

5703-29-22

Explanation of the commercial activity tax credits.(A)

(1) For purposes of the commercial activity tax, the law provides for five different credits taxpayers may apply against their tax liability: (a) a nonrefundable jobs retention credit; (b) a nonrefundable credit for qualified research expenses; (c) a nonrefundable credit for a borrower's qualified research and development loan payments; (d) a credit for unused franchise tax net operating loss deductions, which operates as both a nonrefundable credit or a refundable credit, depending on the year in which the taxpayer claims the credit; and (e) a refundable jobs creation credit. The jobs retention credit, the credit for qualified research expenses, the credit for a borrower's qualified research and development loan payments, and the jobs creation credit are all available under the corporation franchise tax through tax year 2008 (the taxpayer's taxable year ending in 2007). Those credits are available under the commercial activity tax starting January 1, 2008; however, a taxpayer may not apply those credits against the taxpayer's commercial activity tax liability until the tax period July 1, 2008 to September 30, 2008 on the commercial activity tax return due November 9, 2008. (Please note that because November 9, 2008 falls on a non-business day, pursuant to section 1.14 of the Revised Code, the return due date is extended to November 11, 2008. Any reference to such date in this rule will be extended to the same date.) A taxpayer may not begin using the credit for unused net operating losses until tax year 2010. In any event, a taxpayer may not claim as a credit against the commercial activity tax any credit amount that such taxpayer previously claimed as a credit and received the benefit of such credit against the corporation franchise tax or individual income tax or, if applicable, any credit amount that a pass-through entity passed through to its owners to the extent the owners received the benefit of such credit. In addition, in no event may a taxpayer claim a nonrefundable credit against its commercial activity tax annual minimum tax liability. There is no statutory provision to allow a taxpayer to claim against the commercial activity tax any portion of its unused one-seventh manufacturers' credit/grant pursuant to sections 5733.33, 5747.31, and 122.171 of the Revised Code.

(2) In the event a taxpayer is entitled to claim more than one nonrefundable credit against its commercial activity tax liability, section 5751.98 of the Revised Code dictates the order in which such taxpayer must claim each credit. The order is particularly important if, in the year the taxpayer generates the nonrefundable credits, the taxpayer is unable to use some portion of the total credit available (because the total credit amount exceeds the tax due before credits). Generally, a taxpayer may carry forward to future years any nonrefundable credits not used in the year generated; however, the carryforward period is often limited and varies from credit to credit. After the carryforward period for a particular credit expires, any credit amount that remains unused is lost. The unused amount of a particular credit carried

forward to a later year must be used after any lower numbered credit listed in section 5751.98 of the Revised Code but prior to the same credit generated in the later year and prior to any higher numbered credit listed in that section. The chart below reflects for each credit the code section that authorizes the credit, the carryforward period that relates to the credit, and the first year that taxpayers may use the credit against the commercial activity tax. The credits are listed in the table in the order in which they must be claimed.

<u>Credit</u>	<u>Refundable or Nonrefundable</u>	<u>Ohio Revised Code Section</u>	<u>Carryforward Period</u>	<u>First Period Credit Can Be Used Against the CAT</u>
<u>Jobs Retention Credit</u>	<u>Nonrefundable</u>	<u>5751.50(B) and 122.171</u>	<u>Three Years</u>	<u>Period beginning July 1, 2008</u>
<u>Credit for Qualified Research Expenses</u>	<u>Nonrefundable</u>	<u>5751.51</u>	<u>Seven years</u>	<u>Period beginning July 1, 2008</u>
<u>Credit for R and D Loan Payments</u>	<u>Nonrefundable</u>	<u>5751.52</u>	<u>Unlimited</u>	<u>Period beginning July 1, 2008</u>
<u>Credit for Unused NOLs</u>	<u>Nonrefundable</u>	<u>5751.53</u>	<u>Twenty years</u>	<u>2010</u>
<u>Credit for Unused NOLs</u>	<u>Refundable</u>	<u>5751.53</u>	<u>N/A</u>	<u>2030</u>
<u>Jobs Creation Credit</u>	<u>Refundable</u>	<u>5751.50(A) and 122.17</u>	<u>N/A</u>	<u>Period beginning July 1, 2008</u>

(3)

(a) In the event a taxpayer claims any credit against the commercial activity tax, the taxpayer must complete a schedule promulgated by the tax commissioner for such purpose. The schedule shall include identifying information that links the primary/reporting entity to the member claiming the credit, including the primary/reporting entity's name and address, commercial activity tax account number, and federal identification number, as well as the name(s) and account number(s) of those entities claiming the credit, if applicable. On the schedule, the

taxpayer must indicate the amount of each credit the taxpayer claims for that period.

(b) It is important to note that according to division (G)(2)(c) of section 5733.01 of the Revised Code, the corporation franchise tax phase-out factor does not apply in computing the amount of unused (nonrefundable) corporation franchise tax credit carried forward to subsequent year(s). That is, in computing the corporation franchise tax credit carried forward to a subsequent year, the credit is utilized against the corporation franchise tax to the extent the credit applies against the tax before multiplying the credit by the phase-out factor.

(B)

(1)

(a) Pursuant to division (B) of section 5751.50 of the Revised Code, the nonrefundable jobs retention tax credit is available under section 122.171 of the Revised Code to certain eligible businesses that propose capital investment projects that will retain jobs in Ohio. An eligible business may make an application to the tax credit authority to be considered for a nonrefundable jobs retention tax credit.

(b) Subject to the restrictions in paragraph (A)(1) of this rule, the credit granted under section 122.171 of the Revised Code may be applied against the corporation franchise tax, personal income tax, or commercial activity tax for a period of up to fifteen years, depending on the terms of the agreement with the tax credit authority. A taxpayer may carry forward any unused credit for not more than three years after the year in which the credit is granted.

(2)

(a) For those taxpayers that are subject to the phase-out of the corporation franchise tax and the phase-in of the commercial activity tax, the last corporation franchise tax report for which the jobs retention tax credit applies is the 2008 tax year (the taxable year ending in 2007). Jobs retention tax credit agreements entered into prior to 2008 that first apply to the corporation franchise tax automatically apply to the commercial activity tax for the remaining years of the agreement without further action on the part of the taxpayer or the director of development.

(b) A taxpayer that otherwise meets the requirements to claim the jobs retention tax credit must obtain a certificate from the director of development before the taxpayer may claim the credit. A taxpayer claiming a nonrefundable jobs retention tax credit may not begin accumulating the credit toward the taxpayer's commercial activity tax

liability until January 1, 2008, and may not apply that credit against its commercial activity tax liability until the period July 1, 2008 to September 30, 2008 on the commercial activity tax return due November 9, 2008.

(c) In administering the jobs retention tax credit, the department of taxation will follow the policy established by the department of development in a letter to jobs creation tax credit recipients on December 29, 2006. Pursuant to that letter, the credit referenced in any certificate issued before May 31, 2008 must be claimed against the taxpayer's corporation franchise tax liability, and the credit referenced in any certificate issued after May 31, 2008 must be claimed against the taxpayer's commercial activity tax liability regardless of the withholding period on which the credit is based. Alternatively, recipients that are pass-through entities may elect to pass through the credit to such entity's owners. Of course, recipients that make that election may not claim as a credit against their commercial activity tax liability any portion of the credit passed through to a pass-through entity's owners.

(d) For commercial activity tax purposes, a taxpayer operating on a fiscal year basis that has a credit for any portion of calendar year 2007, which credit the taxpayer cannot claim against its corporation franchise tax liability, may claim the credit for that short period against the taxpayer's commercial activity tax liability.

(e) As an example of paragraph (B)(2) of this rule, assume that in year 2000, an April 30 year-end corporation franchise taxpayer enters into an agreement with the director of development for a credit for a period of fifteen years. According to the agreement, the first taxable year for which the taxpayer can claim the credit is the taxable year beginning May 1, 2000 and ending April 30, 2001, which corresponds with the taxpayer's corporation franchise tax report year 2002. When the taxpayer entered into the agreement, the last taxable year for which the taxpayer could have claimed the credit under the corporation franchise tax was the taxable year ending April 30, 2015, which corresponds with corporation franchise tax report year 2016. Because the commercial activity tax is computed and reported on a calendar year basis, the taxpayer is concerned with its credit for the short period May 1, 2007 to December 31, 2007.

(i) If on July 30, 2008, the director of development issues the taxpayer a tax credit certificate for the short period May 1, 2007 to December 31, 2007 then pursuant to the policy established by the department of development's December 29, 2006 letter, the taxpayer must claim the credit for that short period on its commercial activity tax return due November 9, 2008 to the

extent of the taxpayer's liability for that quarter. Any unused credit is carried forward to the taxpayer's next quarterly return and is applied against the taxpayer's corresponding commercial activity tax liability. Beginning in calendar year 2008, the taxpayer is required to compute the credit on a calendar year basis, regardless of its fiscal year-end. Accordingly, the director of development will issue a certificate for the period January 1, 2008 to December 31, 2008 to the taxpayer, and the taxpayer will claim the credit on its return for the period during which the taxpayer receives the certificate.

(ii) If, instead of issuing the certificate in paragraph (B)(2)(e)(i) of this rule, on April 25, 2008, the director of development issues the taxpayer a certificate for the short period May 1, 2007 to December 31, 2007, such taxpayer would be required to apply that credit against its 2008 corporation franchise tax report (based on taxable year 2007).

(3)

(a) In accordance with division (H) of section 122.171 of the Revised Code, a taxpayer claiming a credit under section 122.171 of the Revised Code must submit to the commissioner with the taxpayer's tax return for the tax period in which the taxpayer receives the certificate a copy of the certificate and the completed schedules as referenced in paragraph (A)(3) of this rule. For purposes of the commercial activity tax, some taxpayers are required to file tax returns and to remit tax due on a quarterly basis electronically in accordance with section 5751.07 of the Revised Code, division (C) of section 5751.05 of the Revised Code, and Ohio Adm. Code 5703-29-05. Electronic filers must send a copy of the certificate along with completed schedules to the following address: Ohio Department of Taxation, Commercial Activity Tax Division - CAT Credits, P.O. Box 530, Columbus, Ohio 43216-0530. If the taxpayer fails to provide a copy of the certificate and schedules with its return or, if filing electronically, a copy to the commissioner, the taxpayer must supply a copy of the certificate within sixty days of the commissioner's request.

(b) For example, a taxpayer accrues a credit under section 122.171 of the Revised Code for the period January 1, 2009 to December 31, 2009. The taxpayer applies for a certificate with the director of development and receives the certificate June 15, 2010. The taxpayer may apply the credit against its commercial activity tax liability for the period April 1, 2010 to June 30, 2010 on its return due August 9, 2010. In the event the taxpayer does not fully utilize its entire credit, the taxpayer may carry forward any unused portion to apply against its future commercial

activity tax liability for a period of up to three years. The taxpayer must provide the commissioner with a copy of its certificate at the time it files its initial return. If the taxpayer does not supply a copy of the certificate at that time, the taxpayer must supply a copy of the certificate within sixty days after the commissioner requests such copy.

(C)

(1) Pursuant to section 5751.51 of the Revised Code, the nonrefundable credit for qualified research expenses is available to taxpayers to apply against their commercial activity tax liability for purposes of conducting in-house research and contract research. The term "qualified research expenses" is defined in section 41 of the Internal Revenue Code. For purposes of this paragraph, "Internal Revenue Code" has the same meaning as in division (K) of section 5751.01 of the Revised Code.

(2) A taxpayer may begin accumulating a credit for qualified research expenses toward its commercial activity tax liability in tax year (calendar year) 2008. In addition, a taxpayer may begin applying its unused corporation franchise tax credit for qualified research expenses against its commercial activity tax liability on the commercial activity tax return due November 9, 2008 to the extent the taxpayer could not have applied the credit against the corporation franchise tax. Regardless of a taxpayer's commercial activity tax filing frequency, a taxpayer must compute the credit for qualified research expenses based on expenses incurred during the calendar year (not the taxpayer's federal taxable year or the taxpayer's Ohio corporation franchise taxable year). Thus, a taxpayer must claim the credit for qualified research expenses on its annual return due in February of each year. Any portion of the nonrefundable credit that remains unused after the taxpayer applies the credit against its commercial activity tax liability for that period may be carried forward to the subsequent return for no more than seven years.

(3)

(a) Fiscal year corporation franchise taxpayers claiming a credit under section 5751.51 of the Revised Code need not compute the credit for the short period beginning on the day following the end of its taxable year ending in 2007 and ending December 31, 2007 because the credit does not apply for that period. For calendar years 2008 and thereafter, eligible taxpayers may calculate the available nonrefundable credit by multiplying seven per cent by the difference between the taxpayer's research and development expenses incurred in Ohio during the calendar year and the taxpayer's average annual research and development expenses incurred in Ohio during the three preceding calendar years.

(b) For example, a March 31 fiscal year-end taxpayer's 2008 corporation franchise tax report (based on taxable year ending March 31, 2007) reflects excess research and development expense credits. The taxpayer may begin applying those unused credits against its commercial activity tax liability beginning with the period July 1, 2008 on a return due November 9, 2008. The taxpayer is not required to compute a credit for the period April 1, 2007 to December 31, 2007 because the taxpayer cannot claim a credit for research and development expenses incurred in that period. For calendar years beginning in 2008 and thereafter, the taxpayer will use the formula prescribed in paragraph (C)(3)(a) of this rule to determine its available credit.

(D)

(1) Pursuant to section 5751.52 of the Revised Code, the nonrefundable credit for research and development loan payments is available to taxpayers for application against their commercial activity tax liability for purposes of paying allowable costs of eligible research and development projects. The terms "borrower" and "qualified research and development loan payments" are defined in section 166.21 of the Revised Code. A taxpayer may make an application to the director of development for consideration for this credit, and, if approved, the director of development will issue a certificate.

(2) A taxpayer may begin accumulating a credit for research and development loan payments toward its commercial activity tax liability in tax year 2008, and may begin applying that credit against its commercial activity tax liability for the period July 1, 2008 to September 30, 2008 on the return due November 9, 2008. Furthermore, a taxpayer may begin applying its unused corporation franchise tax credit for research and development loan payments toward the taxpayer's commercial activity tax liability on the commercial activity tax return due November 9, 2008. Any portion of the credit that remains unused after the taxpayer applies the credit against its 2008 corporation franchise tax liability may be applied toward the taxpayer's commercial activity tax until the credit is used in its entirety.

(3) In accordance with division (B) of section 5751.52 of the Revised Code and division (D) of section 166.21 of the Revised Code, before a taxpayer may claim a credit for research and development loan payments, the taxpayer must obtain a certificate from the director of development. The taxpayer must submit to the commissioner with the taxpayer's tax return for the tax period in which the taxpayer receives the certificate a copy of the certificate and the completed schedules as referenced in paragraph (A)(3) of this rule. For purposes of the commercial activity tax, some taxpayers are required to file tax returns and to remit tax due on a quarterly basis electronically in accordance with section 5751.07 of the Revised Code, division (C) of section

5751.05 of the Revised Code, and Ohio Adm. Code 5703-29-05. Electronic filers must send a copy of the certificate along with completed schedules to the following address: Ohio Department of Taxation, Commercial Activity Tax Division - CAT Credits, P.O. Box 530, Columbus, Ohio 43216-0530. If the taxpayer fails to provide a copy of the certificate and schedules with its return or, if filing electronically, a copy to the commissioner, the taxpayer must supply a copy of the certificate within sixty days of the commissioner's request.

(E)

(1) Pursuant to section 5751.53 of the Revised Code, the credit for unused corporation franchise tax net operating loss deductions is available to qualifying taxpayers for application against their commercial activity tax liability to the extent provided by that section and Ohio Adm. Code 5703-29-11. In order to be eligible for a credit for unused net operating loss deductions, a qualifying taxpayer must have filed with the commissioner a report by June 30, 2006 that set forth the amortizable amount available. The term "qualifying taxpayer" is defined in division (A)(4) of section 5751.53 of the Revised Code.

(2) In accordance with divisions (B) and (C) of section 5751.53 of the Revised Code, a qualifying taxpayer may not begin claiming the credit for unused corporation franchise tax net operating losses until calendar year 2010.

(a) In accordance with division (B) of section 5751.53 of the Revised Code, the credit is at first nonrefundable and phases-in by increments of ten per cent per year over the first nine years of the credit. In calendar year 2019, a taxpayer may begin claiming one hundred per cent of any remaining, previously unclaimed amortizable amount as a nonrefundable credit against its commercial activity tax liability. From 2019 through 2029, a taxpayer may continue to claim one hundred per cent of the remaining and outstanding amortizable amount as a nonrefundable credit. In no event may the taxpayer's cumulative credit exceed one hundred per cent of its amortizable amount. In addition, a taxpayer may not apply the nonrefundable credit to reduce its outstanding tax liability (after applying the other credits that precede this credit in the order listed in section 5751.98 of the Revised Code) by more than one-half.

(b) In accordance with division (C)(1) of section 5751.53 of the Revised Code, the taxpayer may claim a refundable credit for its remaining and outstanding amortizable amount in calendar year 2030. In no event may the taxpayer claim a refundable credit for any portion of the amortizable amount the taxpayer previously claimed as a nonrefundable credit. In addition, a taxpayer may not claim a refundable credit if the claimant

was not subject to the commercial activity tax during any portion of calendar year 2030.

(F)

(1) Pursuant to division (A) of section 5751.50 of the Revised Code, the refundable jobs creation tax credit is available to taxpayers and is granted by the tax credit authority under section 122.17 of the Revised Code. A taxpayer that proposes a project to create new jobs in the state of Ohio may apply to the tax credit authority for a tax credit and if the project is approved, the taxpayer and the tax credit authority may enter into an agreement for a term specified by the agreement and in conjunction with division (C) of that section. The jobs creation tax credit is computed by multiplying the amount of Ohio income tax withheld from compensation paid to "new employees" by the percentage stated in the agreement. The term "new employees" is defined in division (A)(2) of section 122.17 of the Revised Code. For corporation franchise tax purposes, the credit is computed based on withholding during the taxpayer's taxable year; for commercial activity tax purposes, the credit is computed based on withholding during the "tax period". The term "tax period" is defined in division (M) of section 5751.01 to mean a calendar year or calendar quarter.

(2)

(a) For those taxpayers that are subject to the phase-out of the corporation franchise tax and the phase-in of the commercial activity tax, the last corporation franchise tax report for which the jobs creation tax credit applies is the 2008 tax year (the taxable year ending in 2007). Jobs creation tax credit agreements entered into prior to 2008 that first apply to the corporation franchise tax automatically apply to the commercial activity tax for the remaining years of the agreement without further action on the part of the taxpayer or the director of development.

(b) A taxpayer that otherwise meets the requirements to claim the jobs creation tax credit must obtain a certificate from the director of development before the taxpayer may claim the credit. A taxpayer claiming a refundable jobs creation tax credit may not begin accumulating the credit under the commercial activity tax until January 1, 2008, and may not apply that credit against its commercial activity tax liability until the period July 1, 2008 to September 30, 2008 on the commercial activity tax return due November 9, 2008.

(c) In administering the jobs creation tax credit, the department of taxation will follow the policy established by the department of development in a letter to jobs creation tax credit recipients on December 29, 2006. Pursuant to that letter, the credit referenced in any certificate issued on

or before May 31, 2008 must be claimed against the taxpayer's corporation franchise tax liability and the credit referenced in any certificate issued after May 31, 2008 must be claimed against the taxpayer's commercial activity tax liability regardless of the withholding period on which the credit is based. Alternatively, recipients that are pass-through entities may elect to pass the credit through to such entity's owners. Of course, recipients that make that election may not claim as a credit against their commercial activity tax liability any portion of the credit passed through to a pass-through entity's owners.

(3)

(a) In accordance with division (H) of section 122.17 of the Revised Code, a taxpayer claiming a credit under section 122.17 of the Revised Code must submit to the commissioner with the taxpayer's tax return for the tax period in which the taxpayer receives the certificate a copy of the certificate and the completed schedules as referenced in paragraph (A)(3) of this rule. For purposes of the commercial activity tax, some taxpayers are required to file tax returns and to remit tax due on a quarterly basis electronically in accordance with division (C) of section 5751.05 of the Revised Code and Ohio Adm. Code 5703-29-05. Electronic filers must send a copy of the certificate along with completed schedules to the following address: Ohio Department of Taxation, Commercial Activity Tax Division - CAT Credits, P.O. Box 530, Columbus, Ohio 43216-0530. If the taxpayer fails to supply a copy of the certificate from the director of development with its return, or, if filing electronically, a copy to the commissioner, the taxpayer must supply a copy of the certificate within sixty days after the commissioner requests such copy.

(b) For example, assume that in year 2000, an April 30 year-end taxpayer entered into a jobs creation tax credit agreement with the tax credit authority for a period of fifteen years. According to the agreement, the first taxable year for which the taxpayer can claim the credit is the taxable year beginning May 1, 2000 and ending April 30, 2001, which corresponds with the taxpayer's corporation franchise tax report year 2002. When the taxpayer entered into the agreement, the last taxable year for which the taxpayer could have claimed the credit under the corporation franchise tax was the taxable year ending April 30, 2015, which corresponds with corporation franchise tax report year 2016. However, because of the law change that phases-out the corporation franchise tax and phases-in the commercial activity tax, the 2008 corporation franchise tax report is the last report for claiming the jobs creation tax credit against the corporation franchise tax. Further, assume that on July 30, 2008, the tax credit authority issued a separate tax

certificate for the transition period that begins May 1, 2007 and ends on December 31, 2007. Because the certificate was issued after May 31, 2008, the taxpayer must apply the credit for that short period against the taxpayer's 2008 commercial activity tax liability. The taxpayer provided to the commissioner a copy of the certificate along with a completed schedule on November 9, 2008. At the same time, the taxpayer filed its third quarter return electronically. The taxpayer applied the credit amount against its third quarter liability and received a refund of the outstanding balance. Beginning in calendar year 2008, the taxpayer is required to compute the total amount of available credit on a calendar year basis, regardless of its fiscal year-end.

Effective: 05/29/2008

R.C. 119.032 review dates: Exempt

CERTIFIED ELECTRONICALLY

Certification

05/19/2008

Date

Promulgated Under: 5703.14
Statutory Authority: 5703.05
Rule Amplifies: 122.17, 122.171, 5751.50, 5751.51, 5751.52, 5751.53,
5751.98