



Ohio Revised Code

Section 122.16 Economic redevelopment of distressed area.

Effective: October 3, 2023

Legislation: House Bill 33

(A) As used in this section:

(1) "Distressed area" means either a municipal corporation that has a population of at least fifty thousand according to the most recent federal decennial census published by the United States census bureau, or a county, that meets at least two of the following criteria:

(a) Its average rate of unemployment, during the most recent five-year period for which local area unemployment statistics published by the United States bureau of labor statistics are available, as of the date the most recent federal decennial census was published, is equal to or greater than one hundred twenty-five per cent of the average rate of unemployment for the United States for the same period.

(b)(i) In the case of a county, its per capita personal income is equal to or less than eighty per cent of the per capita personal income of the United States as determined by the most recently available data from the United States department of commerce, bureau of economic analysis as of the date the most recent federal decennial census was published.

(ii) In the case of a municipal corporation, its per capita income is equal to or less than eighty per cent of the per capita income of the United States as determined by the most recently available five-year estimates published in the American community survey as of the date the most recent federal decennial census was published.

(c)(i) In the case of a county, its ratio of personal current transfer receipts to total personal income is equal to or greater than twenty-five per cent, as determined by the most recently available data from the United States department of commerce, bureau of economic analysis as of the date the most recent federal decennial census was published.

(ii) In the case of a municipal corporation, the percentage of its residents with incomes below the



official poverty line is equal to or greater than twenty per cent as determined by the most recently available five-year estimates published in the American community survey as of the date the most recent federal decennial census was published.

If a federal agency ceases to publish the applicable data described in division (A)(1) of this section, the director of development shall designate, on the department of development's web site, an alternative source of the applicable data published by a federal agency or, if no such source is available, another reliable source.

(2) "Eligible area" means a distressed area, a labor surplus area, an inner city area, or a situational distress area.

(3) "Eligible costs associated with a voluntary action" means costs incurred during the qualifying period in performing a remedy or remedial activities, as defined in section 3746.01 of the Revised Code, and any costs incurred during the qualifying period in performing both a phase I and phase II property assessment, as defined in the rules adopted under section 3746.04 of the Revised Code, provided that the performance of the phase I and phase II property assessment resulted in the implementation of the remedy or remedial activities.

(4) "Inner city area" means, in a municipal corporation that has a population of at least one hundred thousand and does not meet the criteria of a labor surplus area or a distressed area, targeted investment areas established by the municipal corporation within its boundaries that are comprised of the most recent census block tracts that individually have at least twenty per cent of their population at or below the state poverty level or other census block tracts contiguous to such census block tracts.

(5) "Labor surplus area" means an area designated as a labor surplus area by the United States department of labor.

(6) "Official poverty line" has the same meaning as in division (A) of section 3923.51 of the Revised Code.

(7) "Partner" includes a member of a limited liability company formed under Chapter 1705. or 1706.



of the Revised Code or under the laws of any other state if the limited liability company is not treated as a corporation for purposes of Chapter 5733. of the Revised Code and is not classified as an association taxable as a corporation for federal income tax purposes.

(8) "Partnership" includes a limited liability company formed under Chapter 1705. or 1706. of the Revised Code or under the laws of any other state if the limited liability company is not treated as a corporation for purposes of Chapter 5733. of the Revised Code and is not classified as an association taxable as a corporation for federal income tax purposes.

(9) "Qualifying period" means the period that begins July 1, 1996, and ends June 30, 1999.

(10) "S corporation" means a corporation that has made an election under subchapter S of chapter one of subtitle A of the Internal Revenue Code for its taxable year under the Internal Revenue Code;

(11) "Situational distress area" means a county or a municipal corporation that has experienced or is experiencing a closing or downsizing of a major employer that will adversely affect the economy of the county or municipal corporation. In order for a county or municipal corporation to be designated as a situational distress area, the governing body of the county or municipal corporation shall submit a petition to the director of development in the form prescribed by the director. A county or municipal corporation may be designated as a situational distress area for a period not exceeding thirty-six months.

The petition shall include written documentation that demonstrates all of the following:

- (a) The number of jobs lost by the closing or downsizing;
- (b) The impact that the job loss has on the unemployment rate of the county or municipal corporation as measured by the director of job and family services;
- (c) The annual payroll associated with the job loss;
- (d) The amount of state and local taxes associated with the job loss;



(e) The impact that the closing or downsizing has on the suppliers located in the county or municipal corporation.

(12) "Voluntary action" has the same meaning as in section 3746.01 of the Revised Code.

(13) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code or any person subject to the tax imposed by section 5747.02 of the Revised Code.

(14) "Governing body" means the board of county commissioners of a county, the board of township trustees of a township, or the legislative authority of a municipal corporation.

(15) "Eligible site" means property for which a covenant not to sue has been issued under section 3746.12 of the Revised Code.

(16) "American community survey" means the supplementary statistics collected and published annually by the United States census bureau in accordance with 13 U.S.C. 141 and 193.

(B)(1) A taxpayer, partnership, or S corporation that has been issued, under section 3746.12 of the Revised Code, a covenant not to sue for a site by the director of environmental protection during the qualifying period may apply to the director of development, in the manner prescribed by the director, to enter into an agreement under which the applicant agrees to economically redevelop the site in a manner that will create employment opportunities and a credit will be granted to the applicant against the tax imposed by section 5733.06 or 5747.02 of the Revised Code. The application shall state the eligible costs associated with a voluntary action incurred by the applicant. The application shall be accompanied by proof, in a form prescribed by the director of development, that the covenant not to sue has been issued.

The applicant shall request the certified professional that submitted the no further action letter for the eligible site under section 3746.11 of the Revised Code to submit an affidavit to the director of development verifying the eligible costs associated with the voluntary action at that site.

The director shall review the applications in the order they are received. If the director determines that the applicant meets the requirements of this section, the director may enter into an agreement



granting a credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code. In making the determination, the director may consider the extent to which political subdivisions and other units of government will cooperate with the applicant to redevelop the eligible site. The agreement shall state the amount of the tax credit and the reporting requirements described in division (F) of this section.

(2) The maximum annual amount of credits the director of development may grant under such agreements shall be as follows:

1996 \$5,000,000

1997 \$10,000,000

1998 \$10,000,000

1999 \$5,000,000

For any year in which the director of development does not grant tax credits under this section equal to the maximum annual amount, the amount not granted for that year shall be added to the maximum annual amount that may be granted for the following year. However, the director shall not grant any tax credits under this section after June 30, 1999.

(C)(1) If the covenant not to sue was issued in connection with a site that is not located in an eligible area, the credit amount is equal to the lesser of five hundred thousand dollars or ten per cent of the eligible costs associated with a voluntary action incurred by the taxpayer, partnership, or S corporation.

(2) If a covenant not to sue was issued in connection with a site that is located in an eligible area, the credit amount is equal to the lesser of seven hundred fifty thousand dollars or fifteen per cent of the eligible costs associated with a voluntary action incurred by the taxpayer, partnership, or S corporation.

(3) A taxpayer, partnership, or S corporation that has been issued covenants not to sue under section



3746.12 of the Revised Code for more than one site may apply to the director of development to enter into more than one agreement granting a credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code.

(4) For each year for which a taxpayer, partnership, or S corporation has been granted a credit under an agreement entered into under this section, the director of development shall issue a certificate to the taxpayer, partnership, or S corporation indicating the amount of the credit the taxpayer, the partners of the partnership, or the shareholders of the S corporation may claim for that year, not including any amount that may be carried forward from previous years under section 5733.34 of the Revised Code.

(D)(1) Each agreement entered into under this section shall incorporate a commitment by the taxpayer, partnership, or S corporation not to permit the use of an eligible site to cause the relocation of employment positions to that site from elsewhere in this state, except as otherwise provided in division (D)(2) of this section. The commitment shall be binding on the taxpayer, partnership, or S corporation for the lesser of five years from the date the agreement is entered into or the number of years the taxpayer, partnership, or S corporation is entitled to claim the tax credit under the agreement.

(2) An eligible site may be the site of employment positions relocated from elsewhere in this state if the director of development determines both of the following:

(a) That the site from which the employment positions would be relocated is inadequate to meet market and industry conditions, expansion plans, consolidation plans, or other business considerations affecting the relocating employer;

(b) That the governing body of the county, township, or municipal corporation from which the employment positions would be relocated has been notified of the possible relocation.

For purposes of this section, the movement of an employment position from one political subdivision to another political subdivision shall be considered a relocation of an employment position, but the transfer of an individual employee from one political subdivision to another political subdivision shall not be considered a relocation of an employment position as long as the individual's



employment position in the first political subdivision is refilled.

(E) A taxpayer, partnership, or S corporation that has entered into an agreement granting a credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code that subsequently recovers in a lawsuit or settlement of a lawsuit at least seventy-five per cent of the eligible costs associated with a voluntary action shall not claim any credit amount remaining, including any amounts carried forward from prior years, beginning with the taxable year in which the judgment in the lawsuit is entered or the settlement is finally agreed to.

Any amount of credit that a taxpayer, partnership, or S corporation may not claim by reason of this division shall not be considered to have been granted for the purpose of determining the total amount of credits that may be issued under division (B)(2) of this section.

(F) Each year for which a taxpayer, partnership, or S corporation claims a credit under section 5733.34 of the Revised Code, the taxpayer, partnership, or S corporation shall report the following to the director of development:

- (1) The status of all cost recovery litigation described in division (E) of this section to which it was a party during the previous year;
- (2) Confirmation that the covenant not to sue has not been revoked or has not been voided;
- (3) Confirmation that the taxpayer, partnership, or S corporation has not permitted the eligible site to be used in such a manner as to cause the relocation of employment positions from elsewhere in this state in violation of the commitment required under division (D) of this section;
- (4) Any other information the director of development requires to perform the director's duties under this section.

(G) The director of development shall annually certify, by the first day of January of each year during the qualifying period, the eligible areas for the calendar year that includes that first day of January.



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(H) The director of development, in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to implement this section, including rules prescribing forms required for administering this section.