Bill Analysis

Bethany Boyd *Legislative Service Commission*

S.B. 340

123rd General Assembly
(As Introduced)

Sen. Harris

BILL SUMMARY

- Expands the job training tax credit to all taxpayers that pay corporation franchise taxes, rather than limiting it to certain industries that pay that tax.
- Beginning January 1, 2001, and expiring December 31, 2003, extends the credit to dealers in intangibles, income tax taxpayers who invest in pass-through entities, domestic insurance companies, and foreign insurance companies.
- Increases the maximum credit allowed to be taken each year.
- Provides that not more than $20 million in total credits may be granted in any year to all taxpayers permitted under the bill to apply for the credit.
- Establishes notice and hearing procedures for denial or recapture of the credit.
- Makes changes to the eligibility requirements for job training programs and the employees who are trained.

CONTENT AND OPERATION

The job training tax credit

(sec. 5733.42)

Current law permits corporations in certain industries to take a nonrefundable tax credit against their corporation franchise tax liability for employee job training costs they incur. Corporations that propose to conduct an "eligible training program" and claim the credit first must apply to the Director of

Job and Family Services for a tax credit certificate. The Director authorizes the credit, by issuing the tax credit certificate, if: (1) the applicant conducts business in one of the specified industries, (2) the training program is an eligible training program, (3) the proposed program is economically sound and will benefit people by improving workforce skills and strengthening the state's economy, (4) the credit is a major factor in conducting the training program, and (5) authorization of the credit to all corporations does not exceed an aggregate amount set by law (discussed below in "***Total limit on all credits granted***"). The Director cannot authorize the credit for eligible training costs paid or incurred after December 31, 2003.

In general, the bill expands the availability of job training tax credit under the corporate franchise tax to industries that currently cannot claim it, increases the maximum credit that may be claimed, and extends the credit, as amended by the bill, against the tax liability of dealers in intangibles, domestic insurance companies, foreign insurance companies, and taxpayers who are investors in pass-through entities.

Taxpayers eligible for the credit

(secs. 5725.31, 5729.07, 5733.42(C) and (K), and 5747.39)

Current law permits only a corporation that has corporation franchise tax liability and whose primary business activity falls within certain industry classifications to take the job training credit. These industries, as classified in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, are: manufacturing; finance, insurance, and real estate; business services; legal services; and engineering, accounting, research, management, and related services.

The bill eliminates these classifications, thus expanding the tax credit to include any taxpayer who pays the corporation franchise tax and for which a tax credit certificate is issued under continuing corporation franchise tax law.

The bill also extends the credit to other taxpayers who have tax liability under other state tax laws. Under continuing law (R.C. Chapter 5725.), dealers in intangibles, e.g., stockbrokers, mortgage brokers, securities dealers, and finance and loan companies with an office in Ohio, pay a tax of 0.8% on the value of shares of stock or capital employed by them that are on the intangible property tax list maintained by the Treasurer of State. Under the same R.C. Chapter, domestic insurance companies pay an annual franchise tax on their capital and surplus or gross premiums (from tax year 2003 and thereafter, the tax rate will be 1.4% of gross premiums). Likewise, foreign insurance companies pay a tax on any premiums received from policies for Ohio, at the same 1.4% tax rate as domestic

insurance companies, or 1% if the company is a health insuring corporation (R.C. Chapter 5729.). The bill extends to dealers in intangibles, domestic insurance companies, and foreign insurance companies the job training credit against their particular tax liability if they obtain a tax credit certificate from the Director of Job and Family Services, in the same manner as required for the credit under the corporation franchise tax law.

The bill also extends the job training credit to any taxpayer who is an investor in a pass-through entity (e.g., a partnership, S corporation, limited liability company, or sole proprietorship not taxed as a corporation), thus allowing the taxpayer to claim the credit against its state income tax liability if it receives a tax credit certificate. The pass-through entity must apply to the Director for the tax credit certificate in the same manner as taxpayers do under the corporation franchise tax law.

Beginning January 1, 2001, and terminating December 31, 2003, the credit, as extended to dealers in intangibles, domestic or foreign insurance companies, and pass-through entity investors, may be claimed for a "credit period" (see "***Period for which credit may be claimed***," below).

Changes to the job training tax credit that apply to all taxpayers claiming it

For purposes of this analysis, the term "taxpayer" will be used to discuss the various changes to the job training tax credit that apply to all the new entities that, under the bill, may claim the credit against their respective tax liabilities. If any changes made under the bill apply to a particular taxpayer, the type of taxpayer will be specified.

Eligible job training expenses

(sec. 5733.42(A))

To be eligible for the tax credit under current law, the costs an industry pays or incurs must be for an "eligible training program," i.e., 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." 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 or managerial personnel are not eligible employees unless they are the immediate supervisors of nonexecutive, nonmanagerial personnel. Any employee for whom a corporation has claimed an enterprise zone job training tax credit for the same year also is excluded as an eligible employee.

The bill expands the training programs eligible for the credit to include those programs that "provide job skills to eligible employees that enable them to perform other job duties for the taxpayer." The bill eliminates the requirement that an eligible employee be on the same job for at least 90 consecutive days, working at least 24 hours per week. Rather, to be an eligible employee, the individual must have been employed for at least 180 consecutive days before the day an application for the tax credit is filed. The bill adds to the employees who are **not** eligible any employee who is not a full-time employee (employed for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment).

Computing the tax credit

(secs. 5725.31(B), 5729.07, 5733.42(B), and 5747.39)

Under current law, the job training credit equals 50% of the amount by which a qualifying industry's eligible training costs for a year exceed its three-year average of those costs. The maximum credit allowed for a year cannot exceed (1) $500 per eligible employee who is trained and (2) the lesser of $100,000 or 50% of the industry's previous year's corporation franchise tax liability.

The bill eliminates the three-year averaging of the training expenses and increases the maximum credit allowed. Under the bill, the credit equals the taxpayer's eligible training costs (or proportionate share of such costs for an investor in a pass-through entity), not to exceed the lesser of (1) $200,000 or (2) $1,000 per eligible employee who is trained.

Total limit on all credits granted

(sec. 5733.42(H))

Under current law, the total amount that may be granted in job training credits each calendar year is $20 million. Of this $20 million, no more than $10 million may be allocated to industries that are primarily engaged in manufacturing, and at least $5 million must be granted to nonmanufacturing industries with fewer than 500 employees.

The bill provides that the total amount of job training tax credits authorized under the corporation franchise tax law, and the additional tax credits authorized under the bill, cannot exceed the $20 million limit. The manufacturing/nonmanufacturing allocation requirement continues to apply, but under the bill, also applies to the new taxpayers permitted to apply for the credit.

Denial or recapture of the tax credit; hearing

(secs. 5717.02 and 5733.42(D))

The bill requires that if the Director denies an application for a tax credit certificate, the Director must send notice of the denial and the reason for denial to the applicant by certified mail, return receipt requested.

The Director has the authority under continuing law to reduce the amount of a corporation's tax credit if the job training program fails to satisfy the conditions for the credit. If a reduction occurs, 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. The bill requires that the Director send notice of the reduction and the reason for it to a taxpayer by certified mail, return receipt requested, and also certify the reduction to the Superintendent of Insurance, if the credit is claimed by an insurance company (in which case the Superintendent would reduce the credit).

The bill provides that within 30 days after receiving notice of denial or reduction of the tax credit, an applicant or taxpayer may request, in writing, a hearing before the Director to review the denial or reduction. Within 60 days after receiving the request, the Director must hold a hearing at a location to be determined by the Director. Within 30 days after the hearing is adjourned, the Director must issue a redetermination affirming, reversing, or modifying the denial or reduction of the tax credit and send notice of the redetermination to the applicant or taxpayer by certified mail, return receipt requested, and issue a notice of the redetermination to the Tax Commissioner and Superintendent. If the applicant or taxpayer is aggrieved by the redetermination, it may appeal the redetermination to the Board of Tax Appeals under existing tax appeal law.

Recordkeeping requirements

(sec. 5733.42(E))

The bill requires that a taxpayer to which a tax credit certificate is issued retain records indicating the eligible training costs it pays or incurs for an eligible training program for four years following the end of the calendar year in which those costs are paid or incurred. The records must be open to inspection by the Director, upon request, during business hours.

Continuing law provides that the Director or Tax Commissioner may make use of financial statements and other information submitted for the tax credit for the purpose of issuing public reports or in connection with court proceedings concerning the tax credit. The bill provides that those financial statements and

other information may similarly be used by the Superintendent of Insurance, and also may be used in court proceedings concerning tax credits allowed to all taxpayers under the bill.

Rulemaking and reporting requirements

(sec. 5733.42(F) and (G))

Continuing law requires that the Director adopt rules to implement the tax credit. The bill requires that the Director also adopt rules to implement the extension of the credit to other taxpayers. These rules must be adopted after consultation with the Tax Commissioner.

On or before September 30, 2001, 2002, 2003, and 2004, the Director currently must submit a report on the tax credit program to the Governor, President of the Senate, and Speaker of the House of Representatives. The bill requires that the report also address the program as extended by the bill to other taxpayers.

Changes to the job training tax credit that apply to particular types of taxpayers

Period for which the credit may be claimed

(secs. 5725.31(A)(4), 5729.07(B), 5733.42(B) and (J), 5747.39, and 5747.98(A)(21))

Under continuing corporation franchise tax law, the job training tax credit must be claimed for the tax year immediately following the calendar year in which the taxpayer pays or incurs its eligible training costs. Any credit amount in excess of the tax due may be carried forward for three years. The credit must be claimed in the order required by existing corporation franchise tax law.

Under the bill, dealers in intangibles and domestic and foreign insurance companies must claim the credit for the "credit period" during which eligible training costs are paid or incurred. For a dealer in intangibles, the "credit period" is the calendar year ending on December 31 next preceding the first or second Monday of March (the day the dealer's annual tax report is required to be returned). For a domestic insurance company, it is the calendar year ending on December 31 next preceding the day the annual statement is required to be returned (the company receives its tax bill within 20 days after the first Monday in May; it must pay the tax bill 20 to 30 days from the date it was mailed). The "credit period" for a foreign insurance company is the calendar year ending on December 31 next preceding the day the annual statement is required to be returned (which varies, depending on the type of insurance the company provides).

As under the existing job training credit, the credit (or a pass-through entity's proportionate share of it) may be carried forward for three credit periods following the credit period for which the credit is first claimed.

For a taxpayer that is an investor in a pass-through entity, the credit must be claimed for the taxpayer's taxable year that includes the last day of the pass-through entity's taxable year, which must include the last day of the calendar year in which eligible training costs are paid or incurred by the pass-through entity. The pass-through entity investor must claim the credit in the order required by existing income tax law.

Apportioning the tax credit to corporation franchise tax taxpayers

(sec. 5733.42(C) and (K))

Current law treats a group of related corporations as a single, consolidated taxpayer for the purpose of computing the credit amount to which each corporation is entitled. The corporations in the group may choose how to allocate the credit among the various members of the group.

The bill eliminates this provision and provides that for purpose of the credit, a taxpayer may be a partnership or other form of business entity through which income flows as a distributive or proportionate share to its owners. The credit must be apportioned among the persons to which the partnership's or entity's income or profit is distributed in the same proportions as those in which the income or profit is distributed.

Miscellaneous provisions

(secs. 9.66(A) and 5729.07)

The bill provides that the job training tax credit is in addition to any tax credit a domestic or foreign insurance company may take under existing law for insurance premium sales in Ohio of less than $75 million.

For a foreign insurance company, the reduction in its taxes by the job training tax credit does not increase the amount of taxes it must pay under an existing retaliatory tax law that requires Ohio to charge a higher insurance tax rate if other states do so for the privilege of doing business in them.

Under continuing law, a person who applies to the state, a state agency, or a political subdivision for economic development assistance must indicate on the application whether the person has any outstanding liabilities owed to the state, agency, or subdivision. The bill specifies that this law applies to a taxpayer that files an application for the job training tax credit.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-31-00	p. 2166

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