
DEVELOPMENT SERVICES AGENCY

Opportunity zones and business investment credits

- Authorizes a nonrefundable tax credit equal to 10% of a taxpayer's investment in an Ohio Opportunity Zone fund.
- Limits individual credits to \$1 million per fiscal biennium and total credits to \$50 million per biennium.
- Reduces the total biennial cap on the existing small business investment credit from \$100 million to \$50 million and otherwise modifies that credit.

Motion picture tax credit

- Extends eligibility for the motion picture tax credit to certain live theater productions and production contractors.
- Requires that production companies and production contractors be registered with the Secretary of State as a condition of receiving the credit.
- Adds post-production, advertising, and promotional expenses to the kinds of expenditures for which the credit may be claimed.
- Disqualifies productions that do not begin within a specified period after being certified as eligible for the credit.
- Stipulates that tax credit certificates are to be awarded in two rounds – in July and January – each fiscal year.
- Requires each round's applications to be ranked on the basis of the economic and workforce development impact of the production and granted tax credits in the order of the ranking.
- Terminates a tax credit recipient's authority to transfer its right to claim the credit to a third party.

Community reinvestment areas

- Specifies that an amendment that adds affordable housing requirements to the terms of a community reinvestment area (CRA) in existence on July 21, 1994, will not subject the CRA to state law requirements that subsequently became effective.

Rural Industrial Park Loan Fund

- Reinstates the Rural Industrial Park Loan Fund, which was repealed in 2015 and has not received appropriations since FY 2010-2011.
- Requires the fund to support the Rural Industrial Park Loan Program.
- Appropriates \$25 million to the fund.

Sports event grant program

- Authorizes the Development Services Agency to award a sports event grant on the basis of an Ohio sporting event that had been held in Ohio within the two preceding years.

Opportunity zone investment credit

(R.C. 107.036, 122.84, 122.86, 5747.82, and 5747.98)

The act 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.”²³ 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 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.²⁴

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.²⁵

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 act 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

²³ 26 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.

²⁴ 26 U.S.C. 1400Z-2. To qualify, the reinvestment must be made within 180 days after the gain is realized.

²⁵ 26 U.S.C. 1400Z-2.

an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio (referred to in the act as an “Ohio qualified opportunity fund”). Unlike the federal tax incentives, the act’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.

Application process

The taxpayer must apply to the Development Services Agency (DSA) between January 1 and February 1 following the year in which the taxpayer makes the investment. 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.

DSA must consider applications in the order in which they are received. If the taxpayer qualifies for the credit, DSA must 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.

Qualifying Ohio opportunity zones

The act 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. (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.

Annual report

The act requires DSA 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.

Biennial forecast of foregone revenue

Continuing law requires that every main biennial budget act 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 act adds the new opportunity zone investment credit to the list of tax credits that are included in these estimates.

Small business investment credit

(R.C. 122.86)

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

The act also modifies qualifications a business must satisfy in order for a taxpayer’s investment to qualify for the credit. Whereas prior law required a business to employ at least 50 full-time equivalent employees, the act specifies that this requirement is to be satisfied throughout the two-year period leading up to a taxpayer’s investment.

Prior law also required the business to incur costs for payroll or for one or more of four different categories of assets in an amount equal to, or more than, the taxpayer’s investment amount for which the credit is granted, and to have done so within six months of the taxpayer’s investment. The categories include real property, tangible personal property, vehicles used primarily in the business, and intangible property (e.g., royalties, trademarks, licenses).

The act modifies these qualifications as follows:

- Eliminates the requirement that the business’ costs equal the amount of the investment for which the credit is claimed, requiring only that some such costs be incurred.
- Modifies the payroll qualification by permitting increased pay for owners, officers, or managers to count toward payroll, and by disallowing pay for retained employees to count toward payroll. Only the pay of employees hired after the investment would count. (Under prior law, the payroll qualification referred to the pay of “new employees,” but expressly allowed pay for retained employees to count as pay for new employees. The act removes reference to retained employees’ pay.)
- Allows the business to count installation costs toward the cost of tangible personal property.
- Replaces the cost of intangible property with the cost of leasehold improvements or construction.

The act also modifies the administration of the credit. As under former law, taxpayers must apply to DSA to qualify for the credit, or the business may apply on a taxpayer's behalf. The act specifies that, in either case, the application must be made within 60 days after the investment is made and within the same fiscal biennium in which the investment is made. And, whereas under former law the right to claim a credit was represented by a "certificate," which could be used to claim the tax credit once the investment's required two-year holding period concluded, the act refers to this right as an "allocation," which may be converted to a certification once the holding period is over, allowing the credit to be claimed thereafter. Credit allocations are made only after an applicant provides DSA with all documentation needed to demonstrate that a business satisfies the qualifications.

Under continuing law, the credit is available for investments in businesses having assets of \$50 million or less, or annual sales of \$10 million or less, and employing no more than 50 full-time-equivalent employees or employing more than 50% of their U.S. employees in Ohio.

The act's changes apply to investments made on or after July 1, 2019.

Motion picture tax credit

(R.C. 122.85, 107.036, 5726.98, 5733.98, 5747.98, and 5751.98; Section 757.250)

The act modifies the motion picture tax credit – a refundable credit for companies that produce all or part of a motion picture in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production and may be claimed against the commercial activity tax (CAT), the financial institutions tax (FIT), or the personal income tax. A company seeking the credit must first apply to the Director of Development Services for certification of the project as a "tax credit-eligible production." Then, upon completion of the project, the company must hire an independent certified public accountant to compile a report of the company's Ohio-sourced expenditures and apply to the Director for a tax credit certificate based on that amount (or the amount of expenditures estimated in the company's initial application, whichever is less).

Broadway theatrical productions

The act extends eligibility for the motion picture tax credit to "Broadway theatrical productions" that are directly associated with New York City's Broadway Theater District and are rehearsed or performed by a professional cast and crew at a qualified production facility – an Ohio facility that is used in the development or presentation to the public of live stage theater. Such a theatrical production qualifies for the credit if (1) the production is scheduled for presentation in New York City's Broadway Theater District after it is performed in Ohio (a "pre-Broadway production"), (2) the production is scheduled to be performed in Ohio for more than five weeks with an average of at least six performances per week (a "long run production"), or (3) the activities comprising the technical period of the production are conducted in Ohio before the beginning of a performance tour (a "tour launch").

The procedures for certifying Broadway theatrical productions as "tax credit-eligible" and awarding a tax credit certificate upon the completion of the production are mostly the

same as those that apply to motion pictures. However, the act makes a few adjustments to the information that is required to be submitted with the application for certification of the project (see, “**Application requirements,**” below).

Production contractors

The act also extends eligibility for the credit to companies that are involved in a motion picture certified as a tax credit-eligible production but are not themselves the production company. These “production contractors” receive a credit based on Ohio-sourced expenditures incurred in performing services under contract with the production company related to the motion picture such as editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution.

Production contractors are included in the same credit application and evaluation process as the production company producing the motion picture so no separate credit application or progress reporting on the motion picture is required. Following completion of the motion picture, each involved production contractor receives a tax credit certificate – separate from the tax credit certificate awarded to the production company – for a credit equal to 30% of the contractor’s Ohio-sourced expenditures paid or incurred performing services related to the motion picture (or the amount of such expenditures estimated in the production company’s initial application, whichever is less).

Registration with Secretary of State

The act requires, as a condition of receiving the motion picture tax credit, that a production company or production contractor first be registered with the Secretary of State.

Eligible expenditures

The act broadens the types of expenses upon which the credit is based to include postproduction, advertising, and promotional expenditures. Under prior law, only expenditures for goods, services, and payroll used directly for the production itself could be included in computing the amount of the credit and in meeting the \$300,000 minimum expenditure threshold. The act requires the Director to adopt rules as to the specifics of what constitutes “postproduction” activities.

Application requirements

The act makes several adjustments to the information that is required to be submitted for a motion picture or Broadway theatrical production to be certified as eligible for the credit. All applicants are required to submit an estimate of the amount of state and local taxes that will be generated from the project and of the project’s overall economic impact. Furthermore, in addition to the list of preproduction and production dates required under continuing law, the application must include a list of the post-production dates associated with the motion picture or Broadway theatrical production.

If the application concerns a Broadway theatrical production, the application need not include the percentage of the production “being shot in Ohio” or the shooting script. In lieu of submitting an address for an Ohio production office, the company may provide the address of

the qualified production facility at which the Broadway theatrical production will be rehearsed or performed. In addition, the application must include a list of each scheduled performance of the production at that facility.

If the application concerns a motion picture, it must state the name and address of each production contractor that is contracted to perform services involving the motion picture and the amount of eligible expenditures paid or incurred under the contract.

Rescinding certification

The act requires the Director to rescind certification of a production if the production process does not begin within a specified period. The production process for motion pictures and Broadway theatrical productions that are certified as credit-eligible on or after the act's 90-day effective date, October 17, 2019, must begin within 90 days of such certification unless the production company demonstrates that the delay is due to unforeseeable circumstances beyond its control or due to action or inaction by a government agency. The production process for previously certified motion pictures must begin within one year of such certification or before October 17, 2019, whichever is later.

Continuing law requires production companies to submit "sufficient evidence of reviewable progress" within 90 days of the eligibility certification and any time thereafter at the Director's request. The Director may (but is not required to) revoke a production's eligibility if a company fails to report sufficient progress. If eligibility is revoked, the company may reapply for the eligibility certification.

Awarding tax credits

The act requires the Director to award tax credit certificates in two rounds each fiscal year. The first round of applications would be approved by July 31, and the second round would be approved by January 31. The amount of credits awarded in the first round of applications is limited to \$20 million plus any credit allotment that was not used in the previous fiscal year. Under continuing law, the maximum amount of credits that may be awarded in any fiscal year is \$40 million.

For each round, the Director must rank the applications on the basis of the extent of positive economic impact a production would have and the effect of the production on developing a permanent Ohio workforce in the motion picture or live theater industries. Priority must be given to television series and miniseries. For the purposes of ranking applications, the "economic impact" of a production is determined based on the production company's total expenditures in Ohio that are directly associated with the production. The production's impact on developing a permanent Ohio workforce in the motion picture and live theater industries is determined "first by the number of new jobs created and second by the amount of payroll added" for Ohio employees.

After ranking the applications, the Director must award tax credits to productions in the order of their ranking, starting with the productions that have the greatest economic and workforce development impact. The act requires the Director to adopt rules prescribing a schedule and deadlines for applications to be submitted and reviewed.

Prior law specified that applications concerning television series and miniseries were to be prioritized, but did not otherwise specify how and when certificates were to be awarded. Based on the Development Services Agency's website, it appears that the Director awarded credits whenever they were available (i.e., when the annual credit cap resets) in the order in which applications were received.²⁶

Transferability of credits

The act terminates the authority for a credit recipient to transfer all or part of the credit to another person. Under prior law, a motion picture company was permitted to transfer the authority to claim the credit to a third party only if the company provided certain details of the transfer to the Director. A transferred credit had to be claimed by the transferee for the same tax period for which the company could have claimed the credit. A motion picture company was permitted to divide portions of a transferred credit between different transferees but could not transfer the same portion of the credit to more than one transferee.

The act specifies that credits transferred to a third party before the act's 90-day effective date, October 17, 2019, may continue to be claimed to the extent authorized under that transfer.

Application of changes

The act's modifications to the process of ranking applications and awarding credits – including the requirement that credits be awarded in two annual cycles – apply beginning with the 2021 fiscal year. The Director is required to adopt rules necessary to implement those modifications on or before the first day of that fiscal year. The other changes made by the act apply to productions that are certified as tax credit-eligible productions on or after the act's 90-day effective date, October 17, 2019.

Community reinvestment areas

(R.C. 3735.661)

Under continuing law, a municipal corporation or county may amend the ordinance or resolution governing a Community Reinvestment Area (CRA) that was in existence on July 21, 1994, in specified ways, without subjecting the CRA to state law requirements that became effective after that date. The act adds to the list of specified amendments that will not bring a CRA under the newer state law requirements. Specifically, the act allows municipal corporations and counties to require that developers and property owners agree to provide affordable housing as a condition of receiving tax benefits through a CRA that existed on July 21, 1994, without bringing that CRA under the law's subsequently enacted requirements.

²⁶ Ohio Development Services Agency, "Ohio Film Office – Tax Credit Overview and Frequently Asked Questions," <https://development.ohio.gov/filmoffice/Incentives.html>.

Rural Industrial Park Loan Fund

(R.C. 122.26; Sections 259.10 and 259.50)

The act reinstates the Rural Industrial Park Loan Fund and appropriates \$25 million to it from the Facilities Establishment Fund. Under the act, the Director of Development Services must use the Rural Industrial Park Loan Fund to support the Rural Industrial Park Loan Program, which allows loans and loan guarantees for the development and improvement of industrial parks in rural areas of Ohio. There have been no appropriations to the program since FY 2011. The Rural Industrial Park Loan Fund was repealed in 2015. It had a zero balance at the time of its repeal.²⁷

Under current law, the Director of Development Services must adopt rules governing the program, including rules governing criteria for evaluating applications for assistance and reporting and monitoring procedures. The Director also must establish fees, interest rates, payment schedules, and local match requirements; require each applicant for assistance to develop a project marketing plan and management strategy; inform local governments of the availability of the program; and issue an annual report regarding program activities. Generally, an applicant, as a condition of receiving assistance under the program, must agree, for a period of five years, not to relocate jobs from inside Ohio to a site that is developed or improved with assistance from the program.²⁸

Sports event grant program

(R.C. 122.121)

Under continuing law, grants may be awarded by the Director of Development Services to counties, municipalities, or nonprofit organizations acting on behalf of a county or municipality to support the selection of a site for a national or international sports competition. Grants may be used solely to defray the county's, municipality's, or local organizing committee's cost to host the event pursuant to an agreement with the event's sponsor.

Under prior law, a sporting event was disqualified for a grant if it has been held in Ohio in either of the last two years. The act removes the two-year restriction, allowing grants to be awarded even for events that have been held in the two-year period preceding the new event.

²⁷ See Am. Sub. H.B. 1, 128th General Assembly (2009) and Am. Sub. H.B. 64, 131st General Assembly (2015).

²⁸ R.C. 122.24, not in the act.