

# Chapter 122:7-1 General Provisions

## 122:7-1-01 Definitions.

(A) "Authority" means the tax credit authority created pursuant to section [122.17](#) of the Revised Code.

(B) "Date of initial operations" means the date on which the taxpayer's facility and equipment are in a condition sufficient to allow for the initiation of substantial project activities, including but not limited to, the manufacture of product, storage of goods and development of software.

(C) "Director" means the director of development of the state of Ohio.

(D) "Disadvantage person" means a resident of Ohio who is meets at least one of the following criteria:

(1) Is a person who is currently receiving unemployment compensation or has not held a full-time job for at least the last four months;

(2) Is certified as having a disability by the state of Ohio's rehabilitation services commission or bureau of workers' compensation, or who is considered disabled under the Americans with Disabilities Act;

(3) Is eligible for Workforce Investment Act program assistance; or

(4) Is a person whose total gross annual income is less than the annual equivalent of one-hundred fifty percent of the federal minimum wage, or is part of a household of two or more persons whose total gross annual income is less than the annual equivalent of three-hundred percent of the federal minimum wage.

(E) "Extraordinary circumstance" means one or more of the following:

(1) The project proposes to or actually hires and maintains less than twenty-five but at least ten new full-time employment positions at a single project location within three years of initial project operations and proposes to or actually pays and maintains an average hourly base wage rate of at least four hundred percent of the federal minimum wage.

(2) The proposed project is either the indirect primary beneficiary of financial support or the direct non-primary beneficiary of financial support from a local political subdivision, a county, or a nonprofit economic development agency;

(3) The proposed project involves the establishment or expansion of headquarters, research and development, science and technology, or information systems-related operations; or

(4) Other factors related to the project that present an extraordinary opportunity for the state.

(F) "Fixed-asset investment" means the dollar amount invested in building, land, machinery and equipment, computers, and infrastructure related to the project. It does

not include investments in furniture and fixtures, inventory, working capital, and other miscellaneous items.

(G) "Full-time employees" means individuals who are employed for consideration for an average of at least thirty-five hours a week or for less than an average of thirty-five hours a week if such a standard of service is generally accepted by custom and is specified in the tax credit agreement with the authority.

(H) "Maintained employees" means the full-time employees employed by the taxpayer within the same county or within a fifteen-mile radius as the project on the date the authority approves the project for a tax credit in a public meeting.

(I) "Minority" means a resident of Ohio who is a member of one of the following groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.

(J) "Retail" means the effecting of point-of-final-purchase transactions at a facility open to the consuming public, wherein one party is obligated to pay the price and the other party is obligated to transfer title to or possession of the item sold.

(K) "Retained employees" means the full-time employees employed in the project at the project location on the date the authority approves the project for a tax credit in a public meeting. Retained employees includes those full-time employees hired after the authority approves the project for a tax credit and before the taxpayer has entered into the tax credit agreement, if the taxpayer has not entered into the tax credit agreement within sixty days after receiving the agreement from the department of development. Further, retained employees includes those full-time employees transferred to the project locations or relocated to the project location under division (D)(8) of section [122.17](#) of the Revised Code before the authority approves the project for a tax credit in a public meeting and after such action by the authority.

(L) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 or 5747.02 of the Revised Code is required to be paid.

(M) "Taxable year" means the annual tax reporting period of the taxpayer prescribed by division (A) of section [5733.031](#) of the Revised Code.

(N) "Taxpayer" means a business entity that has entered into an agreement for a tax credit pursuant to division of section [122.17](#) of the Revised Code.

(O) "Transferred employees" means the full-time employees employed by the taxpayer in another political subdivision in the state other than the political subdivision in which the project is located that are relocated to the project location and whose positions are refilled in the first political subdivision. Such transferred employees relocated to the project location after the authority approved the project for a tax credit in a public meeting shall not be considered new employees under these rules.

Effective: 01/31/2007

R.C. 119.032 review dates: 11/01/2006 and 01/31/2012

Promulgated Under: 119.03

Statutory Authority: 122.17

Rule Amplifies: 122.17

Prior Effective Dates: 9/25/2000; 11/8/1999; 4/8/1994; 11/10/2003

## **122:7-1-02 Meetings of the tax credit authority.**

(A) The authority shall act only at a meeting conducted in accordance with this rule. Three members of the authority constitute a quorum to transact and vote on the business of the authority. No action shall be taken by the authority without the concurrence of a majority of the membership. "Roberts Rules of Order" shall govern the proceedings at all meetings.

(B) The department of development shall provide the authority with an adequate meeting place, supplies, and staff assistance, including an executive director.

(C) Regular meetings. Regular meetings of the authority may be:

(1) Held in accordance with a schedule adopted by the authority, without additional notice to members;

(2) Scheduled at a previous meeting of the authority; or

(3) Scheduled by the chairman or a majority of the members of the authority at least seven days in advance of a meeting. Upon request, the authority shall provide at least four days notice of the time, place, and purpose of its regular meetings to any person.

(D) Special meetings. The chairman or a majority of the members of the authority may call a special meeting by providing to the members at least twenty-four hours advance notice of the time, place, and purpose of the meeting. The authority shall give twenty-four hours advance notice of the time, place, and purpose of all special meetings to the news media that have requested notification.

(E) Emergency meetings. In the event of an emergency requiring immediate official action, the chairman or a majority of the members of the authority may call an emergency meeting. The authority shall notify, as soon as possible, the news media that have requested notification regarding the time, place, and purpose of the meeting.

(F) Specific business. Any person may, upon request and payment of a reasonable fee to be determined by the authority, obtain reasonable advance notice and an agenda of all meetings at which any specific type of public business is to be discussed.

(G) Agenda. The chairman of the authority shall prepare an agenda for each regular meeting. The agenda shall be distributed by mail or facsimile to the members of the authority at least four days prior to each regular meeting. The chairman or authority calling a special meeting of the authority shall prepare an agenda for such meeting and include a copy of the agenda with a notice of such meeting.

HISTORY: Eff 4-8-94; 11-8-99

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(I), 122.18(E)

Rule amplifies: RC 122.17, 122.18

RC 119.032 Review Dates: November 8, 2004

### **122:7-1-03 Officers.**

(A) Chairperson. The director, or the director's designee, shall serve as chairperson of the authority. After the authority has approved tax credits for a project, the chairperson or a professional employee of the department of development to whom the chairperson has delegated such authority shall execute all agreements with the business entities for tax credits and all agreements with the landlords for annual payments.

(B) Vice-chairperson. The authority shall annually elect one of its members to serve as vice-chairperson. In the absence of the chairperson or the chairperson's designee, the vice-chairperson shall act as chairperson of the authority. In the absence of the chairperson or the chairperson's designee and the vice-chairperson, the members of the authority present at a meeting may elect one of its members to chair the meeting.

HISTORY: Eff 4-8-94; 11-8-99

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(I), 122.18(E)

Rule amplifies: RC 122.17, 122.18

RC 119.032 Review Dates: November 8, 2004, 11/8/99

### **122:7-1-04 Fees.**

(A) Application fees. A taxpayer shall submit a five hundred-dollar application fee to the department of development at the time of the submission of the tax credit application. These fees shall be utilized to cover the administrative costs of the tax credit program as incurred by the department of development. If the tax credit application is not processed and presented to the authority for consideration, the department of development shall refund the application fee to the taxpayer. In all other instances, the application fee shall be non-refundable.

(B) Servicing fees. A taxpayer shall submit a servicing fee, equal to one-hundred twenty-five dollars times twice the term of years of the tax credit, up to a maximum of three thousand seven hundred fifty dollars to the department of development at the time the taxpayer enters into the tax credit agreement. These fees shall be assessed for each grantee listed in the agreement. These fees shall be utilized to cover the administrative costs of the tax credit program as incurred by the department of development.

(C) Amendment fees. A taxpayer that has already received approval from the authority for tax credit assistance shall submit a three-hundred dollar fee to the department of development at the time a request to amend in a substantive manner a previously approved tax credit project. The executive director of the authority shall determine if a request to amend is subject to this fee. Substantive amendments may include but shall not be limited to changes in grantee, project scope, and assignment of tax credits. These

fees shall be utilized to cover the administrative costs of the tax credit program as incurred by the department of development.

(D) Late fees. A taxpayer that does not submit a complete annual report postmarked or received prior to March first of the year the report is due will be assessed a late fee of five hundred dollars on the first day of each ensuing calendar month until the taxpayer submits a complete annual report under division (A) of Section 122:7-1-07 of the Administrative Code. An annual report submitted to the Director but determined to be substantially incomplete shall be assessed a late fee as stated above. The fee must be paid in full before a tax credit certificate will be issued for the taxable year. These fees shall be utilized to cover the administrative costs of the tax credit program as incurred by the department of development.

HISTORY: Eff 12-26-03

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(I)

Rule amplifies: RC 122.17

RC 119.032 Review Date: 12/26/08

### **122:7-1-05 Eligibility requirements.**

(A) Except as otherwise provided in this rule, the authority may grant a tax credit pursuant to section [122.17](#) of the Revised Code if the authority determines the business entity's proposed project demonstrates all of the following:

(1) The project satisfies the requirements set forth in section 122.17(C) of the Revised Code;

(2) The project proposes to or actually pays and maintains an average employee hourly base wage rate of at least one hundred and fifty percent of the federal minimum wage;

(3) The project proposes to or actually hires and maintains at least twenty-five new full-time employment positions at a single project location within three years of the project's initial operations; unless the authority finds an extraordinary circumstance under paragraph (B) of this rule, in which case the project will continue to employ the minimum number of new employment positions specified by the authority:

(4) The project continues to employ at least twenty-five new employment positions at the project site for the term of the tax credit after the three year period following the project's date of initial operations, unless the authority finds an extraordinary circumstance under paragraph (B) of this rule, in which case the project will continue to employ the minimum number of new employment positions specified by the authority:  
and

(5) The project is the primary beneficiary of direct financial support from a local political subdivision, a county, or a nonprofit economic development agency.

(B) A proposed project that fails to satisfy paragraph (A)(3) or (A)(4) of this rule may be granted a tax credit pursuant to section [122.17](#) of the Revised Code upon the recommendation of the executive director and a finding by the authority that there is an extraordinary circumstance which merits an exception.

(C) All or any portion of a project determined to be retail shall not be eligible for tax credits pursuant to section [122.17](#) of the Revised Code.

(D) Service projects must demonstrate that at least fifty-one percent of the sales or revenues attributable to the project are generated from outside the state of Ohio within three years of initial project operations to be eligible for tax credits pursuant to section [122.17](#) of the Revised Code.

(E) The authority shall from time to time set additional eligibility requirements for the projects of business entities to receive tax credits.

HISTORY: Eff 4-8-94; 11-8-99; 9-25-00; 11-10-03

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(F), 122.18(E)

Rule amplifies: RC 122.17, 122.18

R.C. 119.032 Review Dates: 08/15/2003 and 11/10/2008

### **122:7-1-06 Tax credit percent and term.**

(A) Except as otherwise provided in paragraph (D) of this rule, the authority shall not grant a tax credit that exceeds seventyfive percent of the new state income tax revenue to be received by the state for a taxable year from new employees in a project.

(B) The authority shall not grant a tax credit that exceeds a term allowable pursuant to section 122.17(D) of the Revised Code. The tax credit shall be claimed by the taxpayer for the consecutive taxable years during the term.

(C) The authority shall consider the following factors in determining the tax credit percentage and term to be granted to a taxpayer:

- (1) The number of new full-time jobs to be created;
- (2) The average hourly base wage rate of the new full-time jobs to be created;
- (3) The total fixed-asset investment amount the taxpayer and other related members are making in the project;
- (4) The number of full-time jobs to be retained at the project location;
- (5) The economic condition of the area of the state where the project is located;

(6) The specific percentage of disadvantaged persons and minorities the taxpayer is agreeing to hire for the project;

(7) The type of project proposed for tax credit assistance;

(8) The amount of direct local financial support provided to the project; and

(9) The amount of other financial assistance the taxpayer and other related members are to receive from the state for the project.

(D) The authority may grant a tax credit greater than seventy-five percent of the new state income tax revenue to be received by the state for the taxable year from new employees in a project and/or a term exceeding ten years, if:

(1) The proposed project receives a term of five years or less, and the executive director recommends and the authority finds that there is an extraordinary circumstance which merits such an exception; or

(2) The proposed project receives a term of more than five years, and the director recommends and the authority finds that there is an extraordinary circumstance which merits such an exception.

(E) For a taxable year specified in the tax credit agreement where the taxpayer has not substantiated to the satisfaction of the director the amounts reported by the taxpayer under division (D)(6) of section [122.17](#) of the Revised Code by the date the refund statute of limitations expires for that taxable year, as provided in division (B) of section 5733.12 or division (B) of section [5747.11](#) of the Revised Code, then the director shall not issue a certificate under division (D)(7) of section [122.17](#) of the Revised Code for that taxable year.

HISTORY: Eff 11-8-99; 4-8-94; 9-25-00; 11-10-03

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(I)

Rule amplifies: RC 122.17

R.C. 119.032 Review Dates: 08/15/2003 and 11/10/2008

## **122:7-1-07 Reports.**

(A) A taxpayer shall be required annually during the term of the tax credit to submit a report to the director specifying the number of eligible new employees, the new state of Ohio income tax revenue withheld in connection with the eligible new employees for the preceding taxable year, the annual payroll of the eligible new employees, the average wage of the eligible new employees, and any other information the director deems appropriate to perform his or her duties. This taxpayer's report to the director shall be certified as accurate and complete as evidenced by the original signature of any authorized officer of the taxpayer.

(B) The taxpayer shall maintain its operations at the project site for at least twice the number of years as the term of the tax credit. No later than March first of each year for an additional period equal to the term of the tax credit following the term of the tax credit, the taxpayer shall submit to the director a certification that includes, but is not limited to, information demonstrating the taxpayer maintains operations at the project location and the total employment at the project location.

(C) The taxpayer shall establish and maintain for at least four years from the conclusion of the tax credit such records as are required by the director. Such records includes, but not limited to, records of personnel and conditions of employment. The taxpayer shall organize and make available such records as required under this rule for the review and verification of the director or his representative and appropriate state agencies or officials. The taxpayer shall permit the director or his representative and appropriate state agencies or officials to audit, examine and make excerpts or transcripts from records maintained under this rule at any time during normal business hours upon written notice and as often as the director may reasonably deem necessary. In the event the director determines a taxpayer has submitted an annual report containing erroneous data or data not supported by the records established and maintained under this rule, the director may, after providing notice, require the taxpayer to resubmit corrected annual reports for the years in which such reports were filed.

HISTORY: Eff 11-8-99; 4-8-94; 11-10-03

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(1)

Rule amplifies: RC 122.17

R.C. 119.032 Review Dates: 11/10/2008

### **122:7-1-08 Penalties.**

In the event a taxpayer fails to achieve the number of new full-time employment positions by the date set forth in the tax credit agreement or if the authority finds that the taxpayer has failed to comply with any term set forth in the tax credit agreement, the authority may unilaterally and prospectively reduce the percentage and term of the tax credit or immediately terminate the tax credit set forth in the tax credit agreement. In the event a taxpayer relocates employment positions in violation of section 122.17(D)(8) of the Revised Code and that taxpayer has been previously issued tax credit certificates, the authority may, after providing notice, reduce the tax credit rate to preclude the taxpayer from taking any further credits for the term of the tax credit. In the event a taxpayer relocates such positions and has not been previously issued a tax credit certificate, the authority may terminate the tax credit.

HISTORY: Eff 11-8-99; 4-8-94; 11-10-03

Rule promulgated under: RC 119.03

Rule authorized by: RC 122.17(I)

Rule amplifies: RC 122.17

R.C. 119.032 Review Dates: 08/15/2003 and 11/10/2008