Ohio Legislature Passes Bill to Expand Ohio Opportunity Zones and Historic Preservation Tax Credits

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By: Sean Byrne and Eli Redfern

On June 1, 2022, the Ohio General Assembly passed Substitute Senate Bill Number 225 (S.B. 225) to expand the Ohio Opportunity Zones Tax Credit Program and the Ohio Historic Preservation Tax Credit Program and amend certain other provisions. Once the bill is signed into law, the Ohio Department of Development (Development) will be able to award more tax credits to applicants investing in the state's opportunity zones and historic properties.

Ohio Opportunity Zone Tax Credits

Currently, Ohio law allows taxpayers that invest in an opportunity zone fund holding 100% of its assets in a federally qualified Ohio opportunity zone to receive a nonrefundable state income tax credit equaling up to 10% of the taxpayers' investment in a project based in an Ohio opportunity zone. The tax credit may be used in the year of the investment or the following year, with unused credits carried forward for up to five years. In 2021 alone, Development received a record 400 applications for the Ohio Opportunity Zones Tax Credit Program and issued over $26 million in tax credits. S.B. 225 makes four important changes to current Ohio Revised Code (ORC) Section 122.84.

First, S.B. 225 adds that non-taxpayers are eligible applicants (in other words, applicants no longer need to be subject to Ohio personal income tax, broadening eligibility to participate in the program).

Second, S.B. 225 increases the cap on the total amount of opportunity zones tax credits that Development can award from $50 million to $75 million over the 2022-2023 biennium (state fiscal years (SFY) from July 1, 2021 through June 30, 2023). The credit funding cap will then be determined annually by credits awarded (not claimed), with a $50 million cap in fiscal year 2024 and $25 million annual cap from 2025 and thereafter.

Third, tax credit holders, including transferors not subject to Ohio personal income tax, will be able to transfer portions of their credit to different individuals an infinite number of times with written notice to the Ohio Department of Taxation. This increased transferability will allow investors to use part and transfer part of the credit, which may minimize carry forwards and have more credits used more quickly after issuance.

Fourth, the current one month application window for the Ohio Opportunity Zones Tax Credit Program will be replaced with two shortened application periods: from January 10 to February 1, and from July 10 to August 1. For both the investment into the Ohio qualified opportunity zone fund, and the fund's investment in Ohio opportunity zone property, the investment period is the six months immediately prior to the application (i.e. July 1-December 31 or January 1-June 30). This change shortens the time to wait from investment to application to award, but it also shortens the window between making the investment and the investment funds being invested in Ohio opportunity zone property, making it even more critical for applicants to be sure their fund investments flow into underlying Ohio investment promptly.

Ohio Historic Preservation Tax Credits

Development, in consultation with the State Historic Preservation Officer, grants Historic Preservation Tax Credits for up to 25% of qualified expenditures on historically significant properties. S.B. 225 will amend ORC Section 149.311 to increase the total amount of funding available for these credits for SFY 2023-2024, from $60 million to $120 million.

S.B. 225 also provides for temporary benefits for new awards during SFY2023-2024 and taxpayers who have already been awarded tax credits after June 30, 2020 (who can apply for this improved credit so long as construction has not yet commenced).

First, tax credits for projects in any county, township or municipalities with populations under 300,000 (per the 2020 census) are increased from up to 25% to up to 35% of qualified expenses.

Second, the individual project cap increases from $5 million to $10 million for all projects.

Third, these enhanced, up to $10 million of credits, are refundable (if the credit claimed in any tax year exceeds the tax otherwise due, the excess is refunded to the taxpayer, similar to catalytic projects, and not subject to a cap).

Development will also give consideration to the rehabilitation of historic buildings previously used as theaters that will be rehabilitated and will be used as theaters, and Development will consider the extent to which the rehabilitation will increase attendance and gross revenue at the theater.

Finally, ORC Section 149.311(K) clarifies that a tax credit certificate is effective on the last date the historic buildings are "placed in service" as such term is used for purposes of Section 47 of the Internal Revenue Code. This language appears to align state and federal law, and may mitigate the risk of separate years for claiming state credits and federal credits by making the state tax credit certificates effective at the same time as the federal tax credits. It appears, though, there may still be an issue when there are multiple buildings placed in service in separate years, in which case the new language's reference to the "date that <u>all</u> historic buildings rehabilitate by the project are 'placed in service'" (emphasis added) suggests that all the effective date for all buildings is the final building's "placed in service" date.

Other Provisions

S.B. 225 also extends certain tax increment financing (TIF) provisions revised in H.B. 110 (the FY2022-23 budget bill) and amends uncodified section 803.210 to specify that the provisions allowing TIF or downtown redevelopment district service payments to fund off-street parking facilities can be applied prior to the H.B. 110 effective date (September 30, 2021) if the municipal corporation confirms the applicability of this provision. Similarly, H.B. 110 permitted municipalities to set the timing of urban redevelopment or ".41 TIF" exemption commencement after its effective date, but S.B. 225 further permits exemption commencement to be discretionary prior to September 30, 2021 (if the municipal TIF legislation conforms to the new exemption commencement options).

S.B. 225 represents another opportunity to expand upon Ohio's economic development momentum. The legislation will go into effect ninety days after Governor DeWine signs it into law.

Vorys encourages you to contact your Vorys attorney with any questions you may have. For questions on Qualified Opportunity Zones, Ohio Historic Preservation Tax Credits or other incentives matters, please contact: Scott J. Ziance, 614.464.8287, sjziance@vorys.com; Aaron S. Berke, 330.208.1017, asberke@vorys.com; Christopher J. Knezevic, 614.464.5627, cjknezevic@vorys.com; Sean P. Byrne, 614.464.8247, spbyrne@vorys.com; Jonathan K. Stock, 614.464.5647, jkstock@vorys.com; or Elissa Wilson, 614.464.6224, rewilson@vorys.com.