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S.B. 225
134th General Assembly

Final Analysis

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Primary Sponsor: Sen. Schuring

Effective date: September 13, 2022

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SUMMARY

Historic building rehabilitation tax credit

- Increases, from \$60 million to \$120 million, the amount of historic building rehabilitation tax credits that may be awarded by the Director of Development in each of FY 2023 and FY 2024.
- Allows several credit enhancements for rehabilitation projects approved by the Director before July 1, 2024.
- Permits owners of projects approved after June 30, 2020, and before the act's effective date, September 13, 2022, to reapply for an enhanced credit so long as construction on the project has not yet commenced.
- Provides that a state historic rehabilitation tax credit certificate is "effective" on the date that all historic buildings rehabilitated by the project are "placed in service," according to the meaning prescribed by federal income tax law.
- Requires the Director to consider the potential for increased attendance and gross revenue in determining whether to approve a project rehabilitating a historic theater.

Ohio opportunity zone investment tax credit

- Expands eligibility to receive an Ohio opportunity zone investment tax credit to investors in Ohio opportunity zones that are not subject to the personal income tax.
- Transitions the overall cap on the amount of Ohio opportunity zone investment tax credits from a biennial to an annual limit, and requires that compliance be determined based on the amount of credits awarded by the Director rather than the amount of credits claimed by recipients or transferees.
- Increases the cap for the FY 2022-2023 biennium from \$50 million to \$75 million, and sets caps of \$50 million for FY 2024, and \$25 million for FY 2025 and thereafter.

- Requires the Director to conduct two annual application periods, each covering qualifying investments made during the preceding six months.
- Expands the circumstances under which a tax credit may be transferred.

Tax increment financing and downtown redevelopment districts

- Allows for retrospective application of two provisions adopted in H.B. 110 of the 134th General Assembly related to tax increment financing districts (TIFs) and downtown redevelopment districts (DRDs).

Canton Hartford-Houtz Poor Fund

- Relieves the city of Canton of the requirement to appoint a board of trustees to take charge of property bequeathed to the city by an 1879 act of the General Assembly.
- Authorizes the city of Canton to distribute all moneys and proceeds bequeathed to the city under the 1879 act to the Canton Ex-Newsboys Association or any other charitable organization.

DETAILED ANALYSIS

Historic building rehabilitation tax credit

The act increases the amount of historic building rehabilitation tax credits that may be awarded in FY 2023 and FY 2024, and authorizes several tax credit enhancements for rehabilitation projects approved before July 1, 2024. It also permits the owner of a project approved after June 30, 2020, and before the act's effective date, September 13, 2022, to reapply for an enhanced tax credit so long as construction on the project has not yet commenced. Finally, the act specifies the "effective date" of a tax credit certificate and requires consideration of revenue and attendance in evaluating a credit application involving the rehabilitation of a historic theater.

Background

Continuing law authorizes a historic building rehabilitation tax credit equal to a percentage, generally 25%, of the qualified expenditures incurred by the owner or, in some cases, lessee of a building of historical significance to rehabilitate the building in accordance with certain preservation criteria. Credits are awarded through a competitive application process administered by the Director of Development in consultation with the State Historic Preservation Officer. Credit recipients are issued a rehabilitation tax credit certificate, which may be used to claim a credit against the income tax, financial institutions tax, or insurance premiums taxes.

Overall credit cap

Continuing law generally limits the amount of rehabilitation tax credit certificates that may be awarded by the Director to \$60 million per fiscal year, plus any unallocated credits from previous fiscal years. The act temporarily increases the cap to \$120 million (plus unallocated credits) for each of FY 2023 and FY 2024. The cap reverts to \$60 million in FY 2025.¹

Enhancements

The act provides for three temporary credit enhancements.

First, if the project is located in a county, township, or municipal corporation that has a population of less than 300,000, according to the 2020 census, the act increases the credit amount to 35% of qualified rehabilitation expenditures. Projects that are not located in such a county, township, or municipal corporation (i.e., most of Columbus, Cleveland, and Cincinnati) receive the standard 25% credit amount.²

Second, the act increases from \$5 million to \$10 million the maximum annual credit that may be claimed for a single project.³

Third, the act allows a full refund of any credit amount that exceeds the tax otherwise due, up to the \$10 million annual limitation described above. Generally, under continuing law, if any portion of the credit is refunded, the aggregate amount applied against the tax and refunded to the taxpayer is limited to \$3 million, and any additional balance may be carried forward as a credit for up to five years.⁴

The enhancements apply automatically to projects approved by the Director on or after the act's effective date, September 13, 2022, and before July 1, 2024.⁵ The owner of a project approved after June 30, 2020, and before the act's effective date may reapply for an enhanced tax credit, so long as construction of the project has not yet commenced. Under the act, construction commences when physical work on the project begins. Neither preliminary activities such as planning, designing, securing financing, exploring, researching, or developing plans and specifications, nor building stabilization, environmental abatement, or work necessary to qualify a building for the National Register of Historic Places, constitute commencement of construction.

The form of the application, manner of submission, and criteria and procedures used by the Director in reviewing, evaluating, and approving enhanced credit applications for both new and previously approved projects are the same that apply to standard historic rehabilitation tax

¹ R.C. 149.311(D)(2).

² R.C. 149.311(I)(1).

³ R.C. 149.311(I)(2).

⁴ R.C. 149.311(I)(3); R.C. 5725.151, 5725.34, 5726.52, 5729.17, 5733.47, and 5747.76, not in the act.

⁵ R.C. 149.311(I).

credit applications under continuing law. If approved, the enhanced tax credit replaces the standard credit. No project may receive both a standard credit and an enhanced credit.⁶

Certificate effective date

The act provides that a state historic rehabilitation tax credit certificate is “effective” on the date that all historic buildings rehabilitated by the project are “placed in service,” as that term is used in the context of the federal historic building rehabilitation tax credit – though federal law neither defines nor elaborates on what that term means. The effect of applying federal terminology to the Ohio credit is unclear. It could be construed to modify the date that the Director is permitted to issue a tax credit certificate. Continuing law prohibits the Director from issuing a certificate until the project or phase of the project is “complete,” but does not elaborate further.

The act might alternatively be construed to modify when the credit may be claimed. Continuing law provides that the credit must be claimed for the year specified in the tax credit certificate but provides no further instructions to the Director as to when that must be. It could be the year in which the project is completed, the year in which the tax credit certificate is issued, or some other year determined by the Director.

The act could also be interpreted to nullify authority to issue or claim a credit for completing part of a multi-phase rehabilitation project. Multi-phase projects with a rehabilitation period not exceeding five years qualify for a credit upon completion of each project phase. The buildings included in such a project are often not fully placed in service until all phases are complete. Though the act retains language authorizing issuance of certificates in phases, it is possible that making the certificates effective after all buildings are placed in service prohibits the Director from issuing a certificate, or the project’s owner from claiming a tax credit, until all project phases are completed.⁷

Historic theaters

The act requires the Director, when determining whether to award a tax credit to a project that rehabilitates a historic theater, to consider the potential of the project to generate increased attendance and gross revenue for the theater. The considerations apply only if the building was used by a theater before the rehabilitation and is intended for use as a theater afterwards. The act requires all tax credit applications to indicate whether the project includes a historic theater.

Under continuing law, general criteria for reviewing, evaluating, and approving applications are prescribed by rule of the Director. Before approving an application, the Director must conduct a cost-benefit analysis and confirm that the project will result in a net revenue gain in state and local taxes once the historic building is used. The Director must also

⁶ Section 3.

⁷ R.C. 149.311(K) and 5701.11.

consider the economic impact of the project, the regional distributive balance of the credits throughout the state, and the mix of high and low cost projects approved for tax credits.⁸

Ohio opportunity zone investment tax credit

The act makes several modifications to an income tax credit for investments benefitting Ohio opportunity zones. First, it expands eligibility to receive a credit allocation, i.e., a tax credit certificate, to an investor in an Ohio opportunity zone that is not subject to the personal income tax. Second, it transitions the overall cap on the amount of tax credit certificates that may be awarded by the Director of Development from a biennial limit to an annual limit, beginning in FY 2024, and specifies that compliance with the cap is determined by the total credits issued by the Director rather than the total credits claimed by recipients. Third, it increases that overall cap for the FY 2022-FY 2023 biennium and for FY 2024. Fourth, it requires the Director to conduct two, rather than one, annual application periods for the tax credit, each covering investments made in the preceding six months. Finally, it expands the circumstances in which a tax credit may be transferred to another person.

Background

Federal law allows states to designate economically distressed areas that meet certain criteria as “opportunity zones.”⁹ 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 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. Additional federal benefits are available if the investment is held in the fund for at least five years.¹⁰

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

Continuing law, changed in part by the act, adds to these incentives by allowing an 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 law as an “Ohio qualified opportunity fund”) and that fund must invest that money in projects located in an Ohio opportunity zone. The investor may then apply to the Director of Development for a tax credit

⁸ R.C. 149.311(B) and (D)(8).

⁹ 26 United States Code (U.S.C.) 1400Z-1.

¹⁰ 26 U.S.C. 1400Z-2.

certificate. The nonrefundable credit equals 10% of the fund's investment in such projects. It may be claimed in the year in which the fund invests the applicant's investment in such projects, or in the following year. Unused credit amounts may be carried forward for up to five years.

Award to nontaxpayers

The act allows the Director to award a credit to a person that is not subject to Ohio income tax and is, therefore, unable to claim the credit.¹¹ Continuing law, changed in part by the act, allows credit recipients to sell or transfer the credit to another person.

Overall credit limit

Prior law prohibited the Director from issuing tax credit certificates in a total amount that would cause the Ohio opportunity zone investment credits claimed in any fiscal biennium to exceed \$50 million. The act transitions the cap from a biennial limit to an annual limit, beginning in FY 2024. In addition, it requires that, for the FY 2022-FY 2023 biennium and each fiscal year thereafter, compliance with the cap be determined based on the amount of credits issued by the Director rather than the amount of credits claimed by recipients. The act increases the credit cap from \$50 million to \$75 million for the FY 2022-FY 2023 biennium, then sets a cap of \$50 million for FY 2024, and \$25 million for FY 2025 and thereafter.

Continuing law, unchanged by the act, limits the amount of tax credit that may be allocated to any particular credit recipient to \$2 million per fiscal biennium.¹²

Application periods

The act requires the Director to conduct two annual application periods for the credit, each covering qualifying investments by Ohio qualified opportunity funds during the six preceding months. Prior law provided for one application period, from January 1 to February 1, for all such investments during the preceding year. The act shortens that application period to January 10 to February 1, and adds a second application period from July 10 to August 1. It also specifies that, if the start or end date of an application period falls on a weekend or legal holiday, the application period instead starts or ends on the next business day.¹³

Credit transfer

Continuing law, changed in part by the act, allows the holder of an unclaimed tax credit certificate to transfer the full credit amount to another taxpayer. To effectuate the transfer, the original certificate holder must send written notice to the Tax Commissioner stating the certificate number and identifying the transferee. Under prior law, the credit could not be transferred more than once.

¹¹ R.C. 122.84.

¹² R.C. 122.84(C)(2).

¹³ R.C. 122.84(A)(5), (A)(6), (B), and (C)(1).

The act modifies the transferability of tax credit certificates as follows:

- Allows transfer of the unused portion of a partially claimed tax credit;
- Allows a transferor to transfer a portion of the tax credit and retain the remainder, and to transfer portions of the tax credit to multiple transferees;
- Allows the same tax credit, or a portion, to be transferred an unlimited number of times, and by persons other than the original certificate holder;
- Allows transfer of a tax credit, or a portion, to a nontaxpayer.

Each time the credit or a portion is transferred, the transferor must notify the Commissioner. In addition to the information required by prior law, the notice must include the amount of credit to be transferred and, if applicable, the amount of credit retained by the transferor. Transferring a tax credit does not extend the taxable years in which the credit may be claimed or the number of taxable years for which an unclaimed credit may be carried forward.¹⁴

Tax increment financing and downtown redevelopment districts

The act expands the application of two provisions adopted in H.B. 110 of the 134th General Assembly related to tax increment financing districts (TIFs) and downtown redevelopment districts (DRDs). Under prior law, the provisions applied only to TIFs and DRDs established by ordinance adopted after, or proceedings not yet concluded on, H.B. 110's 90-day effective date, September 30, 2021. This act provides that these provisions may also apply to ordinances adopted and projects completed before that date.

Municipal off-street parking facilities

The first H.B. 110 provision allows a county, township, or municipality to use TIF or DRD service payments to fund off-street parking facilities, even if some or all of the parking spaces are reserved for private use. This act extends the provision to municipal projects and ordinances adopted or completed before September 30, 2021, if the municipal corporation adopts an ordinance to confirm applicability of the provision. In effect, this act allows the provision to apply retrospectively upon confirmation by the municipality that established the TIF or DRD.¹⁵

Timing of exemptions

The second H.B. 110 provision extended retrospectively by this act offers additional options to a municipal corporation when setting the beginning tax year of an urban redevelopment TIF exemption. Before H.B. 110, the exemption automatically began on the effective date of the designating ordinance. Under the change in H.B. 110, a municipality could specify the tax year in which the exemption begins, provide that the exemption begins when

¹⁴ R.C. 122.84(E).

¹⁵ Section 803.210 of H.B. 110 of the 134th General Assembly; R.C. 5709.40, not in the act.

the value of an improvement exceeds a specified amount or when construction of one or more improvements is completed, or allow for the exemption to begin in different tax years on a parcel-by-parcel basis. This discretion was already allowed to subdivisions creating DRDs and other types of TIFs.

This act applies H.B. 110's modification to urban redevelopment TIFs established before September 30, 2021, if the establishing ordinance conforms with any of the newly authorized exemption commencement options.¹⁶

TIF background

Continuing law allows municipalities, townships, and counties to create a TIF arrangement to finance public infrastructure improvements. Through a TIF, the subdivision grants a real property tax exemption with respect to the incremental increase in the assessed value of designated parcels that are part of a development project. The owners of the parcels make payments in lieu of taxes to the subdivision equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements ("service payments"). TIFs thereby create a flow of revenue back to the subdivision that created the TIF, which generally uses those service payments to pay the public infrastructure costs necessitated by the development project. The act concerns only urban redevelopment TIF arrangements, under which a municipal corporation acquires land for redevelopment purposes, leases or conveys it to another person, and exempts the improvements from taxation.

DRD background

Continuing law allows municipal corporations to designate DRDs for the purposes of rehabilitating historic buildings, creating jobs, and encouraging economic development in commercial and mixed-use commercial and residential areas. The rules and procedures associated with DRDs are similar to those that apply to TIF districts. A municipal corporation that establishes a DRD is authorized to exempt a percentage of the increased value of parcels located within the DRD from property taxation. The owners of the parcels make service payments, which are used for economic development purposes.¹⁷

Canton Hartford-Houtz Poor Fund

In 1879, S.B. 51 of the 63rd General Assembly was enacted to authorize the Canton City Council to appoint a board of trustees to take charge of property bequeathed to the poor of Canton. The property eventually came to be known as the Hartford-Houtz Poor Fund. The act relieves the city of Canton of the requirement to appoint a board of trustees and authorizes the city to distribute the entire fund to the Canton Ex-Newsboys Association or any other charitable

¹⁶ Section 803.210 of H.B. 110 of the 134th General Assembly; R.C. 5709.41, not in the act.

¹⁷ R.C. 5709.45, not in the act.

organization. As a result, the city may distribute the entire fund without approval from the board of trustees.¹⁸

HISTORY

Action	Date
Introduced	09-08-21
Reported, S. Finance	02-09-22
Passed Senate (33-0)	02-16-22
Reported, H. Ways & Means	06-01-22
Passed House (87-5)	06-01-22
Senate concurred in House amendments (32-0)	06-01-22

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¹⁸ Section 4; S.B. 51 of the 63rd General Assembly and H.B. 840 of the 71st General Assembly.