Ohio Legislative Service Commission

Bill Analysis Mackenzie Damon

S.B. 6

129th General Assembly
(As Introduced)

Sens. Patton, Niehaus, Stewart, Grendell, Bacon, Beagle

BILL SUMMARY

- Expands the existing job retention tax credit program to include a new, refundable job retention credit available to businesses that meet existing program requirements and additional criteria.

- Requires recipients of the new refundable credit to have received an offer of financial incentives from another state in 2010 that may induce the recipient to relocate and to have agreed to invest at least $25 million and retain at least 1,000 employees in Ohio.

- Authorizes the new credit only temporarily by limiting eligibility to projects the Director of Development recommends before July 1, 2011.

- Limits the total of such credits to $6 million in any calendar year.

- States that municipal corporations may provide a similar refundable job retention tax credit against the municipal income tax.

CONTENT AND OPERATION

Refundable job retention tax credit

Credit eligibility

Existing law allows eligible businesses involved in significant capital investment projects to claim a nonrefundable job retention tax credit (JRTC) against the income tax, commercial activities tax, insurance company premiums tax, or corporation franchise tax. Qualifying businesses receive a credit measured as a percentage of the state income taxes withheld from full-time employees working at the project site. The bill expands the JRTC to permit businesses that meet existing JRTC requirements to claim a new, refundable tax credit if the business also meets the following criteria:

(1) The Tax Credit Authority, which reviews and approves JRTC applications, must receive a recommendation to grant the refundable credit to the eligible business from the Department of Development before July 1, 2011;

(2) The business must employ and retain at least 1,000 "full-time equivalent employees." Under current law, a business' number of "full-time equivalent employees" is calculated by dividing its total employee-hours at the project by 2,080, which is the number of hours in a 40-hour-per-week, 52-week work year.

(3) The business must make a capital investment of at least $25 million at a project site over a period of three years that includes the year for which the credit is granted;

(4) In 2010, the business must have received a written offer of financial incentives from another state, and the Director of Development must have determined that the offer is sufficient inducement for the business to relocate to that other state.[1]

Differences between new refundable and existing nonrefundable JRTCs

Refundability

Under current law, a business may not claim a JRTC in excess of the business' annual tax liability. The excess, however, may be carried forward for up to three years. The bill permits a business that qualifies for a refundable JRTC to claim the full amount of the credit in one year, regardless of tax liability, or to carry any excess forward to future years.[2]

Employee retention and capital investment requirements

In order to qualify for the nonrefundable JRTC under existing law, a business need only employ and retain at least 500 full-time equivalent employees. The bill requires that a recipient of a refundable JRTC employ and retain at least 1,000 such employees.

Under the bill, to be considered an "eligible business" for the purposes of either credit, the business must invest at least $50 million in assets for manufacturing operations or $20 million in assets for "significant" corporate administrative functions.

[1] R.C. 122.171(A) and (B).

[2] R.C. 122.171(B).

However, as noted above, businesses applying for the new refundable JRTC would need to demonstrate a capital investment of at least $25 million regardless of investment type. For either credit, the required capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment.[3]

Credit amount and term

As under existing law, the bill requires that the amount and term of a refundable JRTC be specified in an agreement between the eligible business and the Tax Credit Authority. The amount of either credit may equal up to 75% of the state income taxes withheld from eligible full-time employees. An eligible business may receive either credit for a period of up to 15 years; however, under existing Department of Development regulations, the Tax Credit Authority may not grant a JRTC for a term longer than ten years unless the Authority determines that there is "significant retention" of employees associated with the project.[4]

Credit application and agreement

The bill requires recipients of a refundable JRTC to comply with the same application procedures, agreement provisions, and reporting measures required of recipients of the existing nonrefundable JRTC. Under either program, an eligible business must apply to the Tax Credit Authority to enter into a tax credit agreement. The agreement must describe the capital investment project that is the subject of the agreement and require the business to retain a specified number of full-time equivalent employees (at least 1,000 in the case of the refundable JRTC proposed in the bill). The agreement must also require that the business maintain operations at the project site for at least the greater of (1) the term of the credit plus three years, or (2) seven years. In order to continue receiving either credit, the business must file annual reports with the Department of Development and receive a certification verifying the accuracy of the reports.[5]

If a business fails to comply with any of the conditions specified in a tax credit agreement, the Tax Credit Authority may amend the agreement to reduce the percentage or term of the credit.[6]

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[3] R.C. 122.171(A) and (B).

[4] R.C. 122.171(B); O.A.C. 122:16-1-04.

[5] R.C. 122.171(C) and (E).

[6] R.C. 122.171(F).

Aggregate credit limits

Current law limits the total amount of nonrefundable tax credits issued in any calendar year. In 2010, the limit was $13 million; this amount will increase every year between 2011 and 2024 by $13 million over the previous year's amount until the total reaches $195 million.

The bill limits the total amount of refundable tax credits at $6 million in any calendar year.[7]

Municipal income tax credit

Under current law, municipal corporations are expressly permitted to provide a nonrefundable credit against its income tax to businesses that qualify for the state JRTC. The bill states that municipal corporations also may provide a refundable credit for businesses that meet the requirements of the proposed refundable JRTC.[8]

HISTORY

ACTION	DATE
Introduced	02-01-11

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[7] R.C. 122.171(M).

[8] R.C. 718.151. Since municipal corporations impose income taxes pursuant to their constitutional home rule powers (subject to limitation by the General Assembly), it is not clear that they need authorization from the legislature to grant job retention tax credits under current law or under the bill.