Ohio Legislative Service Commission

Bill Analysis

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H.B. 220

129th General Assembly
(As Introduced)

Reps. Beck and Baker, J. Adams, Blair, Blessing, Butler, Combs, Thompson, Rosenberger

BILL SUMMARY

- Authorizes a refundable commercial activity tax credit for investment losses recognized by entities that employ foreign entrepreneur investors who have obtained permanent resident status under the EB-5 visa program and who invest in businesses doing business in Ohio.
- Authorizes a designated limited liability company to develop eligibility standards and certify projects as eligible to claim the credit.
- Limits outstanding potential credit obligations to $200 million.
- Requires tax credit proceeds to be disbursed only to an individual who is an EB-5 investor.
- Requires credit recipients to add back the amount of any capital loss deducted from the recipient's federal adjusted gross income for the purpose of calculating Ohio income tax.
- Terminates certification of such tax credits at the end of 2016.

CONTENT AND OPERATION

Overview

The bill authorizes a refundable commercial activity tax credit for investment losses recognized by businesses in which a qualified immigrant has invested capital. For the business to qualify for the credit, the immigrant must be granted permanent residency status under the federal immigration visa category program for entrepreneur investors (EB-5), and the business would have to create full-time jobs in Ohio in the number required by the EB-5 program regulations. Before claiming a credit, the business must apply to a designated limited liability company to obtain an eligibility certificate. The limited liability company must establish guidelines the company will use to determine eligibility.

EB-5 visa program

Foreign entrepreneur investors

EB-5 is an immigrant visa category for "employment creation aliens."[1] To obtain permanent residency under the EB-5 program, an investor is required to "invest or be actively in the process of investing" an amount of money which is "at risk" in a "new or existing business enterprise" that directly or indirectly results in the creation or preservation of ten full-time jobs over a two-year period. Investments may be made in a project directly or through an EB-5 regional center (see below). The investor is required to invest a minimum of $1 million to the business, unless the investor is investing in an area designated as a targeted unemployment area, in which case the investor must invest a minimum of $500,000. A targeted unemployment area is an area that, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150% of the national average rate.

A successful applicant and the applicant's spouse and children may, with the approval of the United States Citizenship and Immigration Service (USCIS), earn permanent residency in the United States as a result of participating in the program and creating the required amount of jobs in the two-year period.[2] Any resident of a foreign nation are eligible to apply and receive EB-5 status, with the exception of a few such as North Korea. Up to 10,000 EB-5 investor visas may be issued annually, but no more than 3,000 may be given for investments in targeted unemployment areas.[3]

EB-5 regional centers

EB-5 regional centers were authorized in 1993 as a means for EB-5 applicants to meet the investment requirements of the visa without directly managing a business.[4] Each center must be approved by the USCIS before commencing operation. Each center focuses on a specific geographic area within the United States. The centers facilitate the

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[1] Immigration Act of 1990, 101 P.L. 649, 104 Stat. 4978; 8 C.F.R. 204.6 (2011).

[2] 8 C.F.R. 216.6 (2011).

[3] 8 U.S.C. § 1153 (2006).

[4] Department of Justice and Related Agencies Appropriations Act, 102 P.L. 395, 106 Stat. 1828 (1993).

pooling of the capital of multiple EB-5 investors to invest in projects designed to increase economic growth through "export sales, improved regional productivity, job creation, and increased domestic capital investment."[5] EB-5 applicants who invest in a regional center may count toward their employment requirement jobs created from the applicant's investment in a regional center instead of directly hiring employees. Investors are required to invest a minimum of $500,000 in the regional center. Congress has given the USCIS discretion to give priority to EB-5 applications filed in conjunction with a regional center.[6]

Limited liability company

The bill designates a limited liability company named the "Ohio Foreign Investment Authority, LLC" (the "investment authority") to certify eligible projects to claim the credit.[7] For the purpose of determining credit eligibility, a "project" is a business entity, including a sole proprietorship, a partnership, holding company, joint venture, corporation, or business trust that is affiliated with an EB-5 regional center.[8] The investment authority is required to develop and publish, within 90 days after the bill's effective date, a policy governing credit eligibility. The investment authority may modify the policy as it deems necessary. Before being issued an eligibility certificate, the EB-5 investor for which the entity seeks eligibility must be approved for a conditional visa by the USCIS, and the project must demonstrate that it will create the number of jobs required to be created as a condition of the EB-5 investor gaining permanent residency status in Ohio. The investment authority may not certify a project as eligible for the credit on or after January 1, 2017, or if outstanding potential credit obligations would exceed $200 million.[9]

Tax credit

A project's eligibility to claim a tax credit requires the project to hold an eligibility certificate issued by the investment authority and for the EB-5 investor to complete the requirements of the EB-5 program and be granted permanent residency. Thus, if an EB-5 investor is granted permanent residency following the two-year job creation period, the project has received an eligibility certificate, and the project recognizes a loss for federal income tax purposes, then the project may claim a dollar-

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[5] 8 C.F.R. 204.6.

[6] 8 U.S.C. § 1153; 8 C.F.R. 204.6.

[7] R.C. 5751.54(B).

[8] R.C. 5751.54(A).

[9] R.C. 5751.54(B).

for-dollar refundable credit against the commercial activity tax for the amount of loss claimed by the EB-5 investor. If a project is exempt from the commercial activity tax because it has annual gross receipts less than $150,000 would be permitted to file a commercial activity tax return for the purpose of claiming the credit, even though it has no tax liability.

The project would receive the proceeds of any credit awarded. The project is required to disburse the credit proceeds to each EB-5 investor in proportion to the investor's loss in relation to all project EB-5 investors' losses. No portion of the tax credit proceeds could be disbursed to an individual investor, partner, or shareholder who is not an EB-5 investor.

The credit must be claimed for the annual commercial activity tax period that includes the last day of the calendar year in which the project's EB-5 investor or investors recognize a capital loss for federal income tax purposes, without accounting for gains or losses that do not arise from the project.[10] The credit applies to taxable years and annual tax periods that end on or after the bill's effective date.[11]

Illustration

For the purpose of illustrating the operation of the tax credit, assume that a project holds an eligibility certificate issued by the investment authority. The project is a limited liability company with three investors. Investor A and B are EB-5 investors and investor C is not an EB-5 investor. Investor A invests $2 million in the project, Investor B invests $1 million, and Investor C invests $7 million. Assuming all other eligibility requirements are met, the project recognizes a capital loss of $1 million, which is allocated to each investor in proportion with the investor's investment and claimed by each investor for federal income tax purposes. The total amount of the tax credit that the project can claim is $300,000, $200,000 of which the project must distribute to Investor A and $100,000 to Investor B.

Ohio income tax deduction

The bill requires any EB-5 investor who receives proceeds from the commercial activity tax credit to add the amount of any capital loss deducted by the recipient for federal income tax purposes for the purpose of calculating Ohio adjusted gross income for that taxable year.[12]

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[10] R.C. 5751.54(C) and 5751.98.

[11] Section 3.

[12] R.C. 5747.01.

Report to the General Assembly

On January 1, 2016, the investment authority must submit to the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of House and Senate economic development committees a report detailing the following:

(1) The eligibility standards used by the investment authority to approve projects;

(2) The number of eligibility certificates issued by the investment authority in each fiscal year since the credit's inception; and

(3) The investment authority's recommendations for continuing or modifying the credit program.[13]

HISTORY

ACTION	DATE
Introduced	05-05-11

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[13] R.C. 5751.54(D).