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Bill Analysis

Version: As Pending in House Ways and Means

Primary Sponsor: Rep. Cutrona

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SUMMARY

- Authorizes a refundable tax credit for certain small arms and ammunition manufacturers that invest at least \$2 million in building a new or expanding an existing Ohio facility.
- Requires a manufacturer to enter into an agreement with the Tax Credit Authority and meet certain obligations to receive the credit for a term of up to 15 years.
- Limits the total amount of credits that may be awarded to \$10 million per fiscal year.
- Exempts sales of certain firearms and ammunition from sales and use tax.

DETAILED ANALYSIS

Tax credit for firearm and ammunition manufacturers

The bill authorizes a refundable tax credit, known as the “Constitutional Commerce Credit,” for manufacturers of certain firearms and ammunition that build new or expand existing facilities.¹ The credit operates in a similar manner to the job creation tax credit available under continuing law.² An eligible manufacturer submits an application to the Tax Credit Authority (TCA) and, if approved, enters into an agreement with the TCA establishing various obligations, the method by which the value of the credit will be calculated year-to-year, and the length of the credit term which may be up to 15 years. The credit is available only for facility projects primarily undertaken to manufacture small arms and ammunition, i.e., those industries coded as “small arms ammunition manufacturing” or “small arms, ordnance, and

¹ R.C. 122.1712(B)(3).

² R.C. 122.17, not in the bill.

ordnance accessories manufacturing” under the North American Industry Classification System.³

The value of the credit is calculated based on increases in payroll attributable to the new or expanded facility (“Ohio employee payroll”). First, the TCA establishes the applicant’s baseline payroll in Ohio based on the 12 months immediately preceding approval of the application, multiplied by a “pay increase factor” determined by the TCA. The credit for each year after completion of the project is then equal to the amount of Ohio employee payroll for the year in excess of that baseline year (the result is referred to as “excess payroll”), multiplied by a percentage specified in the agreement. The same payroll cannot be counted towards the bill’s credit if it is used in calculating the job creation or job retention tax credits authorized under continuing law.

The credit may be taken against either the income or the commercial activity tax.⁴ The TCA cannot issue more than \$10 million in credits in a single fiscal year.⁵

Application

A manufacturer that proposes a small arms and ammunition manufacturing facility project may apply to the TCA on a form prescribed by the Director of Development. The TCA must evaluate applications to determine if the project is economically sound and will create a direct increase in payroll along with strengthening the state economy by creating other job opportunities. The TCA must also determine that receipt of the tax credit is a major factor in the applicant going forward with the project. If the TCA determines these factors are met, it may enter into an agreement with the manufacturer.⁶

Tax credit agreement

A tax credit agreement under the bill must include all of the following:

- A detailed description of the facility project specifying the applicant’s capital investment which must be at least \$2 million.
- The date by which the applicant must meet its investment and employment obligations, referred to as the “metric evaluation date.”
- The term of the tax credit, which may be no more than 15 years, and the first taxable year or period for which the credit may be claimed.
- A requirement that the applicant maintain operations at the facility for the greater of seven years or the term of the credit plus three years.

³ R.C. 122.1712(A)(9) and (10).

⁴ R.C. 122.1712(A)(2), (3), and (4) and (B)(1).

⁵ R.C. 122.1712(B)(2).

⁶ R.C. 122.1712(C).

- A prohibition on the applicant relocating a substantial number of employees from elsewhere in Ohio without first notifying the county, township, or municipality in which the original facility is located, unless the manufacturer replaces those jobs in that location.
- The percentage of excess payroll that will be allowed as the amount of the credit for each tax year or period.
- The pay increase factor to be applied to the baseline payroll calculation.

For each year of the tax credit term, the applicant must report to the Director of Development the applicant's full-time equivalent employees employed at the facility (determined by dividing annual working hours at the project by 2,080), Ohio employee payroll, and capital investments made for the year, along with any other information the Director may need.⁷ This information is not a public record subject to disclosure under Ohio's public records law.⁸ The Director must annually review the reported information to verify compliance with the agreement and issue a tax credit certificate so long as the applicant is in compliance with its obligations.⁹

Claiming the credit

The credit may be claimed against the income tax or the commercial activity tax in the taxable year or period stated on each certificate issued to the taxpayer. The taxpayer must submit a copy of the certificate issued by the Director along with the tax return or report.¹⁰ Any amount of credit in excess of the taxpayer's liability is refunded to the taxpayer.¹¹ If the certificate owner is a pass-through entity, it may elect to apportion the credit among the persons to whom income or profit is distributed, in the same proportion that income or profit is distributed. This election must be reported to the Director in the same annual report required by the tax credit agreement.¹²

Noncompliance

If a taxpayer fails to meet any of the requirements or otherwise fails to comply with a tax credit agreement under the bill, the TCA may amend the agreement to reduce the credit percentage or term of the credit in the current or a future year.¹³

⁷ R.C. 122.1712(D).

⁸ R.C. 122.1712(F).

⁹ R.C. 122.1712(D)(7).

¹⁰ R.C. 122.1712(G).

¹¹ R.C. 5747.053, 5747.98, 5751.56, and 5751.98.

¹² R.C. 122.1712(I).

¹³ R.C. 122.1712(E).

If the Department of Development determines that there is noncompliance, it must notify the TCA. After the taxpayer is given an opportunity to explain the noncompliance, the TCA may require the taxpayer to refund a portion of the credit, the amount depending on the nature of the noncompliance:

1. If a taxpayer fails to maintain operations at the project for less than the term of the credit, the TCA may recapture up to 100% of the value of the credits. If the taxpayer maintained operations for at least the term of the credit, but less than the minimum seven years or term of the credit plus three years required by the agreement, the TCA may recapture up to 75% of the credits.
2. If a taxpayer fails to meet the job creation, payroll, or investment requirements of the agreement by the metric evaluation date, the TCA may recapture an amount in its discretion.
3. If a taxpayer fails to maintain the number of full-time equivalent employees or amount of payroll during the term of the agreement after the metric evaluation date, the TCA may also recapture an amount in its discretion.¹⁴

If a taxpayer fails in one of the above ways and files for bankruptcy, the TCA is authorized to immediately bring an action to recoup up to 100% of the value of the credit.¹⁵ In determining the amount of credit to recoup, the TCA must consider market conditions and whether the taxpayer continues to maintain other operations within the state. After making the determination of the amount to be recaptured, the TCA certifies that amount to the Tax Commissioner who then has up to one year to make an assessment for that amount.¹⁶

Rules; budget reporting

The bill authorizes the Director of Development, in consultation with the Tax Commissioner, to adopt rules necessary to administer the tax credit program. These rules may require that applicants pay fees, credited to the Tax Incentive Operating Fund, to cover the credit's administrative costs.¹⁷

The bill adds the credit to the list of business-related tax incentives that must be included in the Governor's executive budget proposal, for the purpose of accounting for the amount of credits that might be authorized or claimed in the fiscal biennium and the amount that remain outstanding thereafter.¹⁸

¹⁴ R.C. 122.1712(J)(1).

¹⁵ R.C. 122.1712(J)(2).

¹⁶ R.C. 122.1712(J)(3).

¹⁷ R.C. 122.1712(H).

¹⁸ R.C. 107.036.

Sales and use tax exemption: firearms and ammunition

The bill exempts from sales and use tax the sales of certain personal firearms and ammunition purchased on or after the first day of the first month that begins after the bill's 90-day effective date. Any nonshotgun firearm that is 50 caliber or smaller qualifies for the exemption, as does any shotgun that is 10 gauge or smaller (e.g., 12 gauge, 20 gauge, etc.). Ammunition is exempt if it is designed for use in any such firearm.¹⁹

HISTORY

Action	Date
Introduced	05-30-23

ANHB0189(L0537-2)-135/ks

¹⁹ R.C. 5739.02(B)(67); Section 3.