



## Business Tax Credits

**A** number of Ohio's business tax credits can be claimed against more than one type of tax. Rather than continue to list the same business tax credits in multiple chapters of this annual report, we have chosen to consolidate information about them here.

The tax credits available to Ohio businesses underwent significant reorganization with the 2005 enactment of House Bill 66, which phased out the corporation franchise tax for the vast majority of corporations after the 2009 report year.

For taxpayers subject to the corporation franchise tax phase-out and the phase-in of the commercial activity tax (CAT), the 2008 franchise tax reports (based on 2007 business activity) were the last on which the following credits could be applied:

- Job creation credit
- Job retention credit
- Research expense credit
- Research and development loan payment credit

After Jan. 1, 2008, these credits were automatically converted to credits against the CAT. However, these credits continue to apply against the franchise tax for taxpayers such as financial institutions, which are not subject to the CAT and remain subject to the franchise tax. In addition, a CAT credit for unused franchise tax net operating loss deductions was made available to qualifying corporations starting with the 2010 calendar year.

Other corporation franchise tax credits were neither repealed nor transitioned to the CAT. These will be claimed infrequently (if at all) in the future because the franchise tax is now limited to a relatively small number of corporations, primarily financial institutions. However, there are exceptions. For example, the refundable historic building preservation and motion picture tax credits may still be claimed against the corporation franchise tax by corporations that are no longer subject to the franchise tax. In such situations, the franchise tax becomes, in effect, a vehicle for delivering the incentive.

### Credits

#### **Alternative fuel credit** (Ohio Revised Code 5733.48, 5747.77)

This nonrefundable credit was originally scheduled to expire after the 2009 taxable year, but was extended for two years by Senate Bill 131 (see **Recent Legislation**, below). Retail service station owners may claim a 15 cent per gallon credit against individual income tax liability for most alternative fuels sold during the 2010 and 2011 taxable years. For blends with less than 20 percent biodiesel, smaller credits apply: 7½ cents per gallon for blends of between 10 percent

and 20 percent biodiesel and 3¼ cents per gallon for blends of between 6 percent and 10 percent biodiesel. There is no carryforward of the credit into future years.

A similar credit was once also permitted against the corporation franchise tax, but that version of the credit was not extended beyond 2009.

**Taxes:** Corporation franchise (before the 2010 taxable year) or individual income tax (through the 2011 taxable year).

#### **Enterprise zone day care and training credits** (R.C. 5709.65(A))

Taxpayers that locate in an enterprise zone and who are awarded the appropriate tax incentive certificate by the Ohio Department of Development may claim a nonrefundable credit equal to:

- the amount reimbursed to specified employees for the cost of day care services up to a maximum of \$300 per child; and
  - the amount reimbursed to specified employees for training costs up to a maximum of \$1,000 per employee.
- **Taxes:** Corporation franchise or individual income.

#### **Enterprise zone eligible new employees** (R.C. 5709.66(B))

Taxpayers that locate in an enterprise zone and who are issued the appropriate tax incentive certificate for an eligible employee may claim a \$1,000 nonrefundable credit for each taxable year covered by the enterprise zone agreement during which the eligible employee is employed by the taxpayer. An "eligible employee" is a new employee at the facility to which the enterprise zone agreement applies, who at the time hired was a recipient of aid through the Ohio Works First program (Temporary Assistance to Needy Families) or general assistance and who resided for at least one year in the county in which the facility is located.

**Taxes:** Corporation franchise or individual income.

#### **Ethanol investment credit** (R.C. 901.13, 5733.46 and 5747.75)

This nonrefundable credit equals 50 percent of the taxpayer's investment in an ethanol plant certified by the Ethanol Incentive Board in the calendar year preceding the report year. The credit is limited to \$5,000 per taxpayer per plant. The credit was first available for taxable year 2002.

**Taxes:** Corporation franchise or individual income.

#### **Grape production property credit** (R.C. 5733.32, 5747.28)

This nonrefundable credit equals 10 percent of the cost of purchasing and installing or constructing qualifying property used to produce grapes in Ohio.

**Taxes:** Corporation franchise or individual income.

**Historic building preservation credit** (R.C. 149.311, 5725.151, R.C. 5747.76)

This refundable credit is based on the expenses incurred by owners or a qualified lessee of a historic building to rehabilitate such a building. The credit, if approved by the Ohio Department of Development, equals 25 percent of the owner's or qualified lessee's "qualified rehabilitation expenditures" paid or incurred during the 24- or 60-month rehabilitation period.

**Taxes:** Corporation franchise, dealers in intangibles or individual income.

**Job creation credit** (R.C. 122.17, 5733.0610, 5747.058, 5751.50)

This credit saw significant changes effective Oct. 16, 2009 as a result of House Bill 1; for more information see **Recent Legislation**, below. As revised, the Ohio Tax Credit Authority may award taxpayers a refundable credit for new jobs created according to an agreement pursuant to R.C. 122.17. The credit equals a designated percentage of the additional Ohio income tax withheld from a site over a baseline amount intended to represent the amount of withholding taking place before the job creation agreement. The exact percentage of the credit is established by agreement between the taxpayer and the Tax Credit Authority. The credit is permitted for a period of up to 15 years.

**Taxes:** Commercial activity (starting in 2008), corporation franchise (limited to franchise taxpayers only, starting with the 2008 taxable year) individual income or insurance taxes.

**Job retention credit** (R.C. 122.171, 5733.0610(B), 5747.058(B), 5751.50)

This credit saw significant changes effective Oct. 16, 2009 as a result of House Bill 1; for more information see **Recent Legislation**, below. As revised, the Ohio Tax Credit Authority may award this nonrefundable credit to businesses that invest at least \$50 million in fixed-assets for manufacturing operations or at least \$20 million in fixed-assets for significant corporate administrative functions. In exchange for the credit, employers must commit to retain at least the equivalent of 500 full-time employees at the site for at least seven years or the term of the credit plus three years, whichever is greater. The size of the credit, determined by agreement with the Ohio Tax Credit Authority, equals up to 75 percent of the Ohio individual income tax withheld from the wages or salary paid to employees retained at the site. The credit is normally limited to a term of ten years, but may be granted for up to 15 years in cases where the total amount of annual payroll to be retained is at least \$40 million.

**Taxes:** Commercial activity (beginning in 2008), corporation franchise (limited to franchise taxpayers only, starting with the 2008 taxable year), individual income (before 2008) or insurance taxes (for job retention agreements reached after Oct. 16, 2009).

**Job training credit** (R.C. 5733.42)

This nonrefundable credit applied to taxpayers that incurred "eligible training costs" and received a tax credit

certificate from the Ohio Director of Job and Family Services with respect to an "eligible training program" for "eligible employees." The \$20 million per year program was discontinued at the end of 2007; carry forwards will expire after the 2010 taxable year (documented on 2011 returns or reports).

**Taxes:** Corporation franchise, dealers in intangibles, individual income or insurance taxes.

**Lottery Commission Withholding Credit** (R.C. 5747.062(B))

This refundable credit equals the amount the Ohio Lottery Commission withheld from payments to the taxpayer.

**Taxes:** Corporation franchise or individual income.

**Manufacturing machinery and equipment investment grant** (R.C. 122.172, 122.173, 5733.33, 5747.31)

These nonrefundable grants (previously credits) applied to purchases of new manufacturing machinery and equipment made on or before June 30, 2005. The grants equaled either 7.5 percent of the amount by which the cost of qualifying equipment exceeded the taxpayer's "base investment" for a particular county or 13.5 percent for investments made in certain "priority investment areas" with high unemployment or poverty. One-seventh of this grant could be claimed in each of the seven tax years following the purchase year. Also, manufacturers were permitted to carry forward any unused credit for up to 3 years.

For taxpayers subject to the franchise tax phase-out, the grant ended with the final (2009) franchise tax report. For individual income tax filers, the incentive can be taken against the state income tax until the term of the incentive is completed. Including carry forwards, this could be as late as 2015.

**Taxes:** Corporation franchise (ended with the 2009 report year) or individual income.

**Motion picture production credit** (R.C. 122.85, 5733.59, 5747.66)

This refundable credit, created in 2009 by House Bill 1, can be claimed against individual income or corporation franchise tax liability based on awards from the Department of Development for motion picture production work performed in Ohio. Productions with budgets that exceed \$300,000 may qualify for the credits, which are based on 35 percent of payroll expenditures for Ohio resident cast and crew and 25 percent of other eligible production expenses. The value of each credit may not exceed \$5 million per production, and the total credits to be issued are capped at \$40 million for fiscal biennium beginning on or after July 1, 2011. Corporations may claim this credit against the corporation franchise tax even if they are no longer subject to the franchise tax.

**Taxes:** Corporation franchise or individual income.

**New markets tax credit** (R.C. 5725.33, 5733.58)

This credit, created in 2009 by H.B. 1, is a nonrefundable tax credit with a four-year carry forward for financial institutions and insurance companies that invest in "Community Development Entities," as defined by the federal New Markets Tax Credit program. To qualify, a taxpayer must first qualify

for the federal credit program by holding an equity investment in a qualified Community Development Entity. The Ohio Department of Development may annually issue a maximum of \$10 million worth of credits.

**Taxes:** Corporation franchise or insurance taxes.

**Research expense credit** (R.C. 5733.351, 5751.51)

This nonrefundable credit equals 7 percent of the amount by which the taxpayer's "qualified research expenses" (as defined in Internal Revenue Code section 41) in Ohio during the taxable year exceed the taxpayer's average annual qualified research expenses in Ohio for the three preceding years.

**Taxes:** Commercial activity (starting in 2008) or corporation franchise (limited to franchise taxpayers only, starting with the 2008 taxable year).

**Research and development loan payments credit** (R.C. 5733.352, 5751.52)

The amount of this nonrefundable credit equals the borrower's qualified research and development loan payments during the calendar year that immediately precedes the report year. The payments include principal and interest on a loan made to the borrower from Ohio's research and development fund administered by the Ohio Department of Development.

**Taxes:** Commercial activity (starting in 2008), corporation franchise (limited to franchise taxpayers only, starting with the 2008 taxable year), or individual income (before the 2008 taxable year).

**Technology investment credit** (R.C. 122.15–122.154, 5733.35, 5747.33)

Investors that provide capital to certain qualifying small, Ohio-based research and development or technology transfer companies may be eligible for a nonrefundable credit equal to 25 percent of the taxpayer's at-risk investment. The credit must be approved by the state Industrial Technology and Enterprise Board. The maximum cumulative value of credits granted to all taxpayers cannot exceed \$45 million.

**Taxes:** Corporation franchise and individual income.

**Unused net operating losses credit** (R.C. 5751.53)

Beginning in calendar year 2010, qualifying taxpayers may claim a nonrefundable tax credit equal to 8 percent of the taxpayer's franchise tax net operating loss carry forwards and other deferred tax items against the commercial activity tax. This credit is limited to taxpayers that elected to claim the credit by filing with the Tax Commissioner before July 1, 2006.

**Tax:** Commercial activity.

**Venture capital credit** (5707.031, 5725.19, 5727.241, 5729.08, 5733.49, 5747.80)

The Ohio Venture Capital Authority has the authority to issue refundable tax credits to its creditors. The credits are redeemable in the event of losses on loans to the authority.

**Taxes:** Corporation franchise, dealers in intangibles, individual income, insurance taxes and public utility excise tax.

## Recent Legislation

**House Bill 1, 128th General Assembly (FY 2010-2011 biennium budget bill; budget provisions were effective July 17, 2009, other provisions were effective Oct. 16, 2009 or on other dates)**

H.B. 1 included the following changes:

**Job creation credit** – The act amended R.C. 122.17 to change the formula for computing this credit. For agreements entered into on or after the Oct. 16, 2009 effective date of the amendment, the credit is computed as a percentage of the growth in income tax withholding at the project site over the baseline withholding for that year. Specifically:

- The credit is to be computed as a percentage (as identified in the agreement between the taxpayer and the tax credit authority) of the amount by which income tax withheld from employees at the project site during the taxable year exceeds the taxpayer's baseline withholding at the project site for that taxable year.
- Withholding includes the sum of Ohio income tax withheld from all employees at the project site during the taxable year regardless of whether the employee is a "new" employee and regardless of whether the employee is a full-time employee.

**Job retention credit** – The act amended R.C. 122.171 to revise the calculation of this credit. For job retention credit agreements entered into on or after the new law's Oct. 16, 2009 effective date, the credit is computed as a percentage of the sum of Ohio income tax withheld from all employees at the project site whose hours of compensation are included in calculating the number of "full-time equivalent employees" regardless of whether the employee is full-time or part-time. Under prior law the credit was computed only with respect to Ohio income tax withheld from full-time employees at the project site.

In addition, H.B. 1:

- Allows insurance companies to claim the credit against the premiums tax.
- Limits the aggregate value of job retention credits that the authority can issue during any calendar year.
- Reduced the minimum employee and minimum investment thresholds and other requirements for project eligibility.

**Historic building preservation credit** – The act amended R.C. 5733.47 and 5747.76 to specifically provide that if a pass-through entity is awarded a historic preservation tax credit certificate by the Ohio Department of Development for that entity's "qualified rehabilitation expenditures," the entity can allocate the credit among its equity owners in proportion to their ownership interests or in such proportions or amounts

as the equity owners mutually agree. The new law applies to credits claimed based on certificates issued in taxable years ending on or after Oct. 16, 2009 (see section 803.20 of the bill).

**Motion picture production credit** –The act created the motion picture production credit by creating R. C. 122.85, 5733.59 and 5747.66 and enacting sections 701.90 and 812.20 of the bill.

**Technology investment tax credit** –The act amended R.C. 122.151 to increase the aggregate value of technology investment credits that may be issued from \$30 million to \$45 million.

**New markets tax credit** –The act created the new markets tax credit by enacting R.C. 5725.33 and 5733.58. This new credit is similar to the federal new markets credit. However, the Ohio new markets credit is available only to financial institutions and insurance companies.

**Senate Bill 131, 128th General Assembly, effective May 31, 2010**

**Alternative fuel credit** –The bill amended R.C. 5747.77 to permit, against the individual income tax, a nonrefundable credit of 15 cents per gallon for most alternative fuels sold during the 2010 and 2011 taxable years. Previously, the credit was scheduled to expire after the 2009 taxable year. The bill also expanded the definition of “blended biodiesel” to include fuels with as little as 6 percent biodiesel. Previously “blended biodiesel” needed to contain at least 20 percent biodiesel. The bill also made credits of lesser value available for biodiesel blends of between 6 percent and 20 percent.

**House Bill 58, 129th General Assembly, effective March 7, 2011.**

**Job Retention Tax Credit** –The bill amended R.C. 122.171 to expand 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.

**House Bill 153, 129th General Assembly, effective September 29, 2011.**

This bill expanded the use of the refundable job retention tax credit, with amendments to R.C. 122.171. The bill has new language in R.C. 122.171 extending the approval of the refundable job retention credit for calendar years 2011, 2012, and 2013. It limits refundable job retention tax credits granted in 2011, 2012 and 2013 calendar years to an aggregate amount of \$25 million dollars.

**Invest Ohio Tax Credit**

This bill adds a new tax credit for small businesses, to encourage investment in Ohio. The new program added R. C. 122.86 to create the Small Business Investment Certificate and Tax Credit Program, also known as Invest Ohio. Invest Ohio provides a nonrefundable personal income tax credit to investors that infuse new equity into eligible small businesses. Up to \$100 million dollars in tax credits may be awarded under this program for the biennium which ends on June 13, 2013.

**Amended Sub. House Bill 508, 129th General Assembly, September 6, 2012.**

This bill expanded motion picture production tax credit from \$20 million per fiscal biennium to \$40 million per fiscal biennium.

**Amended Sub. Senate Bill 314, 129th General Assembly, effective September 28, 2012.**

This bill extends eligibility for the historic preservation tax credit to certain qualified lessees. Regarding the job creation tax credit, the bill permits employers to use an earlier payroll period as the base from which the increase in payroll period as the base from which the increase in payroll withholding is measured. The bill makes modifications to the Small Business Investment Certificate Program and tax credit.