Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 220 of the 129th G.A. **Date**: May 18, 2011

Status: As Introduced **Sponsor**: Reps. Beck and Baker

Local Impact Statement Procedure Required: Yes

Contents: Authorizes refundable commercial activity tax credits for investment losses recognized by foreign investors granted certain immigrant visas for investing in Ohio businesses

State Fiscal Highlights

STATE FUND	FY 2012	FY 2013	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	Potential loss
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill authorizes up to $200 million in commercial activity tax (CAT) credits for investment losses in certain businesses, and thus potentially reduces revenue from the tax. Under current law, CAT receipts are distributed, in varying shares, to the GRF. LSC assumes that the potential reduction in GRF revenue will occur after FY 2013.
- The bill also requires credit recipients to add back to Ohio Adjusted Gross Income investment losses deducted for federal income tax purposes. This provision would potentially increase income tax receipts, though the revenue loss from the CAT would be a higher amount.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011	FY 2012	FUTURE YEARS
Counties, Municipalities, Townships, and Libraries			
Revenues	- 0 -	- 0 -	Potential loss-
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Potential reductions in GRF tax receipts from the bill would reduce distributions to the Local Government Fund and the Public Library Fund. Of tax receipts deposited in the GRF, the Local Government Fund and the Public Library Fund receive, respectively, 3.68% and 2.22%.

- Under current law, CAT receipts are also distributed, in varying shares, to the School District Tangible Property Tax Replacement Fund and the Local Government Tangible Property Tax Replacement Fund. If CAT receipts are insufficient for the reimbursements, current law requires a GRF subsidy to the two local funds.

Detailed Fiscal Analysis

The bill authorizes a refundable commercial activity tax (CAT) 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 in the bill, the "Ohio Foreign Investment Authority, LLC," to obtain an eligibility certificate. The Ohio Foreign Investment Authority must establish guidelines and certify projects that are eligible to claim the CAT credits. For the purpose of determining credit eligibility, the bill describes a "project" as a business entity, including a sole proprietorship, partnership, holding company, joint venture, corporation, or business trust that is affiliated with an EB-5 regional center.[1] Before being issued an eligibility certificate, the foreign investor for which the business entity seeks eligibility must be approved for a conditional visa, and the project must demonstrate that it will create the number of jobs required to be created as a condition of the foreign investor gaining permanent residency status in the United States. 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. Other details of the bill and the EB-5 visa program are available in the LSC bill analysis.

Tax credits

A project's eligibility to claim a tax credit requires the foreign investor to complete the requirements of the qualifying visa program and be granted permanent residency. If the foreign 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 refundable credit against the CAT for the amount of loss claimed by the foreign investor.

If a project is exempt from the CAT because it has annual gross receipts less than $150,000, the project would nevertheless receive the proceeds of any credit awarded. The project is required to distribute the credit proceeds to each foreign investor in proportion to the investor's loss in relation to all project foreign investors' losses. No

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[1] The U.S. Citizenship and Immigration Services indicate the following three regional EB-5 centers currently exist in Ohio: Cleveland Industrial Fund, Ltd, CMB Summit, LLC, and Northeast Ohio Regional Center. The geographical scope of the centers and their industries of interest vary. There are two distinct EB-5 pathways for an immigrant investor to gain lawful permanent residence for themselves and their immediate family—the Basic Program and the Regional Center Program. Both programs require the immigrant makes a capital investment of $1,000,000 (or $500,000 in certain qualified zones).

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 CAT 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. The credit applies to taxable years and annual tax periods that end on or after the bill's effective date.

Addback of Capital Losses to Ohio Adjusted Gross Income

The bill also requires any EB-5 investor who receives CAT credits 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 (OAGI) for that taxable year.

Fiscal Impact

As of this writing, LSC has no financial information on the current or potential EB-5 regional centers projects, and whether those projects are profitable or generate losses, and whether they will generate losses in the future. If the projects recognize investment losses, then the tax credits authorized by the bill may generate a loss of revenue from the CAT. However, the revenue loss will depend on investments and profitability of the projects, and the investments made by foreign investors in those projects.

Under current law, CAT receipts are distributed, in varying shares to the GRF, the School District Tangible Property Tax Replacement Fund, and the Local Government Tangible Property Tax Replacement Fund. For example, in FY 2012 and FY 2013, distributions of CAT revenues to the GRF are to be 5.3% and 10.6%, respectively. Distributions to school districts are to be 70% in each of those years, while distributions to other local governments are to be 24.7% and 19.4%, respectively.[2] Also, of tax receipts deposited in the GRF, the Local Government Fund receives 3.68%, and the Public Library Fund receives 2.22%. Thus, a decrease in CAT receipts to the GRF from the bill would also reduce distributions to the Local Government Fund and the Public Library Fund. The addback of investment losses to OAGI would increase GRF receipts from the personal income tax, thus would reduce the revenue loss from the CAT credits. Assuming the investments are made in new projects, the potential net revenue loss may occur outside of the next biennium due to the requirements of the EB-5 visa program. A foreign investor may earn permanent residency by investing in EB-5 projects that create the required amounts of jobs over a two-year period. This fiscal note assumes that both the potential revenue loss from the CAT and the potential revenue gain from the personal income tax will occur after FY 2013.

The Ohio Foreign Investment Authority is required to submit a report to the Legislature on January 1, 2016. This provision has no fiscal effect.

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[2] ORC Section 5721.20 provides the distribution schedule of CAT receipts to the three funds.