STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Chapman, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	Docket No. 25-ALJ-17-0284-CC Docket No. 25-ALJ-17-0359-CC **ORDER**

These consolidated matters are before the South Carolina Administrative Law Court (ALC or Court) pursuant to two Requests for Contested Case Hearing filed by Hugh Chapman (Petitioner) challenging the South Carolina Department of Revenue's (Department's or DOR's) final decisions denying his applications for angel investor tax credits for tax years 2023 and 2024 pursuant to the High Growth Small Business Job Creation Act, S.C. Code Ann. §§ 11-44-10 et seq. (Supp. 2025). Presently before the Court are the parties' motions for summary judgment: the Department's Motion for Summary Judgment filed April 30, 2026 (Department's Motion) and Petitioner's Motion for Summary Judgment filed May 12, 2026 (Petitioner's Motion). For the reasons set forth below, the Court grants Department's Motion and denies Petitioner's Motion.

BACKGROUND

This dispute arises from two applications filed with DOR by Petitioner seeking Angel Investor Tax Credits for tax years 2023 and 2024. As his basis for seeking the tax credits, Petitioner's applications reflected that he invested $60,000 in JOTW Art, LLC (JOTW) on February 22, 2023, and he invested $160,000 in JOTW on October 10, 2024.

Petitioner organized and created JOTW on October 29, 2019. JOTW's address is the same address as Petitioner's Greenville, South Carolina residence. Petitioner is, and always has been, the sole member and owner of JOTW. The Operating Agreement of JOTW, signed by Petitioner as its manager and counter-signed by Petitioner as its member, provides that JOTW is only intended to have one member, such that it will be disregarded as a separate entity from Petitioner for federal tax purposes. Notwithstanding the fact that JOTW is intended to have Petitioner as its sole member, the Operating Agreement contains provisions allowing Petitioner (as member) to assign, transfer, or convey all or part of his membership interest in JOTW, and also permits JOTW to issue membership interests to, and admit as a member, other persons besides Petitioner (subject to Petitioner's consent as the sole member). However, the Operating Agreement states that any action causing JOTW to have multiple members requires the execution of an amended operating agreement setting forth the relative rights, obligations, and duties of the members, the manner in which JOTW is to be operated, and the manner in which JOTW is to be characterized for tax purposes.

Petitioner first met artist Gary Lee Teter in person sometime in 2018 and has a close personal relationship with Mr. Teter and his wife, Barbara Teter. Mr. Teter is an independent artist who creates all his artwork at his studio in Chillicothe, Missouri, where the Teters reside. JOTW's inventory is composed of original works of art by Mr. Teter stored at Petitioner's home; prints of Mr. Teter's art stored at Petitioner's home and a storage unit; and historical photographs that Petitioner purchases on eBay and sends to Mr. Teter. JOTW does not pay for Mr. Teter's art supplies. Mr. Teter has absolute control over the supplies he uses. Petitioner does not direct Mr. Teter's schedule. Petitioner works with Mr. Teter to choose a "direction" for the art that Mr. Teter will produce, but Petitioner does not direct Mr. Teter's production.

There is no fully signed document governing the relationship between JOTW and Mr. Teter. Petitioner signed an Agreement to Create a Series of Artworks in 2019, but this document was not countersigned by Mr. Teter. Nonetheless, the agreement is largely followed by Petitioner and Mr. Teter. There is no written license agreement allowing JOTW to reproduce Mr. Teter's artwork.

JOTW pays Mr. Teter and Mrs. Teter five thousand dollars each month, regardless of output. Mrs. Teter is paid separately to attempt to ensure that she has a work history for social security purposes. Petitioner makes occasional trips to Mr. Teter's home in Chillicothe, Missouri, to take delivery of completed artwork. All, or almost all, of the artwork created by Mr. Teter is retrieved by Petitioner. Mr. and Mrs. Teter are independent contractors with respect to JOTW, not W2 employees. Mr. Teter is an independent contractor in part to ensure that he retains legal rights to his artwork. The only people paid by JOTW are Mr. and Mrs. Teter.

Petitioner acts on behalf of JOTW but he has never been paid by JOTW for that work. Petitioner has only contacted one retailer about selling Mr. Teter's artwork, and that contact was made for the purpose of Petitioner purchasing a piece of art from JOTW. Otherwise, Petitioner has not contacted any other businesses about selling the artwork. JOTW offered for sale to the public two original paintings by Mr. Teter. JOTW sold inventory in the form of prints of Mr. Teter's artwork to individuals in Orlando, Florida in August of 2023 and calculated sales tax on those sales. JOTW has had no other revenue throughout its existence.

Petitioner's $60,000 contribution to JOTW occurred by way of personal check dated February 22, 2023 containing the handwritten words "capital contribution" in the memo line. Petitioner's $160,000 contribution to JOTW on October 10, 2024, was also made by personal check with the handwritten words "capital contribution" in the memo line. Petitioner did not receive a note from JOTW evidencing debt, nor did Petitioner receive stock from JOTW in exchange for the contributions. Nor did Petitioner receive any certificate, e.g. evidencing an ownership stake in JOTW, when he made the contributions because he already owned all the equity interests in JOTW before and after he transferred the funds.

On or about January 30, 2024, DOR notified Petitioner that his tax credit application had been denied because Petitioner was not a qualified business, and therefore the capital contribution upon which his application was based was not a qualified investment under the Act. Petitioner protested DOR's denial of his tax credit application. After a conference with DOR's Appeal Division failed to resolve the disagreement leading to the protest, the matter was transferred to DOR's Office of General Counsel for Litigation for the issuance a department determination. The Determination was issued by DOR on August 15, 2025. The Determination found that Petitioner did not make a qualified investment under the Act, and that DOR has the authority to determine whether a business is a qualified business under the Act.

DISCUSSION

Jurisdiction and Standard of Review

The Court has jurisdiction over this case pursuant to Section 1-23-600 of the South Carolina Code (Supp. 2025) and Section 12-60-460 of the South Carolina Code (2014). The Rules of Procedure for the Administrative Law Court (SCALC Rules) provide that the South Carolina Rules of Civil Procedure (SCRCP) "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC Rule 68. Pursuant to Rule 56(c), SCRCP, summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." SCRCP Rule 56(c). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "[T]he party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009).

"[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). "Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law." *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991). Moreover, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000).

The taxpayer bears the burden of showing entitlement to a claimed credit, exemption, or deduction. *Norfolk S. Corp. v. Comm'r*, 140 F.3d 240, 244 (4th Cir. 1998) ("[B]ecause tax credits and deductions are a matter of legislative grace, taxpayers bear the burden of proving entitlement to the credits they claim on their returns."); 85 C.J.S. Taxation § 1806 (stating that "[t]ax credits operate as a type of exemption to taxation" and that "a person claiming an exemption must show that the statute involved grants an exemption and that the taxpayer is clearly within its terms and provisions."); *Davis Mech. Contractors, Inc. v. Wasson*, 268 S.C. 26, 29, 231 S.E.2d 300, 301 (1977) ("Tax deductions are a matter of legislative grace and the taxpayer must establish compliance with the statutory conditions imposed."). Tax credit provisions must be strictly and narrowly construed against the taxpayer. *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 140, 750 S.E.2d 65, 69 (2013).

<u>S.C. High Growth Small Business Jobs Act of 2013</u>

Pursuant to the High Growth Small Business Job Creation Act, S.C. Code Ann. §§ 11-44-10 et seq. (Supp. 2025) (the Act), an "angel investor" is entitled to a nonrefundable income tax credit of thirty-five percent of a "qualified investment." The Act defines "angel investor" to include individuals, if they are residents of South Carolina or subject to individual income tax in South

Carolina, as long as such individuals are "accredited investors" as defined by the United States Securities and Exchange Commission.[1] The term qualified investment is defined in the Act as follows:

> "Qualified investment" means an investment by an angel investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of subordinated debt in a qualified business. Investment of common or preferred stock or an equity interest or purchase of subordinated debt does not qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting an investment or a purchase.

S.C. Code Ann. § 11-44-30(6). The term qualified business is defined in the Act as follows:

> "Qualified business" means a registered business that:
>
> (a) is either a corporation, limited liability company, or a general or limited partnership located in this State and has its headquarters located in this State at the time the investment was made and has maintained these headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this section;
>
> (b) was organized no more than five years before the qualified investment was made;
>
> (c) employs twenty-five or fewer people in this State at the time it is registered as a qualified business;
>
> (d) has had in any complete fiscal year before registration gross income as determined in accordance with the Internal Revenue Code of two million dollars or less on a consolidated basis;
>
> (e) is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development, or a business providing services set forth in Section 12-6-3360(M)(13), other than those described in subitem (f); and
>
> (f) does not engage substantially in:
>
> (i) retail sales;
> (ii) real estate or construction;
> (iii) professional services;
> (iv) gambling;
> (v) natural resource extraction;
> (vi) financial brokerage, investment activities, or insurance;

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[1] Petitioner's status as an accredited investor, as defined by the SEC, is not at issue in the Motion. The Court notes that SEC has promulgated detailed regulations setting forth the characteristics of an accredited investor. *See* 17 C.F.R. § 230.501(a).

> (vii) entertainment, amusement, recreation, or athletic or fitness activity for which an admission or fee is charged.
>
> A business is substantially engaged in one of the activities defined in subitem (f) if its gross revenue from an activity exceeds twenty-five percent of its gross revenues in a fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage as one of its primary purposes such activity.

S.C. Code Ann. § 11-44-30(5).

In order to receive a tax credit provided by the Act, an applicant must submit an application to DOR for tentative approval, followed by the DOR bestowing approval or denying the application. S.C. Code § 11-44-70 (Supp. 2025).

<u>Whether Petitioner Made Qualified Investments</u>

The parties disagree as to whether Petitioner's payments to JOTW were qualified investments, as necessary to for Petitioner to be entitled to tax credits under the Act.

As discussed above, a qualified investment under the Act, must be an "investment … of cash … for common or preferred stock or an equity interest or a purchase for cash of subordinated debt." S.C. Code Ann. § 11-44-30(6). Petitioner does not contend he received stock or subordinated debt for his contributions to JOTW, but he asserts that the contributions "undeniably increased the *value* of the equity in JOTW," and that "[t]he increase in value of his equity in JOTW is an equity interest provided to [Petitioner] in exchange for the cash investment." The Department's Motion argues Petitioner's contributions were not in exchange for any equity interest in JOTW because Petitioner was the sole owner of JOTW both before and after the contributions. The Court agrees with the Department.

Petitioner concedes he "already owned all the equity interests in JOTW both before and after he transferred the funds to JOTW." Petitioner's equity interest in JOTW was plenary (100%) at all relevant times, meaning no person or entity besides Petitioner has ever held an equity interest in JOTW. Thus, Petitioner did not gain or receive any theretofore un-held equity interest by making contributions to JOTW, and the contributions made by Petitioner were not "<u>for</u>" an equity interest. Petitioner's contributions presumably increased the *value* of JOTW, by increasing its assets, and therefore the contributions may have increased the *value* of Petitioner's interest in JOTW. But that is not the same as obtaining an equity interest in exchange for the contributions, as Section 11-44-30(6) requires in order for such a contribution to be a "qualified investment." By the same token, had JOTW turned around and made *distributions* to Petitioner in the same amounts as his contributions—as expressly permitted by the Operating Agreement—Petitioner would not thereby *lose* any equity interest in JOTW.[2]

An essential element of entitlement to a tax credit under the Act is that the taxpayer made a "qualified investment" under the Act. Under the undisputed facts here, where Petitioner concedes he received no stock or debt instrument in exchange for his contributions, Petitioner would be required to show he made an "investment … of cash … for … an equity interest[.]" The Department's Motion was a properly supported summary judgment motion contending Petitioner's contribution to JOTW lacked this essential element. Because Petitioner bears the burden of proof regarding his entitlement to the tax credit, he was required to come forward with evidence creating a genuine issue of material fact regarding the existence of the element. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (requiring "the entry of summary judgment … against a party who fails to … establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof."). Here, the Court concludes Petitioner failed to establish a genuine issue of material fact as to whether he made a qualified investment as defined by the Act, because Petitioner's equity interest in JOTW was plenary before and after the contributions at issue. As such, the Court will grant the Department's Motion and deny Petitioner's Motion.

Because the Court's determination that Petitioner's contributions to JOTW were not "qualified investments" under the Act effectively resolves the parties' motions, the Court need not address the other grounds raised by the parties, which largely concern whether JOTW is a "qualified business" under the Act. *See* 60 C.J.S. Motions and Orders § 40 ("[T]he court need not pass on all the grounds raised, a discussion and adjudication on every aspect of the motion being unnecessary.").

ORDER

IT IS THEREFORE ORDERED that the Department's Motion for Summary Judgment is **GRANTED**, and Petitioner's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that because the forgoing is dispositive of this contested case, this matter is **DISMISSED WITH PREJUDICE**.

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[2] Petitioner cites no authority in support of his argument that an increase in value of a pre-existing interest constitutes a new, independent equity interest.

AND IT IS SO ORDERED.

Samuel L. Johnson
Administrative Law Judge

June 16, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Reynolds C. Rawls, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Reynolds C. Rawls
Judicial Law Clerk

June 16, 2026
Columbia, South Carolina

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SC Court of Appeals