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Taking Advantage of Ohio's Sustainability Incentives

Now more than ever, businesses are focused on their environmental impact and sustainability goals. This is largely due to increased scrutiny and pressure from regulators, investors and customers to become more "green."

To encourage sustainability projects within their borders, many states offer various programs, incentives and tax exemptions to organizations that invest in environmentally friendly projects. With this current trend in mind, this article provides a brief overview of how the state of Ohio uses its tax code and other financial incentives to attract and promote sustainable investments.

The Qualified Energy Project Tax Exemption

Ohio strongly incentivizes renewable energy generation with the Qualified Energy Property Tax Exemption. This program provides a valuable exemption from public utility personal property tax and real property tax.[1] To qualify, a project must generate renewable energy resources, which include solar, wind, hydroelectric, geothermal and solid waste fuel, among others.[2]

To obtain the exemption, the owner[3] of a project must apply for qualification to the Development Services Agency on or before Dec. 31, 2022.[4] Construction or installation of the energy facility must begin before Jan. 1, 2023.

If the project has a nameplate capacity of 20 megawatts or greater, the board of county commissioners where the property is located must approve the application. Prior to the passage of Ohio House Bill 6 in 2019, the nameplate capacity threshold for county approval was only five megawatts. This new standard will help streamline implementation for projects in the five to 20-megawatt range.

In lieu of paying tax on its public utility property and real property, the owner must make designated annual service payments to the county treasurer.[5] The annual service payments range from \$6,000–\$8,000 per megawatt of nameplate capacity, depending on

the technology used in the qualified project and the number of full-time employees utilized in the project.

These annual service payments become substantially lower than the property tax amounts that would otherwise be due. However, the precise amount of savings would depend on each facility's market valuation and the local mill rate.

As long as the project remains in compliance with its reporting and payment requirements, the property tax exemption will remain valid indefinitely.[6] However, the exemption may be revoked if the Development Services Agency determines that the project has failed to comply with any of the statutory requirements.[7]

The Qualified Energy Property Tax Exemption formerly provided an exemption from public utility personal property tax for property used in a qualified energy project using clean coal technology, advanced nuclear technology or cogeneration technology. However, the deadline to apply expired on Dec. 31, 2017.[8]

Businesses using these technologies and other energy-related investments may, however, still be able to use utilize other state incentives, such as the Enterprise Zone Program.

The Ohio Enterprise Zone Program

The Ohio Enterprise Zone Program is a tool the state uses to drive economic development in specified areas of the state designated as enterprise zones. The program promotes development by granting property tax exemptions on the land improvements generated by new investments in qualified enterprise zones that are designated by local governments.

In other words, while the existing land values and existing building values are not eligible for exemption, the improvements made to the same are eligible for exemption from property tax under this program. Likewise, energy companies making qualified investments in enterprise zones can also obtain an exemption from public utility personal property tax.

In order to qualify for exemption, the entity seeking the incentive must request that the target area be certified as an active

enterprise zone by the city or county in which the zone is located. Once an area has been certified, the city or county and the business must finalize an enterprise zone agreement that sets forth the exemptions that will be granted prior to the project being started.

These incentives are all negotiable, but Ohio law provides some upper limits:

- Exemption of up to 75% of the assessed value of the personal property used at the project site for up to 15 years.
- Exemption of up to 75% of the increase in the assessed valuation of real property constituting the project site subsequent to formal approval of the agreement for up to 15 years.[9]

The enterprise seeking the exemption can also negotiate for other services or assistance from the city or county that it may need in performing the project.

Voluntary Action Program

Ohio's Voluntary Action Program provides another tax exemption for environmentally friendly projects. The program is, in essence, an agreement reached between a business, the Ohio Environmental Protection Agency and the Ohio tax commissioner, whereby the business conducts remedial activities (i.e., actions taken to permanently treat or remove hazardous substance or protect public safety and the environment) at a project site.

In exchange, the Ohio EPA covenants not to sue (for environmental reasons), and the tax commissioner issues a 10-year property tax exemption on the improvements made to the identified property.[10] The exemption works by essentially freezing the tax valuation of the property as of the year in which the remedial project began.

This program can be a useful tool for developers whenever working on a project site that requires environmental mediation before construction or renovation can begin.

Lead Abatement Credit

To help combat lead's adverse environmental effects, Ohio created a new lead abatement credit in late 2019. This is a nonrefundable credit that provides taxpayers a credit equal to the lesser of (a) the lead abatement costs incurred by the taxpayer on the eligible dwelling during the taxable year, (b) the amount of lead abatement costs listed on the application, or (c) \$10,000.[11]

This credit is also subject to the limitation that no more than \$5 million in lead abatement tax credits can be issued in any fiscal year. Awards are issued on a first come, first served basis.

Pollution Control Facility Tax Exemptions

Ohio also provides certain other tax exemptions as incentives for businesses performing projects that fight air, water and noise pollution. The Pollution Control Tax Exemption Program offered by the Ohio Department of Taxation provides a sales and property tax exemption for the installation of air,[12] water[13] or noise[14] pollution control property.

Specifically, the program (1) exempts the tangible personal property that will be incorporated into the facility from sales and use tax and (2) exempts the qualified property improvements from property tax.[15]

To obtain this exemption, the business must submit an application[16] to the Department of Taxation containing plans and specifications of the property, including all materials incorporated or to be incorporated therein and their associated costs, and a descriptive list of all equipment acquired or to be acquired by the applicant for the exempt facility and its associated cost.[17]

The tax commissioner requests the review and approval of the Ohio EPA or Department of Natural Resources, which will then issue a recommendation to the tax commissioner regarding its findings. After receiving a recommendation from the Ohio EPA or Department of Natural Resources regarding the project, the tax commissioner reviews the application to ensure that the facility is designed primarily for an exempt purpose and then grants or denies the exemption.[18]

If the exemption certificate is granted, all future purchases of property to be incorporated into the facility will be exempt from sales and use tax. Businesses should also note that there is a four-year statute of limitations to claim a refund for previously overpaid sales tax. Such sales tax refund claims can result in substantial savings.

Environmental Grant Programs

In addition to Ohio's tax exemptions for sustainability projects, the state also offers various grants that operate in a similar fashion to reimburse businesses and organizations for qualified investments. For example, the Ohio EPA administers several grant programs targeting sustainability investments in the transportation sector.

The Diesel Emission Reduction Grant Program and the VW Mitigation Grant Program^[19] reimburse the project costs associated with diesel vehicle and engine replacements to help finance the purchase of new, more fuel-efficient vehicles and engines. Projects are evaluated based on their cost-effectiveness in using public grant dollars to reduce anticipated nitrous oxide emissions. Grant awards under these programs can be as high as \$2 million.

Similarly, the Alternative Fuel Vehicle Grant is offered to incentivize businesses to switch diesel-powered vehicles to run on alternative fuel sources such as compressed natural gas, liquefied natural gas or propane autogas. For the first time in 2020, Ohio will also be issuing Electric Vehicle Infrastructure Grants to help finance the installation of new electric charging stations in the state. For more information about any of these grant programs, see the Ohio EPA website.

Conclusion

The incentives described in this article demonstrate Ohio's commitment to rewarding businesses that take extra steps to invest in sustainability projects and protect the environment. Businesses considering investments in Ohio should always evaluate whether they could qualify for tax incentives in order to reduce

overall project costs and improve their return on investment.

Note: This article originally appeared on [Law360's State and Local Tax Wire](#) and has been reprinted with permission from Law360. [Click here to view the original.](#)

For more information, contact any member of Frost Brown Todd's [Tax Practice](#).

[1] R.C. 5727.75(D); as of 2008, Ohio no longer imposes a personal property tax on taxpayers other than "public utilities" as defined in R.C. 4727.01(A).

[2] R.C. 4928.01(A)(37)(a).

[3] This same exemption is available to a lessee of property pursuant to a sale and leaseback transaction.

[4] The application deadline was extended by two years by H.B. 166.

[5] R.C. 5727.75(G).

[6] R.C. 5727.75(B)(2).

[7] R.C. 5727.75(E)(3).

[8] R.C. 5727.75(E)(1)(a)(ii).

[9] For county-authorized enterprise zones, the county may only exempt up to 60% of the assessed value of qualified property. See R.C. 5709.63(B)(1).

[10] R.C. 5709.87.

[11] R.C. 3742.50(B); R.C. 5747.26.

[12] An air pollution control facility is defined as property "installed for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, air contaminants generated at an industrial or commercial plant or site that renders air harmful or inimical to the public health or to property within this state ..." R.C. 5709.20(B).

[13] An industrial water pollution control facility is defined as property "installed for the primary purpose of collecting or conducting industrial waste to a point of disposal or treatment;

reducing, controlling, or eliminating water pollution caused by industrial waste; or reducing, controlling, or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of this state ..." R.C. 5709.20(L).

[14] A noise pollution control facility is property "installed for use at an industrial or commercial plant or site for the primary purpose of eliminating or reducing ... the emission of sound which is harmful or inimical to persons or property, or materially reduces the quality of the environment ..." R.C. 5709.20(F).

[15] R.C. 5709.25(A) and (B).

[16] There is an application fee equal to 0.5% of the total project cost. See R.C. 5709.212(A).

[17] R.C. 5709.21(B).

[18] R.C. 5709.21(B) and R.C. 5709.211.

[19] The application period for this grant is set as about a 2-month period each year. The next application window opens June 1 and closes Aug. 7.

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