

OHIO JOB CREATION TAX CREDIT PROGRAM
PROGRAM GUIDELINES AND APPLICATION PROCESS

I. OHIO REVISED CODE SECTIONS 122.17 AND 718.15; AND OHIO ADMINISTRATIVE CODE SECTION 122:7-1

The Ohio Job Creation Tax Credit (JCTC) Program became effective on January 13, 1993. Prior to submitting an application for a tax credit, the applicant should carefully review Section 122.17(A) to (M) of the Ohio Revised Code. Also, the applicant should carefully review Section 122:7-1-01 to 122:7-1-08 of the Ohio Administrative Code. In addition to these legal requirements of the Program, the Ohio Department of Development (“ODOD”) and the Ohio Tax Credit Authority (“Authority”) has adopted guidelines for eligible companies and projects. The "Eligibility Requirements" are listed below.

It should be noted that a municipality, under Section 718.15 of the Ohio Revised Code, may grant a municipal income tax credit against its tax on income to a business entity that also receives a state tax credit under Section 122.17 of the Ohio Revised Code.

II. STATE TAX CREDIT

The program provides a refundable tax credit against a company's Ohio corporate franchise tax or an individual's Ohio personal income tax. The tax credit is based on the state income tax withheld from the new, eligible full-time employees. A five-member Authority is charged with reviewing and approving applications and setting the tax credit rate and term. The Authority has issued credits generally ranging from 50% to 75% for 5 to 10 years. Under Section 122:7-1-06(D) of the Ohio Administrative Code, the Authority may grant a tax credit that exceeds 75% when the Chairman and Executive Director recommends there is an extraordinary circumstance, which merits an exception.

Projects receiving a higher tax credit tend to have a higher number of jobs, pay higher wages, and involve more substantial fixed-asset investment. Greater benefits are also provided to projects located in distressed communities or when companies commit to hiring more than 10% of the new hires from "disadvantaged persons and/or minorities" (see Section 122:7-1-01 (D) & (E) of the Ohio Administrative Code). Finally, projects that receive other state financial assistance, such as lower interest loans or grants, may receive a lesser tax credit than without such assistance.

The Authority meets regularly each month, except the month of November. A high ranking representative of the company will be required to attend the Authority meeting and present the project to the Authority.

III. ELIGIBILITY REQUIREMENTS

A. Eligible Companies

An eligible business entity (taxpayer) may include a C-Corporation, Sole Proprietorship, Limited Liability Company, Partnership, or an S-Corporation. An eligible taxpayer must pay franchise, state income, or other taxes under Ohio Revised Code Chapters 5733 or 5747 to receive the benefit of the JCTC. A state tax credit received by a Partnership, S-Corporation, or similar business entity through which income flows as a distributive share to its owners shall be apportioned among the persons to whom the income or profit of the Partnership, S-Corporation, or other entity is distributed in the same proportions as those in which the income or profit are distributed.

Businesses paying dealers in intangibles tax, insurance tax, or other taxes under Ohio Revised Code Chapter 5725 are **NOT** eligible for the tax credit.

B. Eligible Projects

Eligible projects, as established by the Authority, include headquarter, manufacturing, science and technology, research and development, distribution, and certain types of service projects. Retail projects and lower paying service projects are not eligible.

All projects must meet these 11 criteria in order to be eligible:

1. At least 25 new, full-time jobs must be created and maintained by the company (taxpayer) within three years of initial operations. Upon the recommendation of the Executive Director and a finding by the Authority that there is an extraordinary circumstance, projects creating as few as 10 new, full-time jobs within three years of initial operations may also be eligible.
2. The average hourly base wage rate (excluding benefits) of the project's new, full-time jobs for three years must be at least 150% of federal minimum wage, which is \$7.73 as of September 1997. In special circumstances, the average hourly base wage rate (excluding benefits) of the 10 new, full-time jobs must be at least 400% of the federal minimum wage, which is \$20.60. In addition, the Authority will consider the amount and type of employee benefits being provided.
3. If the project involves an expansion or consolidation of an existing Ohio facility, the company must commit to retaining the current number of employees. The state tax credit will apply only to the net new, full-time positions in the project at the project location.
4. The project must involve a substantial fixed-asset investment in land, building, machinery/equipment, and/or infrastructure.
5. The company must demonstrate to the state, through its financial statements and sources and uses of funds, that it is economically sound, and financially viable.
6. The project must not have already started at the Ohio site or have been publicly announced by the company to be undertaken at the site prior to approval by the Authority. Employees hired prior to approval by the Authority cannot be counted as eligible, new employees for the purpose of the tax credit.
7. Service projects must demonstrate that significant portions of the sales or revenues attributable to the project are generated from outside the State of Ohio. A company that does not meet these criteria may be eligible if its products are sold to its Ohio customer(s) and used as a component or part of a product that can demonstrate that at least 51% of its sales or revenues are generated outside the State of Ohio.
8. Intrastate relocation projects are generally ineligible. Companies receiving tax credits are prohibited from relocating employment positions within Ohio to the project site within the first five years or the term of the tax credit whichever is less. The company may relocate employment positions within Ohio only upon a formal determination by the Director of the Ohio Department of Development that (1) the site from which the employment positions would be relocated is inadequate to meet market or industry conditions, expansion plans, consolidation plans, or other business considerations affecting the company and (2) the legislative authority of the negatively impacted community has been notified of the relocation. A determination must be obtained before the relocation occurs. Transferred and/or relocated employees and/or positions within Ohio are ineligible to receive tax credits.
9. The local community must provide direct and primary financial support for the project in an adequate manner.

10. The company must demonstrate that the tax credit is a "major factor" in its decision to expand or locate at the Ohio site.
11. The company must agree to maintain operations at the project site for at least twice the term of the tax credit (up to 20 years).

IV. APPLICATION PROCESS

The following is a step-by-step process for companies interested in seeking the JCTC:

1. All companies must have an initial consultation with an ODOD representative prior to submitting an application. An ODOD official may want to visit the project site.
2. The completed application must be returned with a \$500 application fee made payable to: Treasurer, State of Ohio, "Job Creation Tax Credit."
3. Applicants may not have a significant outstanding issue or liability with the Ohio Department of Taxation (ODT) or the Ohio Environmental Protection Agency (OEPA), unless the ODOD determines that such issues or liabilities are not significant. The ODOD will initiate the reviews with the ODT and the OEPA upon receipt of the application.
4. The state business development representative or Governor's regional economic development representative will meet with the Executive Director of the Authority to make a final determination regarding eligibility and develop an appropriate level of tax credit support for the Authority's consideration.
5. If the proposed project is eligible, then a non-binding, preliminary commitment letter may be sent to the company which specifies the tax credit amount and term that the Executive Director will recommend to the Authority.
6. The Authority members will review eligible applications and make the final decision concerning approval and benefit level at a public meeting. The agenda for the meeting, which includes the name of the company and its project location, will be made public four days prior to the meeting. Please note that the company's appearance before the Authority shall be construed as a willingness to enter into a Tax Credit Agreement and to comply with its terms. A summary "Statement of the Agreement" is made available upon request.
7. All meetings of the Ohio Tax Credit Authority will be held in the Vern Riffe Center, 77 South High Street, in downtown Columbus. Depending on the number of projects to be presented to the Authority, meetings will begin at 10 a.m. and normally conclude by 1:00 p.m.

V. APPLICATION CONFIDENTIALITY

Financial statements and other information submitted to the ODOD or the Authority by the applicant are generally not considered public records subject to Section 149.43 of the Ohio Revised Code: The Chairman of the Authority may however, make use of the information received, including but not limited to the following, for the purpose of issuing public reports:

- a. Name of the business entity;
- b. Identity of the business entity's parent;
- c. Description of the project;
- d. Location of the project;
- e. Number of jobs created, retained, and/or maintained;
- f. Amount of fixed-asset investment in the project;
- g. Percent and term of the tax credit, dollar value of the tax credit, year the company wants the tax credit to begin and end; and the
- h. Business entity's contact person, office address, and telephone number.

The Chairman of the Authority may also make use of the statements and other information in connection with Court proceedings concerning the Tax Credit Agreement.

Upon request of the Tax Commissioner of the ODT, the Chairman of the Authority shall provide any statements or information received in connection with the tax credit to the commissioner. The commissioner shall preserve the confidentiality of the information.

VI. TAX CREDIT AGREEMENT AND SERVICING FEE

After the Authority approves a project for a tax credit, the Executive Director of the Authority will send the Grantee a letter summarizing the company's commitments (jobs, investment, etc.), and specifying the tax credit amount and term approved.

The Authority will send the company a "Tax Credit Agreement" after all contingencies of the approval have been met and background checks completed. If the company signs and returns the Agreement within 60 days of receipt, the eligible new, full-time employees hired for the project after the date the Authority approved the company's project are eligible for the tax credit. If the company fails to sign and return the Agreement within this 60-day period, the tax credit applies only to those eligible hires after the Director signs the Agreement. Once the company signs and returns the Agreement, the Chairman of the Authority will sign the Agreement and send a signed copy to the company.

Upon signing the tax credit agreement, the company must return the document to the Authority with a one-time servicing fee. The servicing fee amount is \$125 per year for twice the term of the tax credit for each grantee listed in the agreement. For example, if the tax credit term were for 7 years, the servicing fee would be \$125 times 14 years or \$1,750 (per Grantee).

VII. REPORTING REQUIREMENTS

A. **Annual Progress Reports**

Each grantee must submit an annual progress report to the Authority no later than March 1 of each year. The format for the report will be provided to the taxpayer by the Authority. The progress report includes, but is not limited to, questions on the number of new employees, the amount of new payroll, state income tax withheld for new employees, average base wage rate of the new employees, the number of new disadvantaged and/or minority employees, and other information the Director of ODOD deems appropriate. Upon verification of the information submitted on the Director's determination that the company is in compliance with the tax credit agreement, a tax credit certificate will be issued to the company for the eligible dollar amount of the tax credit. Progress reports post marked after March 1 of the year the report is due will be assessed a one hundred dollar late fee made payable to Treasurer, State of Ohio, "Job Creation Tax Credit".

B. **Certification of "Maintenance of Operations"**

Upon expiration of the tax credit term, the company shall continue to annually certify to the Director of ODOD that it is maintaining operations at the project location. The company shall provide the written certification for a period of years consistent with the commitment to maintain operations at the project location for twice the term of the tax credit.

VIII. PENALTIES FOR NONCOMPLIANCE

In the event that the company fails to achieve the number of new, full-time employment positions set forth in the tax credit agreement or if the Authority finds that the company has failed to comply with any term set forth in the tax credit agreement, the Authority may terminate or prospectively reduce the percentage and/or term of the tax credit. Additionally, if the company fails to maintain operations at the project location for twice the term of the tax credit, the Authority may require the company to refund all or part of the tax credits received.

The company or a related entity shall not relocate employment positions from elsewhere in Ohio to the project site within the first five years from the date the agreement is entered into or the term of the tax credit, whichever is less. If a company violates this provision without first obtaining a formal determination from the Director of the ODOD, the company will not be able to claim any tax credits from the time in which the relocation occurs through the end of the term.

A company that does not submit a completed annual report postmarked prior to March 1 of the year the report is due will be assessed a one hundred-dollar (\$100.00) late fee.

IX. CONTACT INFORMATION

For information on the **Ohio Job Creation Tax Credit Program**, or to schedule a consultation, please contact the Ohio Department of Development at (614) 466-4551. If you are an existing Ohio business, you may ask the receptionist for the Business Development Representative that serves the county in which the proposed project is to be undertaken. You may also contact the Governor's Regional Office, which serves the proposed project location. A list of Business Development Representatives and Governor's Regional Economic Development Representatives can be obtained by telephoning the above number.