



Sub. H.B. 374

123rd General Assembly
(As Reported by H. Ways & Means)

Reps. Harris, Trakas, Austria, Goodman, Coughlin, Tiberi, Vesper, Hollister, Netzley, Hartnett, Gardner, Brading, R. Miller, Buehrer, Mottley, Amstutz, Flannery, Jolivette, Grendell, Peterson, Barnes, Distel, Hood, Britton

BILL SUMMARY

- Grants two corporation franchise tax credits--one for qualified research expenses and one for employee job training expenses.
- The credit for qualified research expenses equals 7% of the amount by which one year's expenses exceeds the corporation's three-year average qualified research expenses. The credit begins in 2000 and is nonrefundable, but may be carried forward up to seven years.
- The credit for job training expenses equals up to 50% of the amount by which one year's expenses exceed the corporation's three-year average job training expenses, subject to specified maximums. The credit is nonrefundable, but may be carried forward three years.
- Not more than \$20 million in job training credits may be granted in any year; not more than \$10 million of this may be granted to manufacturing companies, and at least \$5 million is reserved for smaller-sized nonmanufacturing companies.
- The job training expenses credit begins in 2000 and expires at the end of 2003.

CONTENT AND OPERATION

Tax credit for qualified research expenses

(secs. 5733.39 and 5733.98)

The bill grants a credit against the corporation franchise tax for increases in qualified research expenses incurred by a corporation. The expenses must be incurred in Ohio. "Qualified research expenses" is defined in the same way as it is defined for the purpose of the existing federal tax credit for research expenses (see below).

The amount of the credit equals 7% of the amount by which qualified research expenses incurred in a year exceed the corporation's three-year average of those expenses. The three-year average is measured over the three years that precede the year for which the credit is claimed (e.g., expenses paid in 2001 would be compared to the average expenses paid over 1998, 1999, and 2000).

The credit is nonrefundable, but if the amount of the credit for a year exceeds the amount of a corporation's tax liability, the excess may be claimed as a credit against future years' tax liability for up to seven years.

The credit may be claimed for expenses paid or incurred on or after January 1, 2000.

Definition of "qualified research expenses"

"Qualified research expenses" includes expenses paid or incurred for certain kinds of research, whether the research is conducted "in-house" or under contract with another person or entity. Expenses qualifying for the credit include those undertaken "for the purpose of discovering information which is technological in nature . . . and the purpose of which is intended to be useful in the development of a new or improved" product, process, technique, formula, invention, or computer software that the corporation uses in a trade or business or sells, leases, or licenses to another. Research and experimental expenses that qualify for favorable federal tax treatment under the Internal Revenue Code also qualify (these expenses are to be deducted on a current basis, rather than being used to compute capital gain or loss).

Among the expenses that are specifically disqualified are expenses for research after commercial production begins; for adapting existing business functions to a particular customer; for duplicating existing business functions; for

surveys, marketing research, and routine testing or data collection; and for developing computer software primarily for internal use.

Treatment of corporate groups as a single taxpayer

(sec. 5733.39(C))

The bill contains a provision that effectively prevents a group of related corporations from claiming a credit greater than the total amount of credits the corporations could claim on an individual basis. If several corporations are related through common ownership or control (i.e., they are a "qualifying controlled group"), the corporations are treated as a single, consolidated taxpayer. Without this treatment, it would be possible for a group of corporations to create a new subsidiary for the purpose of conducting all of the research for the group; the subsidiary then could claim a credit for 100% of its research expenses, since it had no research expenses in the three preceding years--despite the fact that the corporations as a group did not increase research expenses at all. By treating the corporations as a single, consolidated taxpayer, corporations are prevented from inflating their increases in research expenses by creating new corporations primarily for the purpose of claiming the tax credit.

The corporations in such a group may choose how to allocate the credit among the various members of the group.

Tax credit for job training expenses

(secs. 5733.42 and 5733.98)

The bill grants a corporation franchise tax credit for four years for corporations in certain industries that incur specified kinds of job training expenses.

Eligible job training expenses

(sec. 5733.42(A)(1), (2), and (3))

To be eligible for the credit, the expenses must be for an "eligible training program"--that is, a program "to provide job skills to eligible employees who are unable effectively to function on the job due to skill deficiencies or who would otherwise be displaced because of their skill deficiencies or inability to use new technology." The expenses may include either (1) direct instructional costs (instructor salaries, materials, supplies, books, manuals, videotapes, other media, and equipment that is used exclusively to train employees), or (2) wages paid to

employees for time those employees devote exclusively to training during normal paid working hours.

An eligible employee is any employee who has been employed in Ohio by the same corporation for at least 180 consecutive days; has been "on the same job" for at least 90 consecutive days; and has worked at least 24 hours each week. Executive and managerial personnel do not qualify as eligible employees unless they are the immediate supervisors of nonexecutive or nonmanagerial employees. Also, an eligible employee excludes any employee for whom a corporation has claimed an enterprise zone job training tax credit for the same year. Under the existing enterprise zone law, a corporation can claim a corporation franchise tax credit of up to \$1,000 for paying for a new employee's job training costs. Thus, a corporation cannot claim two different tax credits for training the same employee in the same year.

Computing the credit

(sec. 5733.42(B))

The credit equals 50% of the amount by which a qualifying corporation's eligible training expenses for a year exceed the corporation's three-year average of those expenses. The three-year average is measured over the three years that precede the year for which the credit is claimed.

The maximum credit that a corporation may receive for a year is subject to the following limits:

- The credit may not exceed the equivalent of \$500 per eligible employee who is trained.
- The credit may not exceed \$100,000, or 50% of the corporation's previous year's franchise tax liability, whichever is less.

The credit is nonrefundable, but if the amount of a corporation's credit exceeds the corporation's end-of-year tax liability, the excess may be carried over for three years.

The bill treats a group of related corporations as a single, consolidated taxpayer for the purposes of computing the amount of the job training tax credit that each corporation is entitled to, in the same manner as groups of corporations claiming a research expenses tax credit (see "**Treatment of corporate groups as a single taxpayer,**" above).

Eligible corporations

(sec. 5733.42(C))

The credit is available only to corporations that are engaged in business primarily in one of the following industrial categories (based on the Standard Industrial Classification system):

- Manufacturing;
- Finance, insurance, and real estate;
- Business services;
- Legal services;
- Engineering, accounting, research, management, and related services.

The corporation's job training program must be "economically sound" and must "benefit the people of this state by improving workforce skills and strengthening the economy" of Ohio. Also, the tax credit must be a "major factor" in the corporation's decision to conduct the training program.

Total limit on credits; allocation

(sec. 5733.42(H))

The maximum total amount that may be granted in credits each calendar year is \$20 million. Of this \$20 million, no more than \$10 million may be allocated to corporations that are primarily engaged in manufacturing, and at least \$5 million must be granted to nonmanufacturing corporations with fewer than 500 employees.

Applications; confidentiality of contents

(sec. 5733.42(C), (E), and (H))

Corporations must apply to the Director of the Department of Job and Family Services (once that Department is created) for the credit. Before approving a credit, the Director must determine that all the bills' criteria relating to the credit are satisfied.

The Director must prescribe the form of the application; the application must require applicant corporations to provide a detailed description of the corporation's proposed job training program. Any financial statements or other

information submitted with an application, or taken from such submissions, are not public records subject to disclosure under the public records law, but the Director and the Tax Commissioner are permitted to use such information to issue public reports or in connection with any court proceedings involving the tax credit.

The credit is to be granted to qualifying applicants on the basis of the order in which complete, accurate applications are submitted, until the applicable aggregate dollar limit is exhausted for the year.

Recapture

(sec. 5733.42(D))

The Director has the authority to reduce the amount of a corporation's tax credit if the Director finds that the corporation's job training program fails to satisfy the conditions for the tax credit. If the Director reduces the amount of the credit, the Director must certify the reduction to the Tax Commissioner, who must reduce the amount of the credit that the corporation may claim with its tax report, in accordance with the reduction made by the Director.

Administration; rulemaking; reporting

(sec. 5733.42(F) and (G); Section 4)

Most of the administration of the job training tax credit will be the responsibility of the Director of the Department of Job and Family Services, once this Department is created. Until then, the Director of the Department of Development is responsible for most of the administration. (Current proposals call for the Department of Job and Family Services to be formed by merging the Department of Human Services and the Bureau of Employment Services.)

The Director must adopt rules governing the tax credit pursuant to the Administrative Procedure Act. Once public notice of the rules is given, the Director must submit copies of the rules to the chairpersons and ranking minority members of the House and Senate standing committees responsible for economic development matters. (Since the rules probably will be adopted before the Department of Job and Family Services is created, the Director of Development must adopt the rules; the bill provides that the rules adopted by the Director of Development continue in force until amended or rescinded by the Director of Job and Family Services.)

Annually, by September 30, the Director must submit a report on the tax credit to the Senate President, House Speaker, and the Governor. The report must include the following information: the number of job training programs for which

a credit was granted in the preceding year, a description of each of those programs, the dollar amounts of the credits granted, and "an estimate of the impact of the credits on the economy" of Ohio.

Effective date; termination

The credit may be granted for eligible job training expenses incurred between January 1, 2000 and December 31, 2003.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-01-99	p. 737
Reported, H. Ways & Means	06-24-99	pp. 963-964

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