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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Schuring

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CORRECTED VERSION*

Summary

- Authorizes a nonrefundable tax credit equal to 1% of a taxpayer's investment of at least $250,000 in an Ohio Opportunity Zone fund.
- Authorizes an additional, nonrefundable credit equal to 2% of the taxpayer's investment if, after five years, the Ohio Opportunity Zone project funded by the investment generated more new state and local tax revenue than the amount of credits originally granted with respect to the project.
- Allows taxpayers to claim the credit against the income tax, financial institutions tax, or insurance premiums taxes, or transfer it to another person.

Detailed Analysis

Opportunity zone investment credit

The bill authorizes nonrefundable income tax credits 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

*Corrects descriptions of the credit basis and carry forward.

[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.

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.[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 invests 100% of its 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 is available in two tiers. First, for the year in which a taxpayer invests in one or more Ohio qualified opportunity funds, the taxpayer may receive a credit equal to 1% of the investment, as long as the taxpayer invested at least $250,000 that year.[4] Then, if at least $250,000 of the taxpayer's investment was dedicated exclusively to a project that, after five years, generated more new state and local tax revenue than the amount of all taxpayers' first-tier credits granted with respect to the project, the taxpayer may receive an additional credit equal to 2% of the taxpayer's investment dedicated to that project.[5]

The credits are available against the income tax, the financial institutions tax, or the insurance premiums taxes. The credits are nonrefundable, and any unused credit may be carried forward for up to five subsequent taxable years.[6]

Additional credit for investments in certain projects

Five years after the completion of a project funded by an Ohio qualified opportunity fund, taxpayers whose investments were dedicated to that project may apply for the additional

[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(B).

[5] R.C. 122.841(B).

[6] R.C. 5725.98, 5726.98, 5729.98, and 5747.98.

2% credit described above. First, the taxpayer must have a certified public accountant estimate the increase in state and local tax revenue that resulted from the project, which involves comparing the actual tax revenue attributable to economic activity in the project area over the five-year completion period with the amount of revenue that would have been received if the project had not been completed. The Development Services Agency (DSA) then reviews the estimate, and adjusts it as necessary. If the estimated increase in tax revenue is found to exceed the total amount of first-tier credits already awarded for investments in that particular project, then the DSA Director must authorize the additional credit for the investment.[7]

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. The credit's 100% Ohio-investment threshold is the average of a fund's opportunity zone holdings measured midway through the fund's taxable year and on the last day of the taxable year. In the case of assets in the form of tangible property, the property must be used exclusively in the 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.[8] (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%.)

Application process

The taxpayer must apply to the DSA Director for the first-tier credit by the February 1 following the taxpayer's taxable year when an investment is made. If the taxpayer is applying for the additional 2% credit, the application is due on February 1 of the year following the end of the qualifying project's five-year completion period.

In the application, the taxpayer must include (1) the total investment the taxpayer made in Ohio qualified opportunity funds and (2) a statement from an officer of each fund certifying the amount the taxpayer invested in that fund and describing each project funded by the investment. Applications for the additional 2% credit must also include (1) the completion date of the qualifying project and (2) a CPA certification of the estimated increase in tax revenue arising from the project.

If the taxpayer qualifies for the credit, the DSA Director will issue the taxpayer a credit certificate that lists the amount of the credit and the tax against which it may be used. The taxpayer must file a copy of the certificate with the taxpayer's return. If the taxpayer cannot

[7] R.C. 122.841(A), (B), and (C).

[8] R.C. 122.84(A).

claim the full credit for a particular year, the Tax Commissioner or Director of Insurance, as applicable, must certify the remaining credit amount to the DSA Director, who will issue an updated certificate for the following year.[9]

Transfer of credits

A credit certificate may be transferred once to another person. The transferee may claim the credit against a tax that is different than the tax for which the certificate was originally issued. However, the credit must be claimed within the original five-year carryforward period.[10]

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 credits to the list of tax credits that are included in these estimates.[11]

History

Action	Date
Introduced	02-12-19

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[9] R.C. 122.84(B), (C), and (D) and 122.841(B), (C), and (D).

[10] R.C. 122.84(E) and 122.841(E).

[11] R.C. 107.036.