

OHIO JOB RETENTION TAX CREDIT PROGRAM

The Ohio General Assembly created the Job Retention Tax Credit (JRTC) program in 2001 for the purpose of fostering the retention of full-time jobs in Ohio. The program makes available nonrefundable tax credits to reduce the corporate franchise or income tax liabilities of companies operating in Ohio. Due to the tax reform changes implemented by Amended Substitute House Bill 66 in June 2005, these nonrefundable tax credits will apply to companies' Commercial Activity Tax (CAT) liabilities beginning July 1, 2008. For an eligible business taxpayer to qualify for the tax credit, the company's project must involve a significant investment in Ohio facilities engaging in either manufacturing or significant corporate administrative functions.

The Ohio Tax Credit Authority (Authority) and the Ohio Department of Development (ODOD) administer the JRTC program. The Authority is a five-member independent board consisting of taxation and economic development professionals from throughout the state, charged with reviewing applications, determining the appropriate levels of job retention tax credit assistance to be granted, and approving projects for a retention tax credit. In addition to its review function, the Authority has oversight responsibilities that include monitoring and reporting on the progress of approved projects.

The JRTC program is designed for use exclusively by large-scale capital investment projects. The job retention program offers substantial tax savings in consideration for a taxpayer's commitment to (1) retain employees at a defined project site and (2) significantly invest at that project site towards the acquisition, construction, renovation, or repair of buildings, machinery or equipment, or for capitalized costs of basic research and new product development as determined in accordance with general accounting principles.

TAX INCENTIVES

Under the JRTC program, the Authority may issue a nonrefundable tax credit equal up to 75 percent of the state income taxes withheld from the taxpayer's eligible full-time employees at the project site for a period, in most cases, of up to 10 years. The tax credit term may exceed 10 years, and extend up to 15 years if (1) the project includes a "significant retention" commitment (at least 1,500 full-time positions) and (2) the Director of ODOD makes a recommendation to extend the term to the Authority. For each year the taxpayer is eligible and to each year the credit applies, the credit will be determined by multiplying (1) the Ohio income taxes withheld during that year from the eligible retained employees at the project site by (2) the rate of assistance approved by the Authority.

ELIGIBLE BUSINESSES & PROJECTS

Businesses organized as C corporations, sole proprietorships, limited liability companies, partnerships, and S corporations may apply for and receive a tax credit under the JRTC program, provided they are subject to state franchise or income tax liabilities under Sections 5733 or 5747 of Ohio Revised Code. Again, after July 1, 2008, the tax credit will apply to companies' CAT liability, regardless of how they are organized.

To receive assistance, the JRTC program requires that applicants satisfy all of the following requirements:

1. The applicant must employ an average of at least 1,000 full-time employees at the project site during each of the twelve months preceding the filing of an application for JRTC assistance. The JRTC program features an expanded definition of "project site" to include an integrated complex of facilities in the state of Ohio from which the taxpayer conducts its operations. Under the terms of the statute, a single taxpayer may designate as one project site multiple locations within a fifteen-mile radius consisting of one or more integrated facilities in the state.
2. The applicant must thereafter retain at least 1,000 full-time employees at the project site for the entire term of

any agreement with the Authority. Retained positions are defined as positions of employment (a) for consideration for at least 35 hours per week (b) filled for at least 180 days prior to the filing of a JRTC application and (c) continue to be filled for at least 180 days during each taxable year in which the taxpayer receives credits. Note that those full-time employees designated by the employer as being at the project site in the twelve-month period preceding the taxpayer's application may not necessarily be included in the computation of the credit under the JRTC program. Tax credits are awarded on the basis of a project company retaining at least 90 percent of the committed retained positions stated in its JRTC agreement, but in no case will credits be awarded to those project companies reporting less than 1,000 retained positions during the applicable taxable year. A taxpayer that claims a new job credit under the JRTC program with respect to a new employee cannot claim the job retention credit under the JRTC program with respect to that same employee. Nor can a taxpayer count toward the 1,000 minimum annual retained positions requirement any new employees for which it receives credit under the JRTC program.

3. Within three consecutive calendar years, the applicant's investment at the project site must meet or exceed either of the following measures: (a) at least \$200 million in the aggregate, or (b) at least \$100 million if the committed wage rate associated with the retained positions exceeds 400 percent of the federal minimum wage. The three-year period in which the investment must occur includes the taxable year in which the taxpayer first claims the tax credit. Note that construction and other preparatory work associated with the project need not be completed prior to receiving assistance under the JRTC program. Rather, the taxpayer is required to have merely paid the required investment amount toward the project before receiving job retention credits. The taxpayer may not begin receiving job retention tax credit assistance until the minimum investment required by statute is paid toward the project. In calculating the amount of its capital investment, the taxpayer may *not* include (a) payments made for the acquisition of personal property through operating leases, (b) project costs paid prior to January 1, 2002, or (c) payments made to related members as defined in Section 5733.042 of the Ohio Revised Code.
4. The applicant is required to maintain operations at the project site for at least twice the term of the tax credit.
5. The applicant must demonstrate to the Authority, through its financial statements and other information, that it is economically sound and possesses the ability to complete the required capital investment.
6. Intrastate relocations of employment positions from other locations within Ohio to the project site are generally prohibited. The taxpayer may relocate positions provided it obtains a formal determination from the Director of the ODOD. Companies may not relocate employees to their respective project sites within the lesser of (a) the first five years of the date of execution of an agreement with the Authority or (b) the term of the tax credit. Note that a transfer of an individual employee to the project site from another location in Ohio is not considered a relocation so long as the individual's position at the former site is refilled.
7. The local community in which a project is located must provide substantial financial support towards the project.
8. The applicant must demonstrate that the tax credit is a major factor in its determination to begin, continue, or complete the capital investment project.

APPROVAL PROCESS

The taxpayer must submit an application for assistance under the JRTC program to the ODOD. Staff with the Department will then distribute copies of the completed application to each of the Directors of the Office of Budget and Management and the ODOD, and the Tax Commissioner of the Ohio Department of Taxation. Each is charged with determining the economic impact of the proposed project and must submit to the Authority a summary of his or her determinations and recommendations. The Authority meets to approve projects on the last Monday of each month, except the months of November and December when it meets in early December to review projects. A representative of the taxpayer must attend the Authority meeting. A representative of the local

community is encouraged to attend the meeting to reinforce their support of each respective project.

ANNUAL CERTIFICATION

To receive a tax credit, the taxpayer must submit an annual report to the Director of the ODOD detailing the number of eligible full-time employment positions, the amount of Ohio income taxes withheld from those employees, and the amounts paid towards the completion of the capital investment. Once the Director verifies the information submitted in the taxpayer's annual report, he or she will issue a tax credit certificate to be filed by the taxpayer with its applicable state tax return. In the event that the amount of the job retention credit is greater than the taxpayer's state tax liability, the taxpayer may carry forward the unused portion for up to three years.

Contact the Ohio Department of Development's Office of Tax Incentives at (614) 466-2317 for additional information.