Tax Credit and Other Economic Development Incentives Provisions Contained in Am. Sub. H.B. 1

The Bill includes changes to several existing State tax credits, provides for two new State tax credits, provides for a new loan guarantee program and provides for a new sales tax "TIF" for major sporting events.

On July 17, 2009, Governor Strickland signed Am. Sub. H.B. 1 (the "Bill"), the biennial operating budget bill for State fiscal years 2010 and 2011. The Bill includes changes to several existing State tax credits, provides for two new State tax credits, provides for a new loan guarantee program and provides for a new sales tax "TIF" for major sporting events, all of which are discussed in detail in this Client Alert. The Bill also includes several significant changes to the job creation tax credit and job retention tax credit, which are discussed in detail in a companion Alert.

Changes to the Technology Investment Tax Credit:

Prior law allowed for a tax credit for a taxpayer that invests in an Ohio business with annual gross revenue or a net book value of under $2.5 million that is engaged primarily in R&D, technology transfer, biotechnology, information technology or the application of new technology developed through research and development or acquired through technology transfer. Prior law limited the total amount of tax credits that could be issued to no more than $30 million. The Bill increases this limit to $45 million.

Changes to the Ohio Historic Preservation Tax Credit ("OHTC"):

The Bill allows pass-through entities entitled to claim the OHTC to allocate the entity's OHTC among the equity owners in amounts other than their pro rata ownership shares.

New OHTC Loan Guarantee Program:

The Bill establishes the Ohio Historic Preservation Tax Credit Fund, which is to be used to provide loan guarantees to recipients of the OHTC. The Director of Development may undertake to secure $75 million in federal funds to be deposited into this new fund. If the Director secures these funds, they shall be used to provide loan guarantees to OHTC recipients pursuant to Ohio Revised Code Section 166.06. The amount of a loan guarantee shall not exceed the amount of the OHTC to be awarded for an approved historic rehabilitation project. In addition, the Bill provides that money deposited into the fund shall be used for OHTCs granted during the first funding round of the OHTC program before being used for OHTCs granted during later rounds.

New Ohio New Markets Tax Credit ("NMTC"):

Federal law currently allows for a federal tax credit equal to 39% of the amount of a qualified equity investment ("QEI") made in a community development entity ("CDE"). Substantially all of the QEI must be used by a CDE to make qualified investments in or loans to certain qualified businesses in certain low-income communities ("LICs"). Allocations of federal NMTCs are awarded to CDEs by the CDFI Fund of the U.S. Treasury.

The Bill establishes the Ohio NMTC program. Pursuant to this new program, insurance companies or financial institutions making QEIs may claim 39% non-refundable tax credits, applied over a seven-year period (no credit claimed in years one and two, 7% claimed in year three and 8% claimed for each of years four through seven) based on the "adjusted purchase price" of the QEI. The adjusted purchase price is the percentage of the QEI that is used to make investments in or loans to "qualified active low-income community businesses" ("QALICBs") located in Ohio. In order to receive the Ohio credit, an entity <u>must</u> also have qualified for the federal credit by making a QEI under the federal NMTC program. The Ohio Department of Development is directed to adopt rules for the administration of the Ohio NMTC program, including a rule that would limit the total amount of NMTCs that can be

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claimed in any fiscal year to an adjustable $10 million amount.

A QALICB is any partnership or corporation that derives less than 15% of its annual revenue from the rental or sale of real property and that, for any tax year, satisfies all of the following:

- At least 50% of total gross income of the entity is derived from the active conduct of qualified business within an LIC;
- A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within an LIC;
- A substantial portion of the services performed for the entity by its employees are performed in an LIC;
- Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);
- Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.

New Movie and Television Production Credit:

The Bill authorizes a refundable credit to be taken against a company's corporation franchise tax or income tax for a company that produces at least a portion of a motion picture in Ohio. "Motion picture" includes feature-length films, documentaries, television series, miniseries and interactive websites. A credit is only available if the lesser of budgeted "eligible production expenditures" or actual "eligible production expenditures" exceeds $300,000. If that threshold is met, the credit is equal to 25% of the lesser of budgeted eligible production expenditures or actual eligible production expenditures (excluding budgeted or actual expenditures for resident cast and crew wages), and 35% of budgeted or actual expenditures for resident cast and crew wages. "Eligible production expenses" include expenditures made after June 30, 2009 for goods and services purchased and consumed in Ohio directly for production. For the biennium beginning July 1, 2009 and ending June 30, 2011, no more than $30 million in credits may be allowed, of which no more than $10 million may be allowed in the first year of the biennium. For succeeding fiscal biennia, no more than $20 million in credits may be allowed, and no more than $10 million may be allowed in the first year of the biennium. A single production cannot receive more than $5 million in total credits.

New Sales Tax "TIF" for Major Sporting Events:

The Bill includes provisions allowing counties and municipal corporations to apply to the Director of Development for a grant based on the incremental increase in sales tax receipts generated during a two-week period as a result of a major sporting event. Eligible sporting events include Super Bowls, NCAA national championship games, NBA all-star games, Major League Baseball all-star games, NHL all-star games, NCAA Bowl Championship Series games, World Cup soccer games and Olympic games. This incentive is only available if the projected incremental sales tax receipts associated with an eligible game are greater than $250,000, and individual grants are limited to $500,000. The Director shall not issue grants in excess of $1 million in any fiscal year, and shall not issue any grant before July 1, 2011.