of Revenue the amount of tax credits to be repaid pursuant to the same provisions as for involuntary decertification.[35] The CAPCO, as a subrogee to Louisiana's right to repayment, then has to recover from its investors the sums paid back to the state.[36] Voluntary decertification under certain circumstances, and with the state's approval, will not result in any tax credit forfeiture or retaliation.[37]

A taxpayer claims the CAPCO tax credit for the year in which the investment is made.[38] The credit used may not be greater than the taxpayer's tax liability for that tax year, but any excess credit can be carried forward to subsequent tax years until the entire credit is used by the taxpayer.[39] CAPCO tax credits may be transferred or sold, but only between affiliates and sophisticated investors, and only once per calendar quarter.[40]

There are some limitations on the CAPCO credits. The tax credit claimed must be certified by the Office of Financial Institutions to the Department of Revenue.[41] A 2002 amendment added the restriction that the total credits taken against all of the taxpayer's income taxes in a calendar year may not result in more than an additional $2 million income tax revenue reduction for that year.[42] Premium tax credits may not reduce the revenues by more than $5 million over the prior year.[43] In years when this restriction actually limits the tax credits allowed by the CAPCO Program, the credit is allocated by CAPCO pursuant to a detailed procedure.[44]

35. *Id.* § 51:1928(A).
36. *Id.*
37. *Id.* § 51:1928(B). This subsection provides for three specific sets of circumstances in which a "certified Louisiana capital company may voluntarily decertify" particular investment pools. *Id.*
38. *Id.* § 51:1924(A).
39. *Id.* § 51:1924(E).
40. *Id.* § 51:1924(F).
41. *Id.* § 51:1923(5); *id.* § 51:1924(A).
42. *Id.* § 51:1924(B)(2).
43. *Id.* § 51:1924(D)(1).
44. See id. § 51:1924(B)(3) and (D)(2) for how CAPCO allocates the tax credit.

B. Problems Associated with the CAPCO Program

Louisiana's CAPCO Program has undergone a significant amount of tinkering by the legislature over the years. Adjustments were to be expected, as the Louisiana program was the first of its kind. As a result, the program has produced some positive results. According to a 1999 study commissioned by the Department of Economic Development,[45] the program raised an estimated $683 million in capital over twelve years of operation.[46] However, the CAPCO Program has still been widely criticized as inefficient and ineffective in some respects.

The program was quite costly to Louisiana in terms of lost revenue. The benefits, especially in the short term, seemed to pale in comparison. The legislature did not limit the amount of premium tax credits the state could issue until 1998, and it overlooked a limitation on income tax credits.[47] For fifteen years of the program's existence, the state was free to authorize an unlimited amount of tax credits. In 1998, the state actually had to negotiate an installment plan with two CAPCOs that had solicited investments generating more than $60 million in income tax credits, which could have been claimed immediately.[48] Because the premium tax credits are taken over a ten-year period, the state has been obligated[49] to provide $610 million in tax credits from 1988 through 2009.[50] Therefore, the state will still be paying a hefty price for the program long after its termination and investments cease.

Several operational issues of the CAPCO Program were also questionable. The definition of "qualified Louisiana business" was arguably too lenient, particularly because it did not require a

45. The seemingly outdated study was conducted at the peak of the CAPCO program, which remained relatively constant for the remainder of its run.

46. Postlethwaite & Netterville, CAPCO Study: Prepared for Louisiana Department of Economic Development 62 (Dec. 31, 1999) (unpublished report, on file with Hill Memorial Library, Louisiana State University).

47. *See* 1998 La. Acts No. 70, § 1924.

48. Postlethwaite & Netterville, *supra* note 46, at 28.

49. Louisiana was obligated for this amount as of 1999.

50. Postlethwaite & Netterville, *supra* note 46, at 3.

business to have its headquarters in the state.[51] Thus, the recipients of the CAPCO funds were not the types of businesses that the legislature sought to promote. The actual beneficiaries of the CAPCO Program also appeared to deviate from the legislative intent. Although Louisiana and its citizens would benefit from the economic growth in the long run, the CAPCO Program proved very lucrative for the CAPCO companies and its owners. Attracting investment from risk averse insurance companies by issuing notes secured by cash collateral, instead of equity, yielded great profit for the CAPCO owners.[52] Moreover, because CAPCOs were required to post collateral, the CAPCOs were left with less money for qualified investments.[53] Thus, the CAPCO Program resulted in an inefficient use of the state's resources. The type of investments made by CAPCOs, beyond the program's requirements, were arguably less aggressive since both the insurance company and the CAPCO profited from the transaction itself. The insurance company, without equity in the CAPCO, had no interest in the CAPCO's investments, and its return was entirely independent of their success, prompting calls for an "at risk" requirement to encourage the most efficient use of the new capital.

Difficulties with CAPCOs were not unique to Louisiana. As previously mentioned, many other states have followed in Louisiana's footsteps and implemented a capital company tax credit program, and some of them have experienced disappointments with their programs. As a result of criticism by the Colorado auditor and an independent organization, Colorado's CAPCO Program was replaced by two other incentive programs.[54] The CAPCO Program, which was only in place for three years and which used only half of the allotted credits,[55] was dubbed a failure

51. *Id.* at 20.
52. *Id.* at 35.
53. *See id.* at 36.
54. *See* Stephen A. Metz, *Colorado Gets New Venture Capital Program; CAPCOs Did Not Die, But Will Just Fade Away*, J. MULTISTATE TAX'N, Nov.–Dec. 2004, at 8.
55. *See id.* at 12.

by Colorado's governor.[56] The CAPCO program in Missouri was also discredited, with a Missouri auditor concluding that any benefits failed to offset its costs.[57] The net cost to the state was $116.4 million; $140 million of tax credits only generated $23.6 million in additional revenues.[58] Job creation was also disappointing; an average of only 293 jobs were created per year for fifteen years.[59]

With negative reviews from both in state and out, it is understandable that Louisiana would soon look for another, more efficient method of spurring economic development. Hence, the issuance of CAPCO credits eventually expired.[60] However, a new proposal was on the horizon.

III. LOUISIANA'S MOST RECENT EFFORT—THE ANGEL INVESTOR TAX CREDIT

In its 2005 Regular Session, the Louisiana Legislature unanimously passed a bill authorizing the Angel Investor Tax Credit ("AITC"), effective on August 15, 2005, which has a similar aim as the CAPCO Program.[61] The AITC is intended to enhance the welfare of the state through a healthy entrepreneurial business environment, which requires ready sources of capital that are not currently available.[62] The AITC Program aims to achieve this purpose by encouraging third parties to invest in early stage wealth-creating businesses in the state, expanding Louisiana's economy by enlarging its base of wealth-creating businesses, and increasing the number of quality jobs available in order to retain the presence of young people who are educated in Louisiana.[63]

56. Tripp Baltz, *Colorado: Gov. Owens Signs Compromise Measures Reforming Investment Tax Credit Program*, 44 DAILY TAX REP. H-2 (2004), http://www.westlaw.com (search 44 DTR H-2, 2004).

57. *See* Christopher Brown, *Missouri: Auditor Says Two Credit Programs Fail to Offset Their Costs to the State*, 44 DAILY TAX REP. H-2 (2004), http://westlaw.com (search 44 DTR H-2, 2004).

58. *Id.*

59. *See id.*

60. *See* LA. REV. STAT. ANN. § 51:1931 (2003).

61. *See* 2005 La. Acts No. 400, § 6020.

62. LA. REV. STAT. ANN. § 47:6020(A) (Supp. 2006).

63. *Id.* § 47:6020(B).

The statute authorizes this credit for tax years starting January 1, 2005, through December 31, 2009.[64]

A. How It Works

The AITC credit is a credit against a qualifying taxpayer's Louisiana income or corporate franchise taxes equal to fifty percent of the taxpayer's qualified investments in certified Louisiana entrepreneurial businesses.[65] The AITC statutes limit the credit granted to $1 million per year per business with a $2 million aggregate limit per business over the life of the program.[66] There also is a limit on the aggregate amount of AITC credits that may be issued per year. The Department of Economic Development ("DED"), which administers the program, may not grant Angel Investor tax credits for the program in excess of $5 million per calendar year.[67] The taxpayer divides the credit granted in one year and takes it in five equal portions during each of five years within the ten-year period beginning in the year in which the credit is granted.[68] The credits expire in the eleventh year after they are granted.[69] For income taxes, the credit is generally claimed in the tax year in which it is earned, and credits against franchise taxes are generally claimed in the tax year following that in which the credit is earned.[70] There is an exception to this schedule in the first year of the program, as credits earned in 2005 cannot be claimed against income taxes until the 2006 tax year and against franchise taxes for 2007.[71]

A taxpayer must meet each of several requirements in order to qualify to claim the Angel Investor tax credit. First, the taxpayer's investment in the Louisiana entrepreneurial business must not be secured or guaranteed but, instead, must be "at risk," meaning the

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64. 2005 La. Acts No. 400, § 6020.4(B).

65. LA. REV. STAT. ANN. § 47:6020.1(A) (Supp. 2006); *id.* § 47:6020.2(A)(2)(a).

66. *Id.* § 47:6020.2(A)(1).

67. *Id.* § 47:6020.2(A)(2)(b).

68. *Id.* § 47:6020.2(A)(2)(a) and (B).

69. *Id.* § 47:6020.2(B).

70. *Id.* § 47:6020.2(A)(1).

71. *Id.*

recoupment of the investment depends entirely on the success of the business.[72] Second, the funds invested must not have been raised as a result of: (1) any other Louisiana tax incentive programs; (2) funds that were pooled or organized through capital placement agreements for purposes of equity and venture capital investing unless approved by the DED; or (3) illegal activity.[73] Third, the investor(s) cannot be the principal owner(s) of the business or involved professionally full-time in the operation of the business.[74] The same rule applies for the investors' spouses and relatives within the third degree either by blood or by marriage.[75] A "principal owner" is one or more persons who combined own fifty percent or more of the business.[76] Fourth, the entrepreneurial business must use the proceeds from the investment for capital improvements, plant equipment, research and development, working capital for the business, or other business activity as may be approved by the DED.[77] The proceeds cannot be used to pay dividends, repay shareholder loans, redeem shares, or repay debt unless approved by the DED.[78] Finally, the investor must maintain the investment in the entrepreneurial business for at least three years unless the DED approves otherwise.[79]

The AITC statute strictly defines "Louisiana entrepreneurial business" to ensure that the proceeds of the program achieve the legislature's goals. A business must meet all four of the following requirements to be eligible for certification by the DED. First, the business must have its principal business operations located in Louisiana.[80] Second, the DED must approve the business as qualified to receive Angel Investor credits.[81] Third, the business must demonstrate that it will be a wealth-creating business for Louisiana, meaning that its business plan must show that the

72. *Id.* § 47:6020.1(C)(1)(a).
73. *Id.* § 47:6020.1(C)(1)(b).
74. *Id.* § 47:6020.1(C)(1)(c).
75. *Id.*
76. *Id.*
77. *Id.* § 47:6020.1(C)(1)(d).
78. *Id.*
79. *Id.* § 47:6020.1(C)(1)(f).
80. *Id.* § 47:6020.1(C)(2)(a).
81. *Id.* § 47:6020.1(C)(2)(b).

business will have more than fifty percent of its sales from out of state.[82] Finally, the business cannot be primarily engaged in retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds.[83] Further, the AITC statute incorporates the definition of "Louisiana entrepreneurial business" from the Economic Development Act, which requires that the business be domiciled in Louisiana, have fifty or fewer full-time employees, and have either gross annual income of less than $10 million or a net worth of less than $2 million.[84]

If all of the above requirements are met, a taxpayer investor may use the tax credit. The taxpayer receives a tax credit certificate from the DED, which certifies the eligibility of the entrepreneurial business and the amount of the taxpayer's investment.[85] A copy of this certificate is to be attached to the taxpayer's tax return.[86] Unless the DED rescinds the certificate, the Department of Revenue must accept the tax credit certificate as proof of the tax credit.[87]

B. Improvements over CAPCO?

The AITC Program is a substantial improvement as a tax incentive compared to the CAPCO Program. This is not surprising since the program appears to be closely modeled after Maine's established and successful angel investor credit.[88]

First, the amount of tax revenues the state will lose because of the tax credit is expressly limited at the outset, thereby minimizing any unexpected budgetary issues. Since the AITC is set to be in place for a fixed period of time, the Legislative Fiscal Office evaluated the lost revenues as only $25 million over a ten-year

82. *Id.* § 47:6020.1(C)(2)(c).
83. *Id.* § 47:6020.1(C)(2)(d).
84. *Id.* § 47:6020.1(A); *id.* § 51:2303(5).
85. *Id.* § 47:6020.2(A)(2)(c).
86. *Id.*
87. *Id.*
88. Maine implemented the program in 1988. *See* ME. REV. STAT. ANN. tit. 10, § 1100-T (2006).

period.[89] The annual revenue loss will increase by $1 million each year, peaking at $5 million in lost revenues in the fifth year of the program.[90]

The definition of "Louisiana entrepreneurial business," the targeted beneficiary of the AITC Program, is much narrower than the term "qualified business" under the CAPCO statutes. The absolute requirement that an entrepreneurial business must have its principal operations in Louisiana incorporates a logical requirement that other states' CAPCO programs included. Notably, the revenue, net worth, and employee restrictions are much smaller than in the CAPCO Program. These limitations should ensure that start-up and/or struggling companies receive the funds they need under the AITC Program, regardless of the age of the entity.

A substantial improvement of the AITC is the elimination of the controversial and highly-criticized CAPCO structure. The AITC is available only for funds invested directly into the types of businesses the state wants to assist. This structure reduces the needless waste generated by the CAPCO "middle-man" structure. It assures that one hundred percent of the taxpayer's investment goes immediately into the Louisiana entrepreneurial business, instead of having a schedule for the investment over a period of time. It also eliminates the conflicts of interest between the CAPCO managers and its investors that are present in the CAPCO structure. The Angel Investor Plan's "at risk" requirement for the taxpayer's investment assures that the angel investors will make more deliberate choices in determining the companies in which they will invest, thus increasing the likelihood of meaningful long-term economic development.

Another significant improvement of the AITC is the restriction on how the entrepreneurial business uses the funds received from the angel investor. These approved uses are aimed at fostering positive growth and not merely enabling a business to stay afloat. The new non-related requirement is also a positive addition; the

89. Greg Albrecht, Louisiana Legislative Fiscal Office, *Fiscal Note On HB 627*, http://www.legis.state.la.us/billdata/streamdocument.asp?did=319143 (last visited Aug. 16, 2006).

90. *Id.*

state should not give tax credits for investing in one's own business. But in a state like Louisiana, it could act as a roadblock for some otherwise desirable investments.

C. Potential Shortcomings

While the Angel Investor Tax Credit is an improvement over the CAPCO Program, it has some shortcomings. The ability of the AITC Program to achieve the legislature's goals is also questionable.

The AITC provides for a maximum of $5 million in tax credits over each of five years for a grand total of $25 million. These credits correspond to $10 million of qualified investment annually over five years for a total of $50 million in investment over the life of the AITC Program.[91] The $50 million of capital that the AITC Program will generate pales in comparison to the almost $700 million in documented capital raised by the CAPCO Program. Additionally, the short lifespan of the program will not enable legislators to adequately evaluate the program's effectiveness. It often takes more than five years to observe any measurable impact of a tax incentive program.[92]

IV. IS THE AITC WORTH IT?

Most Louisiana residents will agree that the state needs help with economic development. However, a question exists as to whether throwing money at this problem actually will lead to a solution. Most states use tax incentives to encourage business activity, but the utility of such action is far from certain.

Each year, states across the nation spend over $50 billion on business incentives hoping to spur economic activity and job

91. A rate of fifty percent of credit granted for qualified investments gives: $5 million / 0.5 = $10 million per year. This calculation assumes that no more than $5 million in credits is earned each year whereby each taxpayer realizes the full amount of credit earned.

92. Robert G. Heard, National Governors Association, *Growing New Businesses With Seed and Venture Capital: State Experiences and Options* 17 (2000), http://nga.org/cda/files/vencapital.pdf (last visited Aug. 16, 2006).

growth.[93] These incentives may be in the form of investment tax credits, job creation credits, property tax abatement programs, and tax increment financing schemes.[94] Such incentives often become quite costly. For instance, Alabama recently offered an incentive package equal to $200,000 for each potential job created, and Kentucky offered a deal worth $350,000 per job created.[95] Some incentives are aimed at attracting or keeping a particular business, such as Ohio's offer of $300 million in benefits to keep Jeep's plant located within the state's borders.[96] Offers like these encourage imitation and incite competition between states, spurring the inevitable "race to the bottom."[97] Businesses themselves even encourage tax incentive competition, having become very skilled in obtaining incentives from states.[98]

With the individual states clamoring to make the best and most attractive offer, one might think that incentive programs are actually effective. However, many commentators believe that tax incentives are not as useful of an economic development tool as many legislators think.[99] Studies show that tax incentives actually play a minor role in a business's decision to locate in a particular area.[100] Tax incentives are viewed as useless government expenditures that reduce funding for and undermine other governmental services that do play a major role in a business's

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93. Kathleen A. Norat & Eileen M. Lomoriello, *Clawbacks: A Help or a Hindrance in Negotiating Incentive Benefits?*, J. MULTISTATE TAX'N, Feb. 13, 2004, at 24, 26.

94. Peter D. Enrich, *Business Tax Incentives: A Status Report*, 34 URB. LAW. 415, 417 (2002).

95. Scott J. Ziance, *Making Economic Development Incentives More Efficient*, 30 URB. LAW. 33, 40 (1998).

96. Enrich, *supra* note 94, at 415.

97. Peter D. Enrich, *Saving the State From Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 HARV. L. REV. 377, 380 (1996).

98. Andrew L. Kolesar, Note, *Can State and Local Tax Incentives and Other Contributions Stimulate Economic Development*, 44 TAX LAW. 285, 293 (1990).

99. *See* Enrich, *supra* note 94, at 419; James R. Rogers, *The Effectiveness and Constitutionality of State Tax Incentive Policies for Locating Businesses: A Simple Game of Theoretical Analysis*, 53 TAX LAW. 431 (2000).

100. Kolesar, *supra* note 98, at 285.

location selection.[101] These influential factors include: the quality, availability, and cost of labor (including quality of education and technical expertise); the level and quality of public services; the costs of utilities, transportation, and housing; the proximity to markets, suppliers, and other company facilities; the regulatory environment; the general tax climate; and the quality of life, which includes the natural environment as well as entertainment.[102] The importance of skilled labor is illustrated by Texas Instruments' ("TI") decision to build a plant in Texas. TI executives were influenced by the state's commitment to investing in local engineering and computer science-oriented schools, which in turn would provide the breeding ground for TI's future employees.[103] Further evidence of the importance of these other factors is the growth success of high tax, high spending areas (like California and Georgia) over that of their low tax, low spending counterparts.[104] The higher tax areas have more funds available to invest in the factors that really attract businesses.

Tax incentives pose problems other than not targeting elements that are important to businesses. By offering tax incentives, a state sets a precedent leaving itself vulnerable to similar demands by other businesses and interest groups in the future.[105] Further, states with struggling economies, like Louisiana, are very easily exploited by businesses.[106] It is also very hard to weigh the utility of a particular economic development incentive.[107] Clearly, an economic incentive is beneficial to a state if the revenue loss outweighs the increased revenue from the program.[108] However, even if the costs are easy to quantify, any revenue increase is very speculative.[109] Adding to the difficulty in estimating the positive

101. *Id.*
102. *Id.* at 289.
103. Timothy A. Dunn, *Business Tax Incentives: A Modern View Utilizing Tiebout-Hamilton Rationales*, 40 TEX. J. BUS. L. 235, 244 (2004).
104. *Id.* at 242; Kolesar, *supra* note 98, at 295.
105. Kolesar, *supra* note 98, at 296.
106. *Id.* at 293.
107. *Id.* at 301.
108. *Id.* at 300.
109. *Id.* at 301.

results of an incentive is a state's lack of power to prevent businesses from relocating after benefiting from the incentives.

If tax incentives are of little benefit, then why do states use them? The main proponents of tax incentives are politically, not economically, motivated legislators who are driven by voter perception.[110] By offering these benefits, the politicians give the appearance of trying to help the state.[111] Further, states are pressured by the need to keep up with their neighbors.[112] However, the impact of tax incentives is limited when every state has the same goals and very similar means of trying to achieve them. For example, at one time the so-called "movie tax credits" were a novel and cutting edge idea in Louisiana. Now, most states, including California, the home of Hollywood itself, either have motion picture tax incentives or are considering them. Another reason why tax incentives are so widely used is because there are those that argue that tax policy and incentives matter by increasing a business's return on investment, especially for those with smaller profit margins.[113]

The negative views of tax credits expose the potential fiscal irresponsibility of offering costly, and arguably ineffective, tax credits. This is especially true when these credits may pose a serious threat to the state of Louisiana under the current circumstances. Louisiana already offers an abundance of tax credits for a variety of reasons, many of which were passed or amended during the Louisiana Legislature's 2005 Legislative Session. Further, the state inevitably will be burdened, financially and otherwise, for many years to come by the vast reconstruction efforts following the September 2005 hurricanes.

To mitigate these damaging effects, Louisiana should explore some non-tax incentive options that are likely more efficient and beneficial. One option is to pour government funds into other areas that businesses find attractive, like education and infrastructure, as noted above.[114] The benefits of this option are

110. Enrich, *supra* note 94, at 422.
111. Kolesar, *supra* note 98, at 307.
112. *Id.*
113. *Id.* at 292.
114. *Id.* at 298.

numerous. First, the costs of such improvements are fixed and are often subsidized by the federal government.[115] Moreover, entire communities, not just the targeted businesses, reap the benefits of education and infrastructure improvements. Further, the benefits are experienced regardless of the success in stimulating the economy.[116] Other actions Louisiana may take include making low interest loans and direct grants to businesses.[117] With the inefficiency of some tax incentive schemes, as illustrated by the CAPCO Program discussed above, direct expenditures like these may in fact be more useful than tax incentives.

V. CONCLUSION

The Angel Investor Tax Credit possesses all of the elements of a beneficial government incentive. It is modeled after a similar program that has enjoyed success in another state. It incorporates many of the lessons Louisiana learned from the administration of the CAPCO Program. However, in the grand scheme, individual state tax incentives are marginally successful at achieving positive economic development in a country where all incentives start to look alike. Furthermore, Louisiana's current fragile financial condition makes the endless accumulation of tax incentives incredibly risky. Louisiana needs to avoid the "race to the bottom" with the rest of the country in the name of keeping and attracting sources of economic growth to the state. Louisiana should explore some other more responsible and potentially more effective methods, like education and infrastructure improvements and direct government funding of lucrative businesses.

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115. *Id.*

116. *Id.*

117. Audrey G. McFarlane, *Local Economic Development Incentives in an Era of Globalization: The Exploitation of Decentralization and Mobility*, 35 URB. LAW. 305, 308 n.8 (2003).

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