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MEMORANDUM

To: Robert Brundrett, Ohio Manufacturers' Association
From: Mark A. Engel, Bricker & Eckler LLP
Date: April 4, 2016
Re: House Bill 491

House Bill 491 proposes to enact a credit against the commercial activity tax ("CAT") for taxpayers that incur certain costs at facilities located in activated foreign trade zones within the state. The credit is nonrefundable and equals the amounts that the taxpayer spends on specified activities during the tax period.

Proposed R.C. 5751.15(A)(1) defines a "foreign trade zone" as any general or special purpose zone for which a permit has been granted and remains active, and includes special purpose subzones.

"Qualifying training or continuing education" means "career enrichment lectures, activities, or self-study programs" that are tailored to an employee's current job, a job to which the employee aspires, or the industry in which the employee works."

The credit is available to taxpayers maintaining operations within an active foreign trade zone. The credit equals the amount spent by the taxpayer on the following four categories at the activated trade zone facility in Ohio:

1. Creating additional employment positions;
2. Providing qualifying training or continuing education for employees;
3. Making capital investments, including expenditures for renewable energy resources; and
4. Undertaking initiatives to increase its exports of goods or services produced.

The credit is limited to the amount of tax otherwise due on the basis of gross receipts derived from activities at the facility.

There is no provision for unused credit amounts to carry forward. The credit expires January 1, 2022.

Just a couple of observations about the bill.

February 26, 2016

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The credit is based on the expenses made; that is, the expenses are not tax-affected. If a taxpayer spends \$1 million, its credit equals \$1 million; its credit is not 0.26 % off \$1 million.

The definition of “qualifying training or continuing education” is pretty broad. Lectures and self-study programs can be very general, and the jobs for which such training is obtained may include virtually any job, whether with the employer or not.

Expenses to undertake initiatives to increase exports of goods and services produced at the facility are likewise very broad and vague. General advertising campaign expenses could qualify for the credit.

All in all, this seems to be a *very* generous credit. It might be interesting to know the taxpayer on whose behalf this bill was introduced.