Peter A. Cooper *Legislative Service Commission*

H.B. 690

123rd General Assembly
(As Introduced)

Reps. Robinson, Britton, Buchy, Buehrer, Carey, Coughlin, DePiero, Flannery, Jerse, Lawson Jones, Metzger, Sullivan, Tiberi, Trakas, Van Vyven, Vesper, Willamowski

BILL SUMMARY

- Authorizes refundable tax credits to information technology companies for hiring five or more new employees whose wages are at least four times the federal minimum wage.
- The credit equals a percentage of the amount of state income taxes withheld from new employees' compensation; the maximum percentage is 75%, except for extraordinary circumstances.
- The credits are allowed against the corporation franchise tax (in the case of corporations) and the personal income tax (in the case of pass-through entities).
- Conditions are placed on receipt of the credit, and the credit percentage may be reduced, or part of the credit granted may be recaptured, if those conditions are violated.
- The effectiveness of the credit is to be evaluated after five years.
- Credits are available for taxable years beginning in 2001.

CONTENT AND OPERATION

<u>Tax credits for new employees of information technology companies</u>

(sec. 122.171)

The bill authorizes the Ohio Tax Credit Authority to grant corporation franchise and personal income tax credits to "information technology companies"

for hiring new, relatively high-wage employees. Computation of the tax credits, the conditions under which they may be granted, and the procedures for granting them closely resemble the computations, conditions, and procedures under the so-called "jobs tax credits" currently granted by the Ohio Tax Credit Authority. But the bill requires that information technology company employees for which a credit is granted be paid relatively high wages, and allows them to work off-site as long as their workplace is in Ohio.

Information technology company

(sec. 122.171(A)(1))

For the purposes of the tax credits, an information technology company is a company the primary business of which "involves the provision or development of information technology." Administrative rules to be adopted by the Director of Development are to further define the meaning of the quoted phrase.

An information technology company may be organized as a corporation, an association taxable as a corporation under federal law, or a pass-through entity. Pass-through entities are sole proprietorships, partnerships, S corporations, limited liability companies, and other kinds of business organizations that are not associations taxed as corporations under federal law. The income, losses, and other tax accounting items of pass-through entities generally have no tax status at the entity level; instead, they are taxable in the hands of each of the entity's owners in proportion to the owners' respective shares in the entity. Each pass-through entity owner is entitled to a share of the entity's tax credit in proportion to the owner's share in the entity as a whole.

Qualification for the credit

(sec. 122.171(A) and (B))

In order to claim the credit, an information technology company must hire at least five "qualifying new employees." To be considered a qualifying new employee, an employee's wage rate must be at least four times as great as the federal minimum wage (currently $5.15). The employee also must satisfy the criteria for new employees under the existing jobs tax credit, except that an employee of an information technology company may actually work away from the company's place of business as long as the employee works in Ohio and the

company has a place of business in Ohio where at least ten other full-time employees work.[1]

The company also must satisfy the requirement that receiving the tax credit is "a major factor in the company's decision to go forward" with its "project" (presumably the business operations for which the new employees are to be hired). The Ohio Tax Credit Authority must make this finding.

The bill does not preclude a company satisfying the definition of information technology company from claiming the existing jobs tax credit for employees that do not satisfy the high-wage criterion.

Computation of the credit

(sec. 122.171(D)(4) and (G))

The credit equals a percentage of the amount of Ohio income taxes withheld annually from the compensation of qualifying new employees. The credit percentage may exceed 75% only if the Director of Development recommends a higher percentage on the grounds that extraordinary circumstances warrant a higher percentage.

Applying for the tax credit

(sec. 122.171(C) and (D))

Information technology companies must apply to the Ohio Tax Credit Authority for the tax credit. The Director of Development must prescribe the form for applying, and must allow for electronic applications to be made by way of the Internet. To receive the credit, qualified companies must enter into a tax credit agreement with the Ohio Tax Credit Authority under terms similar to those required for jobs tax credit agreements. The agreement must include the following:

- A description of the company's project.

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[1] *Among the other qualifications of new employees under both the bill and the existing jobs tax credit are that such employees are not previous employees of other Ohio companies that are related to one another through ownership or control (to prevent shifting of existing employees among related companies just to claim a credit); are not simply relocated from the company's other Ohio locations; or are not relatives of any employee-owner who owns at least 5% of the company.*

- The number of years for which the credit is to be granted, which may be up to ten years.

- A requirement that the company maintain operations at its place of business in Ohio for at least twice the term of the credit.

- The tax credit percentage (see "***Computation of the credit***," above).

- A method for determining how many qualifying new employees are employed during the year.

- An annual reporting requirement covering the number of qualifying new employees and the amount of Ohio income taxes withheld from them.

- A requirement that the Director verify the reported amounts by issuing a verification certificate to the company.

To claim the credit once it has been approved by the Authority, a company must submit a copy of a certificate, issued by the Director of Development, verifying the company's qualification for the credit for the taxable year.

Recapture of credit

(sec. 122.171(E) and (I))

If a company receiving a credit does not comply with any of the terms of the tax credit agreement, the Authority may reduce the company's tax credit percentage. If the noncompliance is because the company has not maintained operations for twice the number of years for which the credit is granted, the Authority may require the company to repay some or all of the tax credits already claimed by the company. The maximum amount that may be recaptured depends on the number of years the company failed to maintain its operations relative to the period for which the credit was granted, as follows:

- Up to 100% may be recaptured if the company did not maintain operations for at least the length of the tax credit period.

- Up to 50% may be recaptured if the company maintained operations for at least the tax credit period, but less than one and one-half times that period.

- Up to 25% may be recaptured if the company maintained operations for at least one and one-half times that period, but less than the whole period.

Before recapturing any of a company's tax credits, the Authority must give the company an opportunity to explain the noncompliance. In determining whether and to what extent credits are recaptured, the Authority must consider the effect of "market conditions" on the company's operations and whether the company has other operations in Ohio.

Recaptured amounts are to be collected by assessment by the Tax Commissioner in the same manner, and subject to the same procedures and rights, as assessments for the applicable tax are issued, except that the usual statute of limitations on issuing tax assessments does not necessarily apply (because the noncompliance may occur after it has passed). However, the assessment must be issued within one year after the Authority certifies the amount to be recaptured to the Tax Commissioner.

Administration; rulemaking

(sec. 122.17(I))

The bill's tax credits are to be administered by the Director of Development and the Ohio Tax Credit Authority in largely the same manner as the existing jobs tax credit. The Director is responsible for adopting any additional administrative rules for administering the new credit. Any documents and information submitted by a tax credit applicant or recipient is not a public record, but they may be used to issue public reports or in connection with court proceedings. The Tax Commissioner may request information from the Authority, but must maintain the confidentiality of the information.

Reports and evaluation

(sec. 122.171(J))

By March 31 each year, the Director of Development must report to the Governor, House Speaker, and Senate President on the information technology company tax credit. The report must include information on the number of tax credit agreements granted in the preceding year, companies' project descriptions, and the status of tax credit agreements from prior years.

In 2006, the Director of Development and Director of Budget and Management must evaluate the effectiveness of the tax credits in creating new jobs and indicate the revenue effects. The evaluation also may review other

states' practices and experiences with similar tax credits. A report of the evaluation must be submitted to the Governor, House Speaker, and Senate President by January 1, 2007.

Effective date

(sec. 122.171(B))

The credits may be claimed for taxable years beginning in 2001 or thereafter.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-03-00	pp. 1890-1891

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