



Ohio Legislative Service Commission

Bill Analysis

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H.B. 10

129th General Assembly
(As Introduced)

Reps. Sears, J. Adams, R. Adams, Wachtmann

BILL SUMMARY

- Authorizes a refundable credit against the personal income tax or commercial activity tax for a person who commences a voluntary action to remediate contaminated property and who receives a covenant not to sue.
- Exempts the person from fees and penalties authorized under environmental protection laws for one year after the covenant is issued.
- Authorizes an additional refundable credit if the person returns the property to productive use.

CONTENT AND OPERATION

Refundable tax credits for voluntary action

The bill authorizes two tax credits against the commercial activity tax or personal income tax.¹ Both credits are refundable, meaning that, if the credit exceeds the taxpayer's tax liability for a tax period after applying all other credits to which the taxpayer may be entitled, the taxpayer is entitled to a refund of the excess. If a pass-through entity claims a credit against the commercial activity tax, its owners may not claim the same credit against the personal income tax.

Voluntary action credit

The first credit is allowed for a taxpayer who receives, on or after the bill's effective date, a covenant not to sue from the Director of Environmental Protection

¹ R.C. 5747.78 and 5751.54.

under Ohio's Voluntary Action Program.² The Voluntary Action Program encourages businesses to remediate and reuse real property contaminated by hazardous materials or petroleum by providing various benefits after remediation occurs, including the issuance of a covenant not to sue, which immunizes the property owner from civil liability to the state to perform additional investigational and remedial activities. The credit may be claimed for each covenant the taxpayer receives.

The credit equals 25% of the taxpayer's expenditures made directly to conduct the remedial activities resulting in the covenant. For pass-through entity owners, the credit equals the owners' distributive or proportionate share of that amount. The credit is authorized only for expenditures in voluntary actions initiated before 2018. (A voluntary action is initiated when the person commences the Phase I Property Assessment--an initial investigation to determine whether there is reason to believe the property is contaminated.) Expenditures for remedial activities derived from grants or other governmental payments for which there is no repayment obligation are excluded.

If the credit is claimed against the commercial activity tax by a calendar year taxpayer, the credit must be claimed for the year during which the covenant not to sue was issued. If the taxpayer is a calendar quarter taxpayer, the taxpayer must claim one-fourth of the credit for four tax periods beginning with the tax period during which the covenant not to sue was issued. If the credit is claimed against the personal income tax, the credit must be claimed for the taxpayer's taxable year that ends in the pass-through entity's taxable year during which the covenant not to sue was issued.

Productive use credit

The second credit is allowed for a taxpayer who qualifies for the credit above and who returns the property to productive use.³ A property is returned to productive use if it is used to conduct a trade or business, or if the property is certified for occupancy by a local authority and it is suitable for use in a trade or business. Leasing the property for a commercial, industrial, or residential purpose qualifies as productive use. The credit is determined in the same manner as the voluntary action credit.

If the credit is claimed against the commercial activity tax by a calendar year taxpayer, the credit must be claimed for the year during which the property was first used for a productive use after the covenant not to sue was issued. If the taxpayer is a calendar quarter taxpayer, the taxpayer must claim one-fourth of the credit for four tax periods beginning with the tax period during which the property was first used for a

² R.C. 5747.78(B) and 5751.54(B).

³ R.C. 5747.78(C) and 5751.54(C).

productive use after the covenant not to sue was issued. If the credit is claimed against the personal income tax, the credit must be claimed for the taxpayer's taxable year that ends in the pass-through entity's taxable year during which the property was first used for a productive use after the covenant not to sue was issued.

Environmental fee and penalty exemption

The bill exempts a person who receives a covenant not to sue relating to a voluntary action initiated before 2018 from any fees or civil or administrative penalties that otherwise could be imposed pursuant to various environmental protection laws. The exemption lasts for one year after the date the covenant is issued. A voluntary action is "initiated" when the person commences the Phase I Property Assessment, as described above.⁴

The fees and penalties that may otherwise have been imposed are those authorized in the following chapters: 3704. (air pollution), 3734. (solid and hazardous waste), 3745. (Environmental Protection Agency), 3750. (emergency planning and response), 3751. (hazardous substances), 3752. (cessation of chemical handling operations), 6109. (safe drinking water), and 6111. (water pollution).

HISTORY

ACTION	DATE
Introduced	01-11-11

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⁴ R.C. 3746.241.