

TECHNOLOGY INVESTMENT TAX CREDIT

PROGRAM GUIDELINES

www.development.ohio.gov/tech/titc/

This document is designed to provide program information for Entities and Investors interested in participating in the Technology Investment Tax Credit Program (TITC).

Staff strongly recommends interested parties thoroughly review these guidelines and the information located online prior to participating.

For additional information, including Frequently Asked Questions, applications and forms, meeting schedules and deadlines, please refer to www.development.ohio.gov/tech/titc/.

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I. TITC Program Overview

The program provides a tax credit for Ohio taxpayers that invest in small, Ohio-based technology companies. The amount of the tax credit is 25% (or 30% in some limited cases) of the amount invested by the taxpayer. The maximum investment to which this credit may be applied is \$250,000 (or \$300,000). The credit may be claimed against personal income tax, corporate franchise tax, public utility excise tax or the dealers in intangibles tax.

If an investor is investing in an Encouraging Diversity Growth and Equity (EDGE)-qualified entity, or an entity in a “distressed county,” the amount of tax credit is 30% and the maximum investment to which the credit can be applied is \$300,000. Refer to Section VI for complete details on TITC and EDGE-qualified and Distressed County-qualified entities.

The law currently authorizes the issuance of up to \$45 million in aggregate credits. As of December 2010, \$34.8 million in tax credits have been issued for investments in TITC approved entities.

The law provides the following additional limitations for TITC investments:

	<u>Investments</u>	<u>Credits</u>
Statewide Limits	\$180,000,000	\$45,000,000
Entity Limits	\$1,500,000	\$375,000 (25%) \$450,000 (30%)
Investor Limits (per entity)	\$250,000 (25%) \$300,000 (30%)	\$62,500 (25%) \$90,000 (30%)

The investment amount above is the maximum amount for which a credit can be obtained. An investor will receive a tax credit of 25% of the investment, or 30% of the investment if investing in an EDGE or Distressed County enterprise. The maximum credit an investor may receive is \$62,500, or \$90,000 if investing in an EDGE or Distressed County enterprise. This corresponds to the maximum single investment in one company of \$250,000 (\$300,000 if the company is an EDGE or Distressed County enterprise).

The TITC process includes the following steps, which are further explained in this document.

1. Each entity (company) must meet the program requirements for eligibility and be approved by the TITC Committee.
2. Each investment in an approved entity must meet the program requirements for eligibility and be approved by the TITC Committee.
The investment must be approved before the investment transaction. Investments completed prior to approval are not eligible for the tax credit.
3. The company and investor must submit a *Tax Credit Certificate Request Form* along with the required investment documentation to the Ohio Department of Development in order to receive the tax credit certificate.
4. The investor then submits his/her/its Ohio Tax Credit Certificate along with his/her/its Ohio tax return to utilize the credit. The credit must be used against current tax liabilities each year, but can be carried forward for up to 15 years. The tax form required for claiming this credit is Schedule E, as of 2005.

All forms and information can be found online at www.development.ohio.gov/tech/titc/.

All applications (except for the *Entity Requalification Form* and the *Tax Credit Certificate Request Form*) must be filed with a TITC Edison Partner (Center or Incubator), which are located throughout the state.

The TITC Committee is formed by three members of the Industrial Technology and Enterprise Advisory Council (ITEAC), whose members are appointed by the Governor and the General Assembly. Applications will be reviewed by the TITC Committee at monthly meetings to ensure that the applications meet the requirements set forth in ORC 122.15.

Program History: The Technology Investment Tax Credit Program (TITC) became effective on November 18, 1996. Applicants should reference Sections 122.15 to 122.154 of the Ohio Revised Code, in addition to Sections 5707.05, 5727.41, 5733.34, 5733.98, 5747.32 and 5747.98. In addition to the legal requirements of the Program, the Ohio Department of Development (ODOD) has adopted guidelines for eligible companies and investors, which are outlined here and in the applications.

The Director of the Ohio Department of Development reserves the right to deny or cease tax credit status if he determines that the company in which the applicant proposes to invest, or has invested in (after obtaining approval), is not an Entity eligible to receive investments that qualify for the credit, or that the investment is not eligible to receive the tax credit. Should the Director disapprove an application, or void a tax credit, he/she shall certify the action, with written explanation, to the investor(s), the Entity, the Edison Center or Incubator that recommended the application, and the TITC Committee.

II. ENTITY (COMPANY) APPLICATION GUIDELINES AND REQUIREMENTS

To participate in the program, the first step is that the company (entity) must meet the requirements of the program and be approved by the TITC Committee as an “approved entity.”

In order to qualify for the program, prospective entities must meet all of the following criteria:

1. As defined in ORC Section 122.15(B) an Entity must be a corporation, limited liability company, or unincorporated business organization, including a general or limited partnership.
2. The Entity's principal place of business must be located within the State of Ohio, it must have at least 50% of its gross assets located within the state, and 50% of its employees located within the State. If the Entity is a member of an affiliated group, the gross assets and the number of employees of all members of the group, wherever those assets and employees are located, shall be included for the purpose of determining the percentage of the Entity's gross assets and employees that are located in Ohio.
3. The entity must have a valid business license in Ohio or be organized in the State of Ohio.
4. To be considered a qualified trade or business, the Entity must be involved primarily in research and development, technology transfer, Bio-technology, information technology, the application of new technology developed through research and development or acquired through technology transfer.
 - a. “Research and development” means designing, creating, or formulating new or enhanced products, equipment, or processes, and conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge that may reveal the basis for new or enhanced products, equipment, or processes.
 - b. “Technology Transfer” means the transfer of technology from one sector of the economy to another, including the transfer of military technology to civilian applications, civilian technology to military applications, or technology from public or private research laboratories to military or civilian applications.
 - c. Information Technology is the branch of technology devoted to the study and application of data and the processing thereof; the automatic acquisition, storage, manipulation or transformation, management, movement, control, display, switching, interchange, transmission or reception of data, and the development or use of hardware, software, firmware, or procedures associated with this processing. Information technology includes matters

concerned with the furtherance of computer science and technology, design, development, installation and implementation of information systems and applications that, in turn, will be licensed or sold to a specific target market. Information technology does not include the creation of a distribution method for existing products and services.

5. Qualified trade or businesses **do not include** any of the following:

- a. Any trade or business involving the performance of services in the field of, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of one or more of its employees.
 - b. Any banking, insurance, financing, leasing, rental, investing, or similar business.
 - c. Any farming business, including the business of raising or harvesting trees.
 - d. Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under Section 611, 613, or 613A of the "INTERNAL REVENUE CODE of 1986" 100 STAT. 2085, 26 U.S.C.A. 611, 613, or 613A.
 - e. Any business operating a hotel, motel, restaurant, or similar business.
 - f. Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home. "Nursing Home" has the same meaning as in section 3721.50 of the ORC. "Hospital" has the same meaning as in section 3727.01 of the ORC.
5. The company must have had gross revenue of less than \$2,500,000 or a net book value of less than \$2,500,000 in the last completed fiscal year.
6. Following approval, the Entity must submit any information that the TITC Edison Centers and Incubators, and TITC Committee shall require, to determine if the company maintains its status as an Entity. The Entity must also provide information as requested to evaluate the effectiveness of the TITC Program.

Refer to the Entity Application for additional information.

Each company must submit their completed entity application to a TITC Edison Center or Incubator, along with a non-refundable \$150 application fee (made payable to one of the Centers or Incubators). A complete current list of the TITC Edison Centers and Incubators is posted on the website, www.development.ohio.gov/tech/titc/. The Center or Incubator shall either disapprove the application and inform the entity of the reasons for disapproval, or approve it and forward it to the TITC Program office in Columbus.

- **Each original (not faxed or emailed) entity application should be received by the TITC Edison Partner by the deadline posted on the website. This is typically one week prior to the Development deadline and allows the Edison Partner to review, process and submit to Development.**
- **Each original (not faxed or emailed) entity application must be received by the program office in Columbus (Development) by the deadline published on the web site to be considered at the following TITC meeting. This is typically two weeks prior to the TITC meeting.**

Upon receipt of the application, TITC Staff will review each application, ensure that it is complete, and if it meets the program requirements, recommend it for approval by the TITC Committee. The TITC Committee, which meets the first Thursday of each month, will then consider the entity application. New entity applicants are encouraged to attend the TITC Committee meeting to present a short (5 minutes maximum) presentation detailing how their company meets the TITC requirements. Following the presentation, the entity should be available for questions from the Committee.

Once all questions have been answered, the Committee will vote. Following the meeting, approved and disapproved companies will receive a letter from the TITC program manager informing the company of the Committee's decision and rationale. If the application is approved, the Entity's name will be added to a publicly accessible database indicating its eligibility to receive tax credit investment. First time company approvals expire within one year of the approval date. Investments must be completed while the company is an approved entity (and after each investment is approved) in order to be eligible for the tax credit. After the initial year, each company may apply for "entity requalification."

Participating Entities are required to provide information in subsequent years to determine the overall success of the program.

III. THE ENTITY (COMPANY) REQUALIFICATION PROCESS

The purpose of the *Entity Requalification Form* is to allow a previously approved TITC entity (company) to reapply for approval under the following circumstances: The entity's qualification period has recently expired, or is about to expire, or the entity is undergoing a simple organization change. The purpose of the Requalification process is to verify that the company still qualifies for the program, and to extend its qualification period to allow additional, new investments. **Each company must submit their requalification forms for the program no later than two months (60 days) after the prior eligibility period expiration.** Entities that fail to submit forms within two months of their expiration must submit a complete, new entity application with fee.

Applicants should complete the form as indicated. The form must be signed by a company official. The form is available as an Excel file online (at www.development.ohio.gov/tech/titc), but applicants must submit a printed and signed paper copy. There is no application fee for timely *Requalification Applications*.

The printed form should be submitted directly to:

Technology Investment Tax Credit Program
Ohio Department of Development
77 South High Street, 25th Floor
Columbus, Ohio 43215-6130.

- **Each original (not faxed or emailed) *Requalification Application* must be received by the program office in Columbus by the deadline published on the website in order to be considered at the next monthly meeting.**

See the current meeting schedule and deadlines at www.development.ohio.gov/tech/titc/.

Upon receipt of the application, TITC Staff will review each application, ensure that it is complete, and, if it meets the program requirements, recommend it for approval by the TITC Committee. The TITC Committee, which generally meets the first Thursday of each month, will then consider the application.

Following the meeting, approved and disapproved companies will receive a letter from the program manager informing the company of the Committee's decision and rationale. If the application is approved, the Entity's name will be updated in a publicly accessible database indicating its eligibility to receive tax credit investment. If approved, the company will be requalified for a term equal to six months from the approval.

IV. THE INVESTMENT APPROVAL PROCESS

To participate in the program, after an entity (company) is approved, each investment must meet the eligibility requirements of the program and be approved by the TITC Committee. **Each investment must be approved prior to investment completion. Investments completed prior to approval are not eligible for the tax credit.**

In order to qualify for the program, prospective investments and investors must meet all of the following criteria:

1. The applying investor/s must not be delinquent in any state or local taxes as defined in ORC Section 122.15(G).
2. The investor's investment of money must be in an Entity currently approved as a qualified entity. **Investments may be approved at the same monthly meeting where the entity is approved or requalified.**
3. The investor may not be an "employee with proprietary decision-making authority" of the Entity in which the investment of money is proposed, or related to such an individual. The definition of such a person is determined by the Committee on a case-by-case basis, but generally includes paid officers and board members of the entity. The spouses, parents, children and siblings of such employees are "related" and are also ineligible for the credit.
4. The investor may not be an insider. An insider is a person or entity who owns, controls, or holds power to vote greater than 5% of the ownership of the entity. To determine whether an investor is an insider, compare the sum of the percentages of ownership of the investor and each of the investor's dependents and spouse who were claimed on the investor's most recently filed federal tax return, against the limit of 5%. If the sum is greater than or equal to 5%, the investor is considered an insider and is ineligible for the credit.
5. The maximum tax credit issued shall not be more than \$62,500 (or \$90,000 for an EDGE or distressed county entity) for any one investor in any one company.
6. The investment must take the form of the purchase of newly-issued common or preferred stock, a membership interest, partnership interest, or any other ownership interest. The equity position must be directly purchased from the Entity.
7. No repayment of principal invested may be made for at least three years from the date the investment is made.
8. The annual combined amount of any dividends and interest payments to be made to the investor may not exceed ten percent of the amount of the investment

for each of the three years from the date the investment is made.

Each investor must submit his/her/its completed investment application to a TITC Edison Center or Incubator, along with a non-refundable \$200 application fee (made payable to the Center or Incubator). (A complete current list of the TITC Edison Centers and Incubators is posted on the website, www.development.ohio.gov/tech/titc/.) Alternatively, an \$800 group investment application fee may be submitted for groups of up to 20 investment applications in the same Entity, submitted at one time to the Edison Partner. The Edison Partner shall either disapprove an application and inform the investor of the reasons for disapproval, or approve it and forward it to the TITC Program office in Columbus (Development).

- **Each original (not faxed or emailed) investment application should be received by the TITC Edison Partner for approval at least one week prior to the Columbus deadline, to allow time for the required review, processing and mailing.**
- **Each original (not faxed or emailed) investment application must be received by the program office in Columbus by the deadline published on the website in order to be considered at the following monthly meeting.**

Upon receipt of the application, TITC Staff will review each application, ensure that it is complete, and, if it meets the program requirements, recommend it for approval by the TITC Committee. The TITC Committee, which normally meets the first Thursday of each month, will then consider the *Investment Application*. After a vote by the Committee, approved and disapproved investors will receive a letter from the program manager informing the investor of the Committee's decision and rationale. Generally, investments must be completed within 120 days of approval by the TITC Committee. However, the committee will consider requests from approved entities for shorter and longer investment periods.

If the equity investment results from the conversion of a debt obligation to an equity position in the company (conversion of simple convertible debt), the Entity and Investor must provide documentation acceptable by TITC Staff that substantially proves the equity investment occurred in the required time frame as outlined for a cash investment above.

In the event that an Entity must acquire the funds before the TITC Committee approves the Investor application, a specific-use TITC investment related escrow account may be established for the deposit of the funds. In cases where an escrow account is used, a statement from the financial institution holding the funds must be included, stating all of the details of the account, including withdrawal authorization as well as confirmations of each withdrawal and deposit relating to the investment. The entity and investor must provide documentation acceptable by TITC Staff that substantially proves the equity investment occurred in the required time frame as outlined for a cash investment above.

V. TAX CREDIT CERTIFICATE REQUEST PROCESS

The company and investor must submit a *Tax Credit Certificate Request Form* along with the requested documentation in order to receive the tax credit certificate. This form is submitted directly to the TITC Program Office at the Ohio Department of Development. The form, along with the required attachments, provides proof of the investment within the approval period stated in the investor's approval letter.

Please refer to the *Tax Credit Certificate Request Form*; the following documentation is required:

1. A notarized Investor Certification Form from the investor (Form A of the *Tax Credit Certificate Request Form*).
2. A notarized Company Certification Form from the entity (Form B of the *Tax Credit Certificate Request Form*).
3. Positive proof that the investor has transferred monies from an account over which he/she/it has control to the company for purchase of ownership interest. For example, if the investor wrote a personal check to a bank, which then issued a certified check to the entity, the investor must supply a copy of the investor's cancelled personal check (front and back) and a copy of the cancelled certified check (front and back) Alternative documentation, such as a letter from the issuing bank, a wire transfer order or a copy of the investor's bank statement is acceptable as long as the proof is sufficient to prove investment by the investor.
4. Positive proof that the company (entity) deposited the investment in a company account. For example, the applicant may provide a copy of the bank's deposit receipt specifically identifying each deposit by investor name and investment amount. Another alternative is a signed letter from the bank on bank letterhead stating the investor's name, amount deposited, and the corresponding date of deposit for each investor. Such letters should include the bank employee's contact information for verification.
5. A stock certificate or other dated legal proof of ownership in the company.

Each investor must submit a completed *Certificate Request Form* to the TITC Program office in Columbus within 120 days of the approval date, as outlined in the investment approval letter. Generally the investment deadline is 120 days after the approval by the committee, but it may be changed by the committee on a case-by-case basis. The resulting timeline with the default 120 day investment window is as follows:

Investment Approval	Day 0
Investment Complete Deadline	Between 0 and 120 days
Certificate Request Submission Deadline	Day 120

If a completed *Certificate Request Form* is not received by the TITC program office by the deadline, the investment approval and tax credit authorization is subject to cancellation without notice. This provision allows previously committed but unused tax credits to be used for new investment applications.

Upon receipt of the application, TITC Staff will review each request, ensure that it is complete, and, if it meets the program requirements, will print the Tax Credit Certificate. The Tax Credit Certificate must then be signed by the Chairman of the TITC Committee and by the Director of the Department of Development. Generally, the certificates will be mailed to the requesters within 60 days of the submission of a completed *Certificate Request Form*.

The investor must provide ongoing information, as requested, to evaluate the effectiveness of the Technology Investment Tax Credit Program.

VI. EDGE CERTIFIED ENTITIES AND DISTRESSED COUNTY ENTITIES

Investors in companies which are EDGE-qualified receive expanded benefits under the TITC program. Likewise, companies which reside in so-called “distressed counties” receive the same expanded benefits.

An investor in a TITC-qualified company will normally receive a tax credit of 25% of the investment. Investors in EDGE companies and companies in distressed counties receive a credit for 30% of the investment. The maximum credit an investor may receive is \$62,500, or \$90,000 if investing in an EDGE or Distressed County enterprise. The maximum single investment in one company is \$250,000 (\$300,000 if the company is an EDGE or Distressed County enterprise).

Distressed Counties:

Please review the website for a current list of Qualifying Distressed Counties as determined by ORC 122.15.2

EDGE Companies

EDGE, which is an abbreviation for Encouraging Diversity, Growth and Equity, is a program that is managed by the Ohio Department of Administrative Services. The criteria and qualifications to become an EDGE-certified company include location in a qualified census tract or demonstration of a socially and economically disadvantaged business status. Full details can be found at <http://www.ohio.gov/das/EDGE>.

If your business is located in a qualified census tract, no proof of social disadvantage is required. A qualified census tract is based on median household income level, unemployment level and/or poverty level within the state as prescribed by Title 26 of the U.S. Code Section 42(d). To view areas of Ohio that qualify, and to see if your business address qualifies, visit <http://map.sba.gov/hubzone/hzqry.asp?state=OH>.

For a quick overview of the EDGE program for businesses, refer to:

<http://www.das.ohio.gov/eod/edge/EDGEFAQBusiness.htm>

VII. CONTACTS

Your first resource of information is the program website, www.development.ohio.gov/tech/titc/. The website is updated frequently and includes current application deadlines, meeting schedules and frequently asked questions.

Your second resource for information is your local TITC Edison Center or Incubator.

In order to make local resources available to companies and investors who wish to take advantage of the TITC program, all entity (company) and investment applications must be submitted first to a TITC Edison Partner, located throughout Ohio. At each center or incubator, a business assistance specialist can assist you in answering any program questions, completing your application, or referring you to other business assistance resources in your area.

Please refer to the website for the most up-to-date list and complete contact details. www.development.ohio.gov/tech/titc/

Finally, your third point of contact is the Technology Investment Tax Credit program office at the Ohio Department of Development.

Technology Investment Tax Credit Program

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