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S.B. 8

133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Ways & Means

Primary Sponsor: Sen. Schuring

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Summary

- Authorizes a nonrefundable income tax credit equal to 10% of a taxpayer's investment in an Ohio opportunity zone.
- Limits the total credit allowed to any individual to \$1 million per fiscal biennium, and limits the total credits allowed to all taxpayers in a biennium to \$50 million.
- Reduces the total biennial cap on the existing small business investment credit from \$100 million to \$50 million.

Detailed Analysis

Opportunity zone investment credit

The bill authorizes a nonrefundable income tax credit for taxpayers that invest in Ohio opportunity zones. The credits enhance existing federal and Ohio tax benefits for investments in such zones.

Opportunity zone background

Beginning in 2018, federal law allows states to designate economically distressed areas that meet certain criteria as "opportunity zones."¹ Once the zone is certified by the Secretary of the Treasury, certain investments made to benefit the zone are eligible for preferential federal tax treatment. Specifically, when a taxpayer reinvests capital gains (i.e., income from the sale of stock or other asset) in an "opportunity zone fund" – an investment fund that holds at least

¹ 26 United States Code (U.S.C.) 1400Z-1. The Opportunity Zone law was enacted in December of 2017 by the federal "Tax Cut and Jobs Act." A map of opportunity zones designated in Ohio is available at https://development.ohio.gov/bs/bs_censustracts.htm.

90% of its assets in property, stock, or ownership interests that benefit opportunity zones – the tax on those capital gains is deferred until the investment is sold or exchanged from the fund.²

Moreover, if the investment is held in the opportunity zone fund for five years, the investment's basis is increased by 10% of such deferred gain (effectively a 10% decrease in tax on the original gain). If held for at least seven years, the basis is increased by 15%. If held for ten years, not only is the basis increased by 15%, but any capital gains accrued while the investment was held in the opportunity zone fund is exempt from tax.³

Because Ohio law uses federal adjusted gross income as a starting point for Ohio income tax liability, the federal deferral and reduction in capital gain taxes also defers or reduces a taxpayer's Ohio income tax. These federal and Ohio tax benefits are available regardless of where the zone is located.

Ohio income tax credit

The bill adds to these existing incentives a new Ohio income tax credit for investments that entirely benefit Ohio-designated zones. To qualify for the credit, a taxpayer must invest in an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio (referred to in the bill as an "Ohio qualified opportunity fund"). Unlike the federal tax incentives, the bill's credit is available even for investors that do not have capital gains to reinvest.

The credit equals 10% of the taxpayer's investment. The taxpayer may claim the credit in the year in which the Ohio qualified opportunity fund invests the taxpayer's investment in a project located in an Ohio opportunity zone, or in the following year (in case the taxpayer's credit is approved after the tax filing deadline for the year in which the investment was made).

The credit is nonrefundable, but any unused credit can be carried forward for up to five subsequent taxable years. The total amount allowed to a particular taxpayer in any fiscal biennium is limited to \$1 million. The total amount of credits available for all taxpayers is limited to \$50 million per biennium. Because of this limit, investors must apply for the credit.⁴

Application process

The taxpayer must apply to the Development Services Agency (DSA) between January 1 and February 1 following the year in which an investment is made. The taxpayer must include in the application (1) the total investment the taxpayer made in Ohio qualified opportunity funds and (2) a statement from an employee or officer of each fund certifying the amount the taxpayer invested in that fund, the amount of that investment that the fund directed to opportunity zone projects, and a description of each project funded by the investment.

² 26 U.S.C. 1400Z-2. To qualify, the capital gains must be reinvested in the fund within 180 days after the gain is realized.

³ 26 U.S.C. 1400Z-2.

⁴ R.C. 122.84(A) and (C).

DSA must consider applications in the order in which they are received. If the taxpayer qualifies for the credit, DSA will issue the taxpayer a credit certificate that lists the amount of the credit. The taxpayer must file a copy of the certificate with the taxpayer's return.⁵

Qualifying Ohio opportunity zones

The bill provides details for determining whether an opportunity zone fund's assets are invested in an Ohio-designated zone for the purposes of the credit. In the case of assets in the form of tangible property, the property must be used exclusively in the opportunity zone during the fund's holding period of the property. In the case of assets in the form of stock or partnership interests in a business, all of the business' tangible property must be used exclusively in the Ohio zone during the fund's holding period of the stock or interest.⁶ (These are stricter investment standards than those that federal law requires for an investment to qualify for the federal tax (and Ohio flow-through tax) benefits: federal law requires only 90% of a fund's investments to be in an opportunity zone, and requires "substantially all," instead of all, of a business' tangible property to be used in a zone during "substantially all" of the time the fund holds its investment in the property or business. Under the proposed Treasury regulations, "substantially all," when used in reference to the percentage of a business' tangible property it uses in an opportunity zone, may be as little as 70%.)

Transfer of credits

A credit certificate may be transferred once to another person, but the credit must be claimed within the original five-year carryforward period even if transferred.⁷

Annual report

The bill requires the Development Services Agency to issue an annual report that includes information about the number of taxpayers that applied for, and were awarded, credits during the preceding year; the amount of credits awarded; the projects funded by taxpayer investments; and the opportunity zones in which those projects are located.⁸

Biennial forecast of foregone revenue

Continuing law requires that every main biennial budget bill include detailed estimates of the state revenue that will be foregone due to "business incentive" tax credits in the current biennium and future biennia. The bill adds the new opportunity zone investment credit to the list of tax credits that are included in these estimates.⁹

Small business investment credit

The bill modifies an existing income tax credit for investments in smaller businesses, by reducing the total biennial limit on the credit allotment. Currently, the amount of the credits awarded each fiscal biennium is limited to \$100 million; the bill reduces the limit to \$50 million.

⁵ R.C. 122.84(B), (C), and (D).

⁶ R.C. 122.84(A).

⁷ R.C. 122.84(E).

⁸ R.C. 122.84(F).

⁹ R.C. 107.036.

The bill also states that taxpayers may not claim a small business investment credit and an Ohio opportunity zone investment credit on the basis of the same investment.¹⁰

History

Action	Date
Introduced	02-12-19
Reported, S. Ways & Means	04-02-19

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¹⁰ R.C. 122.86.