



## Department of Development

### **Job Retention Tax Credit Program (JRTC) 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) § 122.171 governing the Job Retention 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 except that projects approved on and after July 1, 2009 will be subject to the program's annual cap outlined in the "Eligibility Requirements" section of this document.

The Ohio General Assembly created the Job Retention Tax Credit Program (JRTC) in 2002. The program makes available to eligible companies operating within Ohio *non-refundable* tax credits against their respective corporation franchise tax, Commercial Activities Tax, or income tax obligations. Credits granted under the JRTC allow participating companies to receive credit equal a portion of the state income taxes withheld from eligible existing full-time employment positions. The JRTC program is designed for use exclusively by large-scale capital investment projects. In consideration for a taxpayer's commitment to significantly invest in the acquisition, construction, renovation, or repair of its facilities and/or machinery and equipment, the job retention program offers substantial tax savings. The retention tax credit is structured to resemble the Job Creation Tax Credit Program (JCTC), incorporating a number of similar programmatic requirements and conditions for participation.

As with its duties under the JCTC, the Authority, a five-member independent board consisting of taxation and economic development professionals from throughout the state, is charged with reviewing and making determinations on job retention tax credit applications for assistance. In addition to its review function, the Authority has contract and oversight responsibilities that include monitoring and reporting the progress of approved tax credit projects. The Ohio Department of Development (Development) administers the JRTC program for the Authority.

Interested stakeholders are strongly encouraged to review the relevant statutory and administrative code authorities governing the JRTC. See ORC § 122.171 and Ohio Administrative Code (OAC) Rules 122:16-1-01 through 06. In addition to these legal requirements of the program, the Authority and Development have adopted these guidelines for eligible companies and projects.

#### Tax Incentives

The Authority may issue tax credits under the program allowing companies to receive a credit up to 75 percent of the state income taxes withheld from eligible full-time employees for a period of up to 10 years. Those projects committed to the "significant retention" of annual payroll, defined in these guidelines as annual payroll of at least \$40,000,000, may be granted a tax credit for a period of up to 15 years.

### Eligible Businesses & Projects

Firms organized as C-corporations, sole proprietorships, limited liability companies, partnerships, and S-corporations may apply for and receive tax credits under the job retention program. An eligible business must be a taxpayer; the taxpayer must pay corporation franchise, state income, or Commercial Activity Taxes to receive the benefit of the JRTC. Specific guidance as to the distribution of JRTC assistance through a pass-through entity is provided under ORC § 122.171(I).

To receive assistance, the JRTC requires that taxpayers satisfy the following project requirements:

1. The taxpayer must employ at least 500 full-time equivalent employees at the project site at the time the tax credit authority grants the tax credit.
2. Tax credit assistance is predicated on the taxpayer's maintenance of at least 500 full-time equivalent employees at the project site for the entire term of any agreement with the Authority. Tax credits are awarded for 500 or more "retained positions," defined as positions of employment. "Full-time equivalent employees" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment in the project by 2080. The taxpayer is precluded from counting employment positions that are subject to the terms of assistance under the JRTC towards the commitment levels required by the job retention tax credit.
3. The taxpayer must invest at least \$50 million in fixed-assets for manufacturing operations or \$20 million in fixed-assets for significant corporate administrative functions at the project site. The investment must be completed within the three consecutive calendar years preceding the taxable year in which the taxpayer first claims the tax credit. The JRTC program defines a project site as a single location from which operations are conducted. Under the terms of the statute, manufacturers may designate multiple locations consisting of one or more integrated buildings or structures within a fifteen-mile radius as one project site. The taxpayer may not begin receiving job retention tax credit assistance until the minimum investment is completed. In calculating the amount of its capital investment, the taxpayer may *not* include (a) payments made for the acquisition of personal property through operating leases, or (b) payments made to related members as defined in ORC § 5733.042 or to elected consolidated taxpayers or combined taxpayers as defined in ORC § 5751.01.
4. The taxpayer is required to maintain operations at the project site for at least the greater of (a) the term of the tax credit plus three years, or (b) seven years.
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. Intrastate relocation projects generally are ineligible to receive JRTC 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;
  - (3) The business reason for the relocation of employees.
7. The local community in which a project is located must provide a letter of support for the project.
  8. The taxpayer seeking assistance under the JRTC must demonstrate that the tax credit is a major factor in its determination to begin, continue, and complete the capital investment project.
  9. Beginning with JRTC projects approved on or after July 1, 2009, the aggregate amount of tax credits issued during any calendar year for JRTC projects approved by the Authority may not exceed the following amounts:
    - For 2010, \$13 million dollars;
    - For 2011 through 2023, the amount of the limit for the preceding calendar year, plus \$13 million dollars;
    - For 2024 and each year thereafter, \$195 million dollars.
  10. For each individual project, the Authority will approve a schedule for the maximum amount of credits to be issued in a calendar year.

### Application Process

The taxpayer must submit an application for assistance to Development staff on behalf of the Authority. This application must include an application fee in the amount equal to that set in OAC § 122:16-1-02(A). After receiving an application, Development staff will distribute copies for review to the Directors of the Office of Budget and Management (OBM) and Development and the Tax Commissioner. Each agency head is charged with considering the economic and fiscal impact of the proposed project and must submit to the Authority a summary of his or her determinations and recommendations. Generally, the Authority meets to review projects on the last Monday of each month. The location and time of each 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/>.

A representative of the taxpayer must attend the Authority meeting. The Authority encourages local communities to provide representation at the meeting to reinforce their support for each respective project.

### Confidentiality

Financial statements and other information submitted to Development or the Authority by an applicant for or a recipient of a tax credit 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 full-time equivalent employees retained and/or maintained; the amount of fixed-asset investment; the benefit value of any JRTC 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 a project is approved for JRTC, the Authority will send the company a tax credit agreement. Once the agreement is executed by the taxpayer and returned to Development, the Chairman of the Authority will execute the document. A fully-executed copy will be provided to the taxpayer for its records.

The taxpayer must remit a one-time servicing fee in the amount equal to that set in OAC§ 122:16-1-02(B). Any taxpayer added to the tax credit agreement as a grantee after the date of Authority approval is subject to this fee.

### Amendments

Any substantive change to the terms and/or conditions of a tax credit agreement following approval by the Authority will require reconsideration of the project, and if approved by the Authority, a formal written amendment of the tax credit agreement. Such changes include, but are not limited to, changes in the project scope and assignment of the tax credit agreement. Taxpayers requesting an amendment may access an online "Amendment Request Form" and must pay a fee in the amount equal to that set in OAC§ 122:16-1-02(C).

### Reporting Requirements

#### *Annual Certification*

To receive a tax credit certificate, the taxpayer must submit an annual report to the Director of Development by March 1<sup>st</sup> of the year following any year for which the tax credit is claimed. The first annual report is due March 1<sup>st</sup> of the year following the calendar year in which the investment is completed and the tax credit begins. The report must detail the number of eligible

full-time equivalent employees the amount of income taxes withheld from those employees, and the amounts paid towards the completion of the capital investment. Once the Director verifies the information submitted in the taxpayer's annual report, the Director will issue a tax credit certificate to the taxpayer. The taxpayer must, in turn, file the tax credit certificate with the taxpayer's applicable state tax return. In the event that the amount of the job retention credit is greater than the taxpayer's state tax liability, any unused portion may be carried forward up to three years. **Failure by grantees to submit complete and/or timely annual progress reports 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 the report remains incomplete or unfiled.**

*Requirement to "Maintain Operations"*

Once the active term of the tax credit ends, a post-term reporting period begins. Each taxpayer-grantee must annually report by March 1<sup>st</sup> of each year of the post-term period and certify to Development that substantial operations continue at the project location. Failure to submit any post-term report and certification will result in the assessment of a \$500 late fee for each calendar month the report is not received.

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 JRTC 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 JRTC 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 JRTC assistance received.

*This information last revised 10/5/2009.*