Client Alert: Economic Development Incentives Provisions in House Bill 59

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On June 30, 2013, Governor Kasich signed Am. Sub House Bill 59 (H.B. 59), which is the operating budget bill for state fiscal year 2014. H.B. 59 includes several economic development incentives-related provisions, the most significant of which are described in detail below.

Job Creation Tax Credit (JCTC) Reporting For Home-Based Employees

Current law allows certain employers to enter into an agreement with the Ohio Tax Credit Authority (the Authority) to receive a JCTC for home-based employees, which agreement must be executed by September 6, 2019. Prior law required an employer subject to such an agreement to report to the Ohio Development Services Agency (DSA) on the number of home-based employees on or before January 1stof each year, beginning in 2013. H.B. 59 specifies that such reports will be due on or before March 1st, beginning with 2014.

Refundable Job Retention Tax Credit (JRTC)

Under prior law, a refundable JRTC was available to entities that (i) employ 500 full-time equivalent employees or have retained payroll at the site of at least $35 million, (ii) invest at least $5 million in capital improvements in the political subdivision in which the entity maintains its principal place of business, (iii) have retained payroll of at least $20 million at the site, and (iv) have their JRTCs approved between July 1, 2011 and January 1, 2014. H.B. 59 eliminates the requirement that the project site be located in the same political subdivision as the entity's principal place of business if the entity maintains a unit or division with at least 4,200 employees at the project site.

Notice For State Incentives Offered For Relocation Projects

Before a state loan or other assistance under Ohio Revised Code (R.C.) Chapter 166 could be offered for a relocation project, prior law required the director of DSA to provide written notice to (1) the county and the municipal corporation or township in which the facility is to be relocated, (2) the county and the municipal corporation or township in which the facility to be replaced is located, (3) the state representative and state senator in whose district the facility is to be relocated, and (4) the state representative and state senator in whose district the facility to be replaced is located. H.B. 59 requires the notification to be performed by the applicant rather than the director of DSA, and only requires written notice to the county and the municipal corporation or township in which the facility to be replaced is located.

Clarification Regarding Amendments For Pre-1994 Community Reinvestment Areas (CRAs)

Certain CRAs that were established prior to July 22, 1994 are currently grandfathered from the amendments to R.C. Chapter 3735 made in S.B. 19 of the 120th General Assembly, including the requirement that a written CRA agreement be executed for all commercial projects. Section 3 of S.B. 19 indicated that the pre-1994 version of the CRA statutes would apply to CRA legislation that was effective prior to July 22, 1994, and to the first two amendments to the CRA legislation. Under prior law, it was unclear which types of amendments would count toward this "two amendment limit."

H.B. 59 clarifies that the two amendment limit language in Section 3 of S.B. 19 only applies to amendments that:

- Expand the size of the CRA.
- Increase the exemption percentage or exemption term.
- Increase the duration of the CRA.
- Change the eligibility requirements for receiving CRA exemptions.

H.B. 59 also specifies that the following types of amendments do not count toward the two amendment limit, including amendments that:

- Decrease the size of the CRA.
- Decrease the exemption percentage or exemption term.
- Shorten the time after which exemptions may be terminated.
- Recognize or confirm the continued existence of a CRA or CRA exemption.
- Make procedural or administrative changes.

Finally, uncodified language in H.B. 59 specifies that the above-described language is a clarification of the intent of Section 3 of S.B. 19, and is to be applied retroactively.

New Community Authority (NCA) Amendments

Under prior law, if more than half of a new community district was located within the boundaries of the most populous municipal corporation in the county, the "organizational board of commissioners" for the district was the legislative authority of the municipal corporation. H.B. 59 defines "organizational board of commissioners" in the same manner for new community districts located entirely within the boundaries of a municipal corporation.

In addition, prior law allowed the organizational board of commissioners to adopt an alternative method for selecting members for the NCA board of trustees for petitions filed within three years after March 22, 2012. H.B. 59 allows for such an alternative selection method for all NCAs. If, however, an NCA established prior to March 22, 2012 elects to use the alternative selection method, H.B. 59 limits the authority of the board of trustees to collect community development charges and issue bonds or notes to the amount permitted for a board of trustees whose members are not resident-elected.

Finally, for NCAs established within three years of March 22, 2012, prior law allowed the community development charge to be levied based on (i) all or part of the income of residents of real property within the district if that property is devoted to residential uses, and (ii) all or part of the profits, gross receipts or other revenues of any business operating in the district. H.B. 59 expands that authority to allow the charge to be levied based on all or part of the income of persons employed within the district for NCAs established within three years of March 22, 2012.

Tax Increment Financing (TIF) Amendments

Under prior law, the legislation establishing a TIF could specify the year in which the TIF exemption was to commence, provided that such tax year commences after the effective date of the TIF legislation. H.B. 59 clarifies the intent of this language, specifying that in lieu of stating a specific year, the legislation can provide that the TIF exemption commences in the tax year in which the value of the improvement exceeds a specific amount or in the tax year in which the construction of one or more improvements is completed, provided that such tax year commences after the effective date of the TIF legislation. H.B. 59 also provides that for "project/commercial TIFs," the TIF legislation can specify that TIF exemptions are to commence on a parcel-by-parcel basis. Uncodified language specifies that the above-described TIF amendments apply to TIF exemption applications that are pending on, or filed after, the effective date of H.B. 59.

Expanded Data Center Sales and Use Tax Exemption

Under prior law, a business could submit an application to the Authority for a sales and use tax exemption for purchases of certain tangible personal property that will be used at an eligible computer data center if that business invested at least $100 million in the facility and maintained at least $5 million in annual payroll at the site. H.B. 59 makes several significant changes to this exemption. First, H.B. 59 allows for the submission of one exemption application by an applicant business on behalf of itself and other businesses operating a data center at the facility, and the total capital investment and payroll levels of all businesses in the same facility are combined toward meeting the eligibility guidelines. Second, the annual payroll requirement is lowered from $5 million to $1.5 million, and is not required to be met until the third year of the exemption agreement. Third, under H.B. 59, a business may still receive the exemption if the business leases the data center to other businesses, and does not itself provide "electronic information services."

Finally, H.B. 59 makes several administrative changes to the exemption to account for the existence of multiple businesses operating at a single data center.

Ohio Historic Tax Credit Amendment

Under prior law, the owner of the historic building could enter into a pass-through agreement with a "qualified lessee" for purposes of the federal historic rehabilitation tax credit, and all qualified rehabilitation expenditures paid by the owner "shall be attributed to the qualified lessee." H.B. 59 removes this attribution requirement, instead providing that qualified rehabilitation expenditures paid by the owner "may be attributed to the qualified lessee." This change will allow for additional flexibility in structuring transactions where both the federal and state tax credits are used.

The above-described amendments in H.B. 59 are expected to become effective 90 days after H.B. 59 is signed by Governor Kasich, or approximately September 28, 2013. If you have any questions about the issues discussed in this client alert, please contact Scott J. Ziance – (614) 464-8287, sjziance@vorys.com – or Chris L. Connelly – (614) 464-8244, clconnelly@vorys.com.