



S.B. 125

124th General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Allows a nonrefundable tax credit against corporation franchise tax liability for air quality expenditures incurred by the owners or operators of certain coal-fired electric generating or coal consumption facilities.
- Provides that the credit is equal to 66-2/3% of those expenditures and requires that 10% of that credit amount must be first taken in tax year 2005, with 10% allowed in each ensuing tax year until the credit is fully claimed.
- Permits such owners or operators to assign, sell, trade, or otherwise transfer the credit to any corporation that is subject to the corporation franchise tax.
- Expands the air quality facilities for which the Ohio Air Quality Development Authority may issue bonds or make loans or grants.

CONTENT AND OPERATION

Tax credit for air quality expenditures

Credit eligibility

(R.C. 3706.01(I) and 5733.48(A) and (B))

The bill creates a nonrefundable tax credit against corporation franchise tax liability for air quality expenditures made by an owner or operator (hereinafter the "owner") of an "eligible facility," regardless of whether the owner is subject to the

corporation franchise tax.¹ The expenditures must be for the cost incurred by the facility's owner for air quality equipment (tangible personal property that constitutes an air quality facility under the Ohio Air Quality Development Authority's law--see "*Air quality facilities*," below) at the eligible facility, provided that the air quality equipment was placed in service after the bill's effective date and on or before December 31, 2010.² The "cost" of the air quality equipment is broadly defined to include numerous costs and expenses, such as costs for the equipment's acquisition and construction or for the acquisition of land, costs for public utility relocation or for the diversion of highways, and expenses for research and development.

Under the bill, eligible facilities to which the credit applies are (1) coal-fired electric generating facilities that are located in Ohio, (2) coal-fired electric generating facilities that are located outside Ohio and, under existing public utility law, were included at any time as property used and useful in rendering the public utility service for which rates were fixed and determined by the Ohio Public Utilities Commission, or (3) coal consumption facilities located in Ohio that are owned or operated by an ultimate consumer of electricity that uses more than 45 million kilowatt-hours of electricity each calendar year.

Claiming the credit

(R.C. 5733.48(B) and (C) and 5733.98)

The credit may be first taken in tax year 2005. The credit is equal to 66-2/3% of the owner's air quality expenditures. The owner must claim 10% of the credit amount for the tax year immediately following the calendar year in which the air quality equipment with respect to which the expenditures were made is first placed in service. In each of the ensuing tax years, 10% of the credit amount is allowed until the credit is fully claimed. Air quality equipment placed in service after the bill's effective date, but prior to January 1, 2004, is treated as

¹ *The owner of an eligible facility could be a municipal corporation or a nonprofit rural electric company, neither of which is subject to the corporation franchise tax. The bill is structured in this manner so that those entities, or other eligible facility owners, may assign, sell, trade, or otherwise transfer the tax credit to any taxpayer that has corporation franchise tax liability (see "*Transfer of the credit*," below).*

² *If the air quality equipment is leased or subleased to the owner of the facility, the lessee's or sublessee's air quality expenditures is an amount equal to that portion of the cost paid or to be paid by the lessee or sublessee at the eligible facility, provided that the lessee or sublessee is contractually obligated to amortize at least 80% of those costs through lease payments to be made to the lessor or sublessor and no other person claims the tax credit with respect to those expenditures.*

being placed in service during calendar year 2004. If, for instance, the bill happened to be enacted by November 1, 2001, the owner could claim in tax year 2005 the total air quality expenditures made between November 1, 2001, and January 1, 2004, plus any such expenditures made in calendar year 2004.

The credit must be claimed in the same order existing law prescribes for claiming nonrefundable credits. Any credit amount in excess of the corporation franchise tax due, after allowing for any other credits preceding it in that order, may be carried forward each tax year until fully used, but the amount of the excess credit allowed in any such year must be deducted from the balance carried forward to the next year.

Transfer of the credit

(R.C. 5733.48(D))

The bill provides that an owner may assign, sell, trade, or otherwise transfer to any taxpayer (a corporation that is subject to the corporation franchise tax) all or a portion of the tax credit to which the owner is entitled by providing written notice of the assignment to the Tax Commissioner, in such form as the Commissioner prescribes, at any time prior to the use of the credit. The taxpayer to which the credit is assigned, sold, traded, or otherwise transferred may apply it and any carried-forward credit amounts against its corporation franchise tax liability, to the same extent as if the taxpayer were an owner subject to that tax and entitled to the credit.

Certification of air quality equipment

(R.C. 5733.48(E))

The bill requires that the Ohio Air Quality Development Authority certify to the Tax Commissioner whether property is air quality equipment, and, if so, the date the equipment was placed in service and whether expenditures for it constitute air quality expenditures. The Authority may require the owner to furnish information as is necessary to support a claim for the tax credit, and no credit will be allowed unless the information is provided.

Ohio Air Quality Development Authority

General responsibilities of the Authority

(R.C. Chapter 3706.)

Under continuing law, the Ohio Air Quality Development Authority operates to promote the conservation of clean air and the prevention and

abatement of air pollution. To accomplish this, the Authority, along with its other powers, may make loans and grants to governmental agencies for the acquisition or construction of "air quality facilities" and may make loans and issue air quality revenue bonds for "air quality facilities" for industry, commerce, distribution, or research, including public utility companies. Property that is part of an air quality facility is not subject to taxes or assessments so long as the bonds or notes issued to finance the costs of the facility are outstanding. In addition, the transfer of the property to the person to whom a loan or installment or conditional sale with respect to the facility is made is not subject to the sales or use tax.

Air quality facilities

(R.C. 3706.01 (G) and (R))

The bill amends the definition of "air quality facility" by adding facilities or processes for which the Authority may make loans and grants and issue bonds under its existing law. These changes also affect the tax credit for air quality expenditures, discussed above, since the credit is allowed for the cost of tangible personal property that constitutes an "air quality facility" under the Authority's law.

Under the Authority's existing law, an "air quality facility" generally is any method, process, or equipment to remove, reduce, or dispose of air contaminants, particularly facilities and expenditures that qualify as air pollution control facilities under section 103 of the Internal Revenue Code; motor vehicle inspection stations; any property used to treat or dispose of solid waste resulting from the reduction of air contaminants; and any property or equipment that promotes cleaner air through improvements in the efficiency of energy use or energy conservation. Any property or system used for any of these purposes, whether another purpose is served, or is incidental to or the end purpose of which is any of the foregoing, also is an air quality facility.

The bill expands the definition of air quality facility to include any method, process, or equipment that either prior to, during, or subsequent to the combustion of any energy source, removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants or substances containing air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air.

The bill also includes in air contaminants, where the property is used to treat or dispose of solid waste resulting from the reduction of air contaminants, those contaminants emitted either prior to, during, or subsequent to the combustion of an energy source.

As for property or equipment that promotes cleaner air through improvements in the efficiency of energy use or energy conservation, the bill adds that this may be accomplished through the use of a renewable fuel as a primary energy source. The bill defines "renewable fuel" as water, wind, solar, geothermal, or biomass resources.

The bill also provides that any air quality project for which the Director of Development authorizes the use of Energy Efficiency Revolving Loan Fund moneys also is an air quality facility. (Under existing law, the Director may use moneys in the Fund for financial assistance, in the form of loans at below market rates, loan guarantees, and linked deposits, for certain energy efficiency projects in Ohio.)

HISTORY

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Introduced	06-07-01	p. 631

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