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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Schaffer

Zachary P. Bowerman, Attorney

SUMMARY

- Authorizes a nonrefundable income tax and commercial activity tax credit for small arms manufacturers that make certain investments in Ohio beginning in FY 2025, to be administered by the Tax Credit Authority.
- Computes the credit on the basis of personal income or commercial activity tax liability attributable to the minimum \$2 million investment in a new or expanded facility.
- Limits the amount of credit that may be claimed in the first year, and subsequent nine years, to the federal firearms excise tax paid in the preceding year, allowing excess credit amounts to be carried forward until the 20th year.
- Exempts sales of certain firearms and ammunition from sales and use tax.

DETAILED ANALYSIS

Overview of manufacturing credit

The bill authorizes a nonrefundable income tax and commercial activity tax (CAT) credit for a small arms manufacturer that invests in new or expanded manufacturing facilities in Ohio on or after July 1, 2024. The credit may be obtained by filing an application with the Department of Development's Tax Credit Authority (TCA). 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 ordnance accessories manufacturing" under the North American Industry Classification System.¹

¹ R.C. 122.97(J) and (K).

The credit, which may be awarded for up to 20 years, is calculated on the basis of the manufacturer's percentage of economic activity in Ohio attributable to the manufacturer's capital investment, on the amount of the manufacturer's investment, and on the amount of Federal Firearms and Ammunition Excise Tax (FAET) paid by the manufacturer on the products of the subject facility. (Federal law imposes a FAET equal to 10% of the purchase price of pistols and revolvers and 11% for ammunition and other firearms.²)

The process of applying for, obtaining, and continuing to qualify for the credit are explained in detail below.

Step 1: initial application

To obtain a credit, a small arms manufacturer must submit an application to the TCA, on a form prescribed by the Department of Development, no later than March 1 of the year after the year in which the manufacturer makes a capital investment in a new or expanded small arms and ammunition manufacturing facility. The application must describe and detail the property that makes up the manufacturer's investment and the employment positions attributed to the capital investment for that year. The applicant must also report the amount of FAET it paid in the last year on firearms and ammunition manufactured at the facility.³

After receiving an application, the TCA must (1) determine whether the facility qualifies for the credit and (2) calculate the amount of the applicant's credit-eligible capital investment ("qualified investment").⁴ This qualified investment equals the costs incurred by the applicant during the preceding year to construct, purchase, or lease real or tangible personal property for use as part of a new or expanded small arms and ammunition facility. These costs are generally limited to property that has a useful life of four years or more, but do include rent costs for such property, depending on the term of the lease and the useful life of the equipment. Qualified investments do not include the cost to purchase the applicant's own stock or assets (though the TCA may allow these purchases to qualify) or airplanes and helicopters or acquisitions from affiliated or related entities.⁵

The TCA shall deny any application for which it determines the facility does not qualify for the credit or for which the qualified investment is less than \$2 million. Otherwise, the TCA must approve the application and issue the manufacturer a tax credit, not later than the last day of March, enabling it to claim the credit.⁶

² 26 United States Code (U.S.C.) 4181.

³ R.C. 122.971(A).

⁴ R.C. 122.971(B)(1).

⁵ R.C. 122.972.

⁶ R.C. 122.971(B)(2) to (4).

Step 2: initial credit (year one)

The tax credit certificate issued by the TCA will list the applicant, the amount of the qualified investment, the maximum credit amount, the credit percentage, and whether the credit can be claimed in the current or previous year, as elected by the manufacturer on its application. The maximum credit amount is the FAET paid in the preceding year on firearms and ammunition manufactured at the facility multiplied by the credit percentage.⁷ The credit percentage is calculated by the TCA to approximate the percentage of the manufacturer's total income tax or CAT liability that is attributable to the investment in the new or expanded facility. The bill's default method for calculating the credit percentage is to divide the payroll directly attributable to the investment by the total payroll at the new or expanded facility, using information reported by the manufacturer or any other information available. If the TCA determines that the payroll method is not an accurate approximation of tax liability attributable to the investment, it must devise an alternative method. In doing so, the TCA must evaluate any alternative method proposed by the applicant on its application.⁸

The credit, which is nonrefundable, may be claimed against either or both the income tax and the CAT in the taxable year or tax period stated on the certificate issued to the taxpayer.⁹ The amount of each credit that may be claimed for a particular period is the amount of tax liability attributable to the new or expanded facility multiplied by the credit percentage, except that the total credit or credits claimed cannot exceed the maximum amount stated on the certificate. If a taxpayer seeks to take the credit against both taxes but the calculation exceeds the certificate amount, the taxpayer must reduce the income tax credit before reducing the CAT credit. Any certificate amount not taken in one year can be carried forward for up to 19 total years, subject to reductions discussed below.¹⁰

Step 3: annual reporting

Before March of each year following the initial year in which the credit is awarded, the manufacturer is required to certify updated information to the TCA to ensure that the credit amount may be accurately calculated for the remaining years of the credit. Specifically, the manufacturer must certify the following:

- Any additional qualified investment and any prior investment in property that is no longer used in the facility, except for property destroyed or damaged by a casualty, e.g., fire.
- For the first nine annual reports, the amount of FAET paid by the manufacturer in the preceding year on firearms and ammunition manufactured at the facility.

⁷ R.C. 122.971(B)(3).

⁸ R.C. 122.971(C).

⁹ R.C. 122.973, 5747.98, and 5751.98.

¹⁰ R.C. 122.973.

- Updated payroll information.

After submitting this information, the TCA must issue another tax credit certificate to the manufacturer, authorizing it to claim a credit for the current or preceding year.¹¹ The TCA may not issue a certificate if the manufacturer fails to certify this information or if the 20-year maximum credit term has been reached. If, after the tenth year, the manufacturer does not have any excess credit to claim (see below), the manufacturer is not required to report this information.¹²

Step 4: credits in subsequent years

In each of the 19 years following receipt of the initial credit, the TCA must issue updated tax credit certificates listing the maximum credit amount and credit percentage recalculated using the updated information reported by the taxpayer. For the first nine years after the initial credit is claimed, the maximum credit amount is the FAET paid in the preceding year on firearms and ammunition manufactured at the facility plus any excess amount of credit that was not claimed in a previous year. However, if in the recalculation the credit percentage is reduced, the carry-over amount is also reduced in the same proportion. For the tenth through 19th years, the maximum credit amount is any remaining carry-over amount only, subject to the same reduction. The subsequent credits must be claimed for either the taxable year and tax periods that ended in the preceding year or those that end in the current tax year, depending on the year for which the taxpayer took the initial credit.¹³

If a tax credit recipient sells or otherwise transfers its interest in the new or expanded manufacturing facility, and the new owner continues to operate the facility, the recipient may also transfer the tax credit to the new owner for the remaining years of the credit after providing notice to the TCA.¹⁴

Administrative reports; rules

Beginning before FY 2030 and every five fiscal years thereafter, the bill requires the TCA to submit to the General Assembly and the Governor a report evaluating the cost and effectiveness of the small arms manufacturer credit during the last five-year period. The report must include information such as the number of manufacturers claiming the credit, the qualified investments made by those manufacturers, the costs of the credit, and small arms manufacturing industry employment trends.¹⁵

The Director of Development, after consultation with the Tax Commissioner and TCA, must adopt rules necessary to administer the credit. The bill exempts these rules from a

¹¹ R.C. 122.974(A) and (B)(1).

¹² R.C. 122.974(C).

¹³ R.C. 122.974(B)(2) to (4).

¹⁴ R.C. 122.974(D).

¹⁵ R.C. 122.975(A) and (B).

continuing law that prohibits or restricts an agency from adopting a new regulatory restriction in certain instances.¹⁶

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.¹⁷

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.¹⁸

HISTORY

Action	Date
Introduced	05-30-23

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¹⁶ R.C. 122.975(C).

¹⁷ R.C. 107.036.

¹⁸ R.C. 5739.02(B)(60); Section 3.