



S.B. 83

126th General Assembly
(As Introduced)

Sens. Grendell, Clancy, Jacobson, Schuring

BILL SUMMARY

- Creates a personal property tax credit for the purchase and use in Ohio of new manufacturing machinery and equipment.
- If a taxpayer's corporation franchise or income taxes increase because of the credit, allows an additional credit equal to the amount of that increase to be claimed by the taxpayer.
- Reimburses local governments for tax revenues forgone as a result of the tax credit.

CONTENT AND OPERATION

Background

Existing law authorizes a tax credit against corporation franchise tax liability for new manufacturing machinery and equipment (engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing) purchased and used in Ohio by corporations and other business organizations (R.C. 5733.33). A parallel credit is allowed against the state income tax for sole proprietors and investors in pass-through entities (R.C. 5747.31). The credit applies to purchases made before January 1, 2016, provided the machinery or equipment is installed no later than December 31, 2016. The credit equals 7.5% of a taxpayer's incremental increase in the cost of new manufacturing machinery and equipment over a baseline period, except that in inner cities, certain economically distressed areas, and labor surplus areas, the percentage is 13.5%. The credit must be claimed over seven years, with one-seventh of the credit claimed each year, and is nonrefundable.

In a recent case, *Cuno v. DaimlerChrysler, Inc.*, No. 01-3960, 2004 FED App. 0293P (6th Cir. Sept. 2, 2004), the United States Court of Appeals for the

Sixth Circuit ruled that this tax credit violated the federal Commerce Clause, and enjoined enforcement of the statute that grants it. The Court stayed the issuance of the mandate that enjoined enforcement of the statute to give Ohio time to appeal the case to the United States Supreme Court. If the *Cuno* decision is not overturned on appeal or the Supreme Court refuses to hear the case, the decision becomes final and the tax credit may no longer be claimed. But as of April 1, 2005, taxpayers may continue to claim the credit against their corporation franchise or income tax liability.

The bill replaces the tax credit enjoined by *Cuno* with a similar credit, to be claimed against personal property taxes, rather than corporation franchise or income taxes. The bill reimburses local governments for tax revenues forgone as a result of the credit.

Personal property tax credit for purchases of new manufacturing machinery and equipment

Claiming the credit

(R.C. 5705.031, 5733.33, and 5747.31)

The bill creates in the personal property tax law a credit for purchases of new manufacturing machinery and equipment (MM&E) that may be claimed against the taxes levied on personal property located and used in business in this state. In most aspects, the credit is the same as the existing MM&E credit in that it applies to purchases made before January 1, 2016, provided the MM&E is installed no later than December 31, 2016, and uses the same percentages and baseline periods for determining the amount of the credit. The credit must be claimed over seven years, with one-seventh of the credit claimed each year. But unlike the existing MM&E credit, which is nonrefundable, this credit is **refundable**, and the taxpayer claiming the credit need **not** be a manufacturer to receive the credit.

The credit created by the bill must be claimed with the annual returns listing personal property used in business that are made to the county auditor of each county in which a taxpayer has taxable personal property. The county auditor of the county in which new MM&E is installed must reduce the aggregate taxes to be levied against the taxpayer's personal property by the amount of the credit. If the amount of the credit exceeds taxes due, the taxpayer is entitled to a refund of the excess, which must be apportioned pro rata among the separate taxing units in the county in the same proportion that the amount of taxes levied by each taxing unit against the taxpayer's personal property bears to the taxes levied by all taxing units against that property.

Rather than issuing tax assessments under the corporation franchise or income tax laws, the Tax Commissioner issues assessment certificates under the existing personal property tax law for all or any part of the credit claimed if the MM&E subsequently does not qualify for a credit.

The amount of the credit claimed under the bill must be reduced by the amount of credit taken under the existing MM&E tax credit for a tax year before tax year 2005 (for the corporation franchise tax) or a taxable year before the taxable year beginning in 2004 (for the income tax). The bill provides that the existing MM&E tax credit that may be taken against corporation franchise tax liability may no longer be claimed after tax year 2004. Likewise, the existing MM&E tax credit may no longer be claimed against income tax liability for taxable years beginning after December 31, 2004.

Additional credit

(R.C. 5705.031(D), 5733.06, and 5747.02(A))

The bill requires that corporation franchise or income taxes charged against each taxpayer must include the amount of the bill's MM&E tax credit during the taxable year less the corporation franchise or income tax due without regard to the credit, but not less than zero. If this computation results in an amount greater than zero, that amount constitutes an additional credit under the bill's MM&E tax credit that may be claimed along with the credit. In other words, if the credit is taken and it increases the taxpayer's corporation franchise or income taxes (because the taxpayer may no longer have a personal property tax deduction if the taxpayer does not pay property taxes as a result of claiming the bill's credit), the amount by which the credit increases either one of those taxes constitutes an additional personal property tax credit that may be claimed by the taxpayer. The bill provides that this additional credit must be treated as nonrefundable and may only be carried forward for three property tax years.

Additional conditions for elections by qualifying controlled groups

(R.C. 5705.031(I))

Under existing law's MM&E credit, a qualifying controlled group, such as parent and subsidiary corporations or multiple corporations that have a certain percentage of their stock owned by the same individuals or entities, may retroactively choose to have its pre-2001 new manufacturing machinery or equipment purchases treated as purchases by a single, consolidated taxpayer. Once a qualifying controlled group elects to have pre-2001 purchases treated as purchases by a single taxpayer, the election cannot be revoked and, while the election need not accompany a timely filed tax report, the election must

accompany a subsequently filed but timely application for refund, a timely filed amended report, or a timely filed petition for reassessment.

The bill permits this election for qualifying controlled groups to continue under the bill's MM&E tax credit, and applies the same no revocation and filing requirements to the election. But the bill makes the qualifying controlled group's election subject to the following additional conditions:

(1) A taxpayer cannot receive both the bill's MM&E tax credit and the existing MM&E credit against corporation franchise or income tax liability;

(2) A taxpayer cannot be denied the bill's MM&E credit if the corporation franchise tax, income tax, or personal property tax assessment law permits an application for refund;

(3) Notwithstanding corporation franchise tax law regarding assessment of the franchise tax by the Tax Commissioner, the election will result in the application of the bill's additional credit (above) with respect to every taxable year for which the election was made.

Reimbursement of local governments for tax revenues forgone

(R.C. 319.312 and 321.24(H))

The bill provides that taxing districts must be reimbursed for revenues forgone because of the bill's personal property tax credit. At the time the county auditor makes the general tax list and duplicate of personal property, the bill requires the auditor to compute the amount of tax revenue forgone by each taxing district in the county. The county auditor must certify the amount forgone to the county treasurer with the general duplicate of personal property, which is certified to the county treasurer on or before the third Monday of August each year, and the treasurer must certify that amount to the Tax Commissioner.

Upon receiving notification from the county treasurer that the treasurer has completed settlement (on or before October 31 of each year) with the county auditor for all taxes the treasurer has collected on the general personal and classified property duplicates, the Tax Commissioner must provide for payment to the county treasurer from the General Revenue Fund of an amount equal to the tax revenue forgone because of the bill's MM&E tax credit. The payment must be credited upon receipt to the county's undivided income tax fund, and the county auditor must distribute the amount among the various taxing districts in the county as if it had been levied, collected, and settled as personal property taxes. The amount received by a taxing district must be apportioned among its funds in the same proportion as the current year's personal property taxes are apportioned.

Technical changes

(R.C. 319.302, 323.156, and 4503.06(H)(2))

The bill makes technical changes to reflect the addition of language to existing law.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 03-01-05 | p. 251 |

S0083-I-126.doc/jc