



## Department of Development

### **Job Creation Tax Credit Program (JCTC) for Projects Approved After October 17, 2009**

As part of the amended House Bill 1 of the 128<sup>th</sup> General Assembly, Ohio Revised Code (ORC) § 122.17 governing the Job Creation Tax Credit underwent substantial revisions. This guidance outlines how the Ohio Tax Credit Authority (Authority) plans to implement the changes to administer the program for projects approved after October 17, 2009. Projects approved prior to October 2009 will continue to be administered under prior statutory authority, rules and guidance.

The Ohio Job Creation Tax Credit Program (JCTC) became effective in January 1993. The program provides a refundable tax credit against a taxpayer's Commercial Activity Tax under ORC Chapter 5751, insurance premiums tax under ORC Chapters 5725 and 5729, Ohio corporate franchise tax under ORC Chapter 5733, or an individual's Ohio personal income tax obligations under ORC Chapter 5747. The tax credit is based on the state income tax withheld by the taxpayer for new jobs created as a result of new business investment in Ohio. The Authority is charged with reviewing and approving applications and setting the tax credit rate and term.

The Authority may grant tax credits under the program allowing companies to receive refundable credits generally up to 75 percent of withheld state income taxes, for a period of up to 15 years.

The tax credit rate and term are determined by the Authority based on the number of jobs to be created, the new payroll to be generated by the project, the fixed asset investment in the project, and the extent of interstate competition for the project.

Interested parties are strongly encouraged to review the relevant statutory and administrative code authorities governing the JCTC. See ORC § 122.17 and Ohio Administrative Code (OAC) Rules 122:7-1-01 through 09. In addition to these legal requirements of the program, the Authority and the Ohio Department of Development (Development) have adopted these guidelines to aid in the efficient administration of the program.

Note that under ORC §718.15, a municipal corporation may grant a municipal income tax credit to a taxpayer that receives JCTC assistance.

#### Eligibility Requirements

##### *Eligible Companies*

Any form of business entity, including a C-corporation, sole proprietorship, limited liability company, partnership, or an S-corporation, which is or will become an Ohio taxpayer is eligible for JCTC assistance. The potential taxpayer must be subject to insurance premiums, corporation franchise, state income, or commercial activity taxes to receive the benefit of the JCTC. Specific guidance as to the distribution of JCTC assistance through a pass-through entity is provided under ORC § 122.17(J).

### *Eligible Projects*

The Authority aims to assist projects that are economically sound and will benefit the people of Ohio by increasing opportunities for employment and strengthening the economy. Projects proposing a large number of jobs and high, competitive wages are given additional consideration when determining JCTC approval and benefit levels. That said, the Authority has set the following minimum eligibility criteria for projects to be considered for JCTC assistance:

1. The potential taxpayer commits to create at least 10 full-time equivalent employees paying wages of at least 150% of the federal minimum wage and generating at least \$660,000 in total annual payroll during the first three years of project operations. The taxpayer is expected to maintain these commitments throughout the term.

Note: The payroll amount of \$660,000 approximates to 175% of the federal minimum wage for 25 full-time equivalent employees. The payroll threshold will increase as federal minimum wage increases.

2. The potential JCTC grantee must commit to maintain the level of proposed new payroll for the term of the tax credit and maintain operations at the project site for the post-term reporting period.
3. If the project involves an expansion or consolidation of an existing Ohio facility, the potential JCTC grantee must commit to retaining on an annual basis its baseline payroll. Baseline payroll is the aggregate wages paid to employees, not including fringe benefits, at the project site for the 12 months preceding approval of the project by the Tax Credit Authority. This information is aggregated on the Ohio Department of Taxation form IT-3 or can be found for individual employees on form IT-2 in the "Total Ohio Wages" box. The JCTC will apply only to the income tax revenue according to the formula for calculating the tax credit set forth in these guidelines.
4. The project must involve a fixed-asset investment in land, building, machinery/equipment, and/or infrastructure improvements.
5. The taxpayer must demonstrate to the state, through its financial statements and sources and uses of funds, that it is economically sound and possesses the financial ability to complete the required capital investment.
6. The applicant must demonstrate that the tax credit is a "major factor" in its decision to expand or locate in Ohio. If a project starts prior to Authority approval, the JCTC will not be considered a "major factor" in the taxpayer's decision. Accordingly, the project must not have already started, *i.e.*, construction begun at the site or project publicly announced as planned for the project site, prior to approval by the Authority. Payroll generated prior to approval by the Authority cannot be counted as eligible, new payroll for the purpose of the tax credit.
7. Service-oriented projects must demonstrate that at least 51 percent of project site-attributable sales or revenues attributable to the project are generated from buyers located outside Ohio.

8. Intrastate relocation projects generally are ineligible to receive JCTC assistance unless a formal determination is made by the Director of Development that the legislative authority of the negatively impacted county, township, or municipal corporation has been notified by the potential taxpayer of the relocation. The potential taxpayer must also concurrently send a copy of the notice to the Executive Director of the Tax Credit Authority. The notice to the negatively impacted community must include the following:
  - (1) The number of full-time equivalent employees that will be relocated;
  - (2) The payroll attributed to the relocated employees; and
  - (3) The business reason for the relocation of employees.
9. The local community in which a project is located or its designated economic development agent must provide a letter of support for the project.
10. The potential taxpayer must maintain operations at the project site for the greater of (a) the term of the credit, plus 3 years, or (b) 7 years.

Calculation of the Tax Credit

*Baseline Income Tax Revenue (BITR)* means aggregate Income Tax Revenue (ITR) withheld at the project site over the 12 months immediately preceding the date the Authority approves the project, adjusted annually by the “Pay Increase Factor”

*Pay Increase Factor (PIF)* means one plus the numeric figure determined by the Authority to annually adjust the BITR. The figure will be determined by the Authority and be no more than the greater of (a) the taxpayer’s average payroll increase based on three most recent three years of data, or (b) twice the most recently published consumer price index available at the time the Authority approves the project.

Expressed as a formula, the tax credit calculation is as follows:

$$\text{ITR} - \text{BITR} = \text{Excess Income Tax Revenue}$$

$$\text{Excess Income Tax Revenue} \times \text{Tax Credit Percentage} = \text{Tax Credit Value}$$

Application Process

The following is a step-by-step process to apply for JCTC assistance:

1. All taxpayers interested in applying for JCTC assistance must consult with a Development representative prior to submitting an application. Such consultation may include a Development official visiting the project site.

2. A complete application must be submitted to Development for review. The application must be accompanied by an application fee in the amount equal to that set in OAC§ 122:7-1-04(A).
3. The Executive Director of the Authority will meet with appropriate Development staff to determine eligibility and, if warranted, determine a JCTC benefit level recommendation.
4. A commitment letter summarizing the recommended level(s) of JCTC assistance (as well as other economic development assistance for which the applicant may be offered) will be sent to the applicant.
5. The Authority convenes regularly to review complete applications. Generally, the Authority meets to review projects on the last Monday of each month. The Authority renders final determinations for proposed JCTC projects. The location and time of each Authority Meeting is made public prior to the meeting and may be accessed at Development's website through the following link: <http://www.development.ohio.gov/edd/jctc/>.
6. Each applicant for JCTC assistance will be screened for outstanding obligations or compliance issues with the Ohio Department of Taxation (OTAX) and the Ohio Environmental Protection Agency (OEPA). Development will obtain a tax clearance and initiate a review by each respective agency once a completed JCTC application is received.

#### Confidentiality

Financial statements and other information submitted to Development for the purposes of applying for JCTC assistance are not considered public records under ORC § 149.43. The Chairman of the Authority may, however, make use of certain information received for the purpose of issuing public reports. Information that may be shared includes the taxpayer's name; the taxpayer's affiliates description and location of the project; the number of jobs created and retained; the amount of fixed-asset investment; the benefit value of any JCTC awarded; and the taxpayer's contact person, office address, and telephone number.

The Chairman of the Authority also may make use of such information in connection with legal proceedings concerning any tax credit agreement.

Upon request of the Tax Commissioner, the Chairman of the Authority must turn over any statements or information received in connection with the tax credit. The Tax Commissioner is charged with preserving the confidentiality of the information.

#### Tax Credit Agreement & Servicing Fees

After an application is approved for JCTC assistance, the Authority will draft and send the taxpayer three (3) copies of its tax credit agreement. Once each copy of the agreement is executed by the taxpayer and returned to Development, it will be executed on behalf of the Authority. A signed original copy will be sent to the taxpayer for its records. The taxpayer must sign and return this legal document within 60 days of receipt.

The taxpayer must remit a one-time servicing fee in the amount equal to that set in Ohio OAC § 122:7-1-04(B).

### Amendments

Any substantive change to the project or terms and/or conditions of a tax credit agreement following approval by the Authority requires a formal amendment. Taxpayers requesting amendments may access an online “Amendment Request Form” and must pay a fee in the amount equal to that set in OAC § 122:7-1-04(C).

### Relocations for Post-approved Projects

As it pertains to intrastate relocations for post-approved projects, the taxpayer must notify legislative authority of the negatively impacted county, township, or municipal corporation of the relocation. The notice should be in writing and include the following:

- (1) The number of full-time equivalent employees that will be relocated;
- (2) The payroll attributed to the relocated employees;
- (3) The business reason for the relocation of employees.

This applies to relocations of employment (a) within the same political sub-division and (b) from one political sub-division to a different political sub-division. The taxpayer must also concurrently send a copy of the notice to the Executive Director of the Tax Credit Authority.

Taxpayers must report all payroll relocated during the term of its agreement on its annual progress report. Once a taxpayer reaches \$200,000 in aggregate relocated payroll, all withholdings from aggregate relocated payroll for the project will be added to the taxpayer’s “Income Tax Revenue” and “Baseline Income Tax Revenue.”

### Reporting Requirements

#### *Annual Progress Reports*

Each taxpayer must submit a complete annual progress report to the Authority no later than March 1 of each year during the term of any tax credit agreement. The annual progress report follows a standard format developed by the Authority. Information requested in the annual progress report includes the number of full-time equivalent employees for the project; total payroll for the project; income tax revenue for the project; baseline income tax revenue for the project; excess income tax revenue for the project; amount of relocated payroll for the project during the tax year; and other information Development deems appropriate. **Failure by taxpayers to submit complete and/or timely annual progress reports for the by March 1<sup>st</sup> of the year the report is due shall be assessed a \$500 late fee for each ensuing calendar month and may be subject to a reduction in tax credit percentage and/or term pursuant to ORC § 122.17(E).** Upon verification of information submitted in the annual progress report, a tax credit certificate is issued to the taxpayer.

*Requirement to “Maintain Operations”*

Once the active term of the tax credit is complete, the post-term reporting period begins of which the taxpayer must annually report by March 1<sup>st</sup> of each year and certify to Development that operations continue at the project location. Pursuant to Ohio Administrative Code (OAC) § 122:7-1-04(D), failure to submit these certifications will result in a \$500 late fee for each ensuing calendar month.

Penalties for Noncompliance

*In-term*

In the event that a taxpayer fails to generate and maintain, for the length of the term, the level of committed payroll, or if the Authority otherwise finds the taxpayer has failed to comply with any term of the agreement, the Authority may terminate or prospectively reduce the JCTC benefit level. Further, if the taxpayer fails to maintain substantial operations at the project location for the term of the tax credit, the Authority may require the taxpayer to refund up to 100% of JCTC assistance received.

*Post-term*

If the taxpayer fails to maintain operations at the project location during the post-term reporting period of the tax credit, the Authority may require the taxpayer to refund up to 75% of any JCTC assistance received.

*This information last revised 8/30/2010.*