



Department of Development

Ted Strickland, Governor
Lee Fisher, Lt. Governor
Director, Ohio Department of Development

February 26, 2008

Job Creation Tax Credit Treatment of Fiscal Filers during Transition to Commercial Activity Tax

Per earlier correspondence from the Office of Tax Incentives¹, for corporation franchise tax (CFT) taxpayers, Job Creation Tax Credit program (JCTC) certificates issued on or before May 31, 2008 must be taken against the CFT. Conversely, certificates issued after May 31, 2008 are to be taken against the CAT (subject to the apportionment of JCTC certificates to pass-through entities²).

The 2008 return is the last opportunity for claiming JCTC under the CFT.

Because the CAT is computed and reported on a calendar year basis, there may be concerns during this transition period on the part of fiscal year taxpayers as to properly reporting and claiming tax credits under the JCTC.

Such concerns among fiscal year filers, resulting from the change-over to the CAT, may be demonstrated using the following example³:

- Fiscal filing CFT taxpayer with May 1 to April 30 taxable year filed a 2002 franchise return for its taxable year May 1, 2000 to April 30, 2001. This taxable year was captured under the JCTC program's 2001 annual report (received March 1, 2002).
 - Without the transition to the CAT, the taxpayer would simply file a 2008 CFT return for its taxable year May 1, 2006 to April 30, 2007. The Office of Tax Incentives would track the taxpayer's activities during this taxable year under the JCTC program's 2007 annual report (filed no later than March 1, 2008).
 - In a vacuum (*i.e.*, without the guidance provided by the Office of Tax Incentives in this correspondence), the phase-in of the CAT as of January 1, 2008 would require the taxpayer to choose among the **following possible filing options** with regard to the JCTC:
 - File a "standard" JCTC 2007 annual report for its taxable year May 1, 2006 to April 30, 2007 (as in the non-CAT transition scenario, immediately above). The annual report must be filed no later than March 1, 2008.
- AND-
- File an *additional* "short period" JCTC 2007 annual report that includes the portion of the taxpayer's "next" taxable year May 1, 2007 to December 31, 2007. Provided the Office can issue a certificate by May 31, 2008, this filing option would capture the last

¹ See Office of Tax Incentives' published December 29, 2006 guidance letter. The correspondence spells out the issuing of tax credit certificates during the transition to the commercial activity tax (CAT) in calendar year 2008.

² See Ohio Revised Code (ORC) §122.17(J).

³ The concepts described under this example apply to any fiscal filer, including retail-based taxpayers with a February to January fiscal year.

applicable period during which the taxpayer may earn credits against its CFT obligations. Conversely, even if the Office would be unable to issue a certificate by the May 2008 deadline, the taxpayer – for cash flow purposes – likely would desire the ability to capture any certificate value for this “short period” under the JCTC 2007 annual report.

-OR-

- File a *combined* “long period” JCTC 2008 annual report that includes the portion of the taxpayer’s last taxable year under the CFT (May 1, 2007 to December 31, 2007) as well as the period January 1, 2008 to December 31, 2008. The report for this period would be due by March 1, 2009. A certificate issued under this choice would offset any CAT liability.
- Thereafter, the taxpayer would file both its tax returns *and* JCTC annual reports according to the CAT’s calendar year filing requirements.⁴

Question

The following question has been posed by Ohio Department of Taxation and legal counsel to JCTC participants: how does the Office of Tax Incentives anticipate receiving JCTC 2007 annual reports and issuing certificates given the various fiscal filing options available? Put differently, **does the Office have a preference between the possible filing options described above** – requiring “short period” or “long period” JCTC annual reports?

Answer

The Office of Tax Incentives **prefers that fiscal year taxpayers file both a “standard” and a “short period” JCTC 2007 annual report**. But the Office of Tax Incentives will accept “long period” JCTC 2008 reports, if that option is chosen by fiscal year taxpayers. Irrespective of the choice made, all fiscal filing taxpayers are required to submit the “standard” JCTC 2007 annual report by the March 1, 2008 deadline.

Filing under the “short period” option

For those taxpayers choosing to file “short period” JCTC 2007 annual reports, the Office of Tax Incentives will implement the following procedure during this transition period to the CAT⁵:

1. **Expedite review** and make every effort to issue certificates by the May 31, 2008 deadline for both “standard” and “short period” JCTC 2007 annual reports filed by those taxpayers which:
 - a. Received a JCTC 2006 tax credit certificate; or
 - b. Will be filing their first annual report under the program, but have zero (0) retained employees in the project.

⁴ See ORC §122.17(B). “The amount of the credit available for a taxable year *or for a calendar year that includes a tax period* equals the new income tax revenue for that year multiplied by the percentage specified in the agreement with the tax credit authority” [emphasis added].

⁵ Internal process note: the operative changes in our reporting documents would involve manipulating spreadsheet formulas to capture the “short period.” The JCTC annual report form’s self-audit tool currently contemplates a twelve-month reporting period. To shorten the reporting period requires two discrete changes in Form JCTC-02 self-audit formulas: the number of days in the reporting period (changing from 366 to the applicable shorter value); and the number of weeks (changing from 52 to the applicable shorter value).

In these two groups, the Office of Tax Incentives is reasonably confident a taxpayer either (1) understands the JCTC reporting requirements and is in relative good standing under the program; or (2) has a less complex reporting obligation to the Office, respectively. And as such, the Office possesses a degree of comfort in handling “double” the number of annual reports and attempting to issue respective certificates by the May 31, 2008 deadline.

2. Perform **traditional review** for both “standard” and “short period” JCTC 2007 annual reports by all other fiscal year taxpayers, including:
 - a. Those which did not receive a JCTC 2006 tax credit certificate; and
 - b. Those for whom the JCTC 2007 annual report marks their first report year under the program, and which have one (1) or more retained employees in the project.

In these two groups, the Office of Tax Incentives acknowledges either: (1) previously identified issues with earlier annual reports having precluded us from issuing certificates; or (2) the need for more in-depth review of annual report materials to ensure the first-year filer’s information is correct as it begins participating in the program.

In filing the “short period” report, taxpayers will be granted a filing deadline “safe harbor.” That is, the Office of Tax Incentives will accept such reports through March 1, 2009 (the same due date as the JCTC 2008 annual report). This extension is meant to allow sufficient time for taxpayers to compile the necessary information concerning the short period. Why? Because the Office of Tax Incentives believes many fiscal filing taxpayers remain unaware of the filing implications under the JCTC resulting from the transition to the CAT. The Office of Tax Incentives will not assess a late filing penalty against fiscal year taxpayers submitting their “short period” JCTC 2007 annual reports through March 1, 2009. Notwithstanding this “safe harbor,” such taxpayers are encouraged to file their “short period” reports as soon as possible since doing so may result in the receipt of certificates and, accordingly, an ability to claim credits sooner than if they wait until March 1, 2009 to submit such reports.

Note: The Office cannot ensure a fiscal year taxpayer filing under the “short period” option will be issued a tax credit certificate before the May 31, 2008 deadline for taking credits against CFT obligations. Although the Office will use its reasonable best efforts to issue tax credit certificates as efficiently as possible, the foregoing merely indicates the order of priority to be given to annual reports filed and does not bind the Office to issuing any certificates prior to May 31, 2008.