

California Competes Tax Credit - Application Process Reopening for FY 2014/2015

August 14, 2014

Overview

The California Competes Tax Credit (“CCTC”) is an income tax credit available to businesses expanding in or relocating to California.¹ The CCTC was enacted on July 11, 2013, with the initial application period having closed on April 14, 2014.² For fiscal year 2013/2014, the CCTC Committee awarded \$28,904,663 in tax credits in amounts ranging from \$20,000 to \$6,000,000 to 29 taxpayers.³ For fiscal year 2014/2015, the Governor’s Office of Business and Economic Development (“GO-Biz”) anticipates \$150,000,000 in available CCTC.⁴ Two of the three application periods and all CCTC committee hearing dates have been released by GO-Biz, and the application process should open shortly.⁵

This Tax Alert provides a summary of the CCTC and information on the upcoming application process.

Summary of the CCTC

The CCTC is a competitive, negotiated income tax credit that is subject to application, review and award.⁶ The CCTC, unlike most tax incentives, requires applicants in each period to vie against one another for a finite amount of available tax credits. Taxpayers may request any amount of CCTC that is greater than \$20,000 but not more than 20% of the aggregate amount of CCTC available in a fiscal year.⁷ Once GO-Biz opens an application period, a taxpayer applying for the credit will be required to fill out an online form on which the taxpayer may provide information about the project, including but not limited to:

- Information about the taxpayer;
- A brief description of the project;
- Whether the project is related to expansion, retention or relocation;
- Aggregate number of jobs the taxpayer will create or retain in the state;
- Aggregate compensation paid or proposed to be paid to the taxpayer’s newly-hired or retained employees;
- Aggregate investment by the taxpayer in the project; and
- Amount of CCTC requested and over what time period.⁸

Applications are reviewed based upon a two-phase process intended to reward those taxpayers who offer California the greatest economic benefit at the least economic cost.⁹ Phase I involves the automatic, mechanical ranking of the applications based upon a quantitative cost-benefit ratio (“CBR”).¹⁰ The CBR is a fraction, of which the numerator is the taxpayer’s requested amount of CCTC and the denominator is total investment proposed (aggregate new employee compensation and aggregate new investment).¹¹ The applications will then be listed according to the lowest CBR in ascending order, and GO-Biz will move the applications from Phase I to Phase II, beginning with the lowest CBR, until the aggregate CCTC requested by all taxpayers is at least 200% of the amount of CCTC available for the application period.¹² Notwithstanding the CBR, any application can move immediately from Phase I to Phase II if an owner, president, chief executive officer or other equivalent

¹ California Revenue and Taxation Code (“RTC”) §§ 17059.2, 18410.2 and 23689.

² Notice Regarding California Competes Tax Credit, Governor’s Office of Business and Economic Development (March 18, 2014).

³ Fiscal Year 2013-2014 Approved Tax Credit Agreements Awardee List, available [here](#).

⁴ Notice Regarding California Competes Tax Credit, GO-Biz (June 30, 2014), available [here](#).

⁵ *Id.*

⁶ RTC §§ 17059.2, 18410.2 and 23689 and Cal. Code. Regs., Tit. 10, §§ 8020 and 8030.

⁷ RTC § 23689(g)(3).

⁸ Cal. Code. Regs., Tit. 10, § 8030.

⁹ Cal. Code. Regs., Tit. 10, § 8030(f).

¹⁰ Cal. Code. Regs., Tit. 10, § 8030(g)(1).

¹¹ *Id.*

¹² *Id.*

person certifies in writing to GO-Biz that, absent consideration for the CCTC, either: (1) the project will occur in another state, or (2) the applicant will relocate operations out of California or terminate all or a portion of its employees located in California.¹³

Phase II involves negotiations with GO-Biz and considers a variety of qualitative factors, including but not limited to, the economic impact of the project on the local community, the location of the project, the number of new employees to be hired, other incentives that may be available, additional opportunities for future expansion and the strategic importance of the business to the state.¹⁴ In Phase II, if any of the quantifiable information provided in Phase I (e.g., number of jobs created, aggregate investment) changes by more than 5%, the application may be rejected by GO-Biz.¹⁵

All CCTC awards will be made publicly available upon approval.¹⁶ Once the CCTC committee approves an agreement, the California Franchise Tax Board (“FTB”) will be notified. The FTB will enforce the agreement and notify GO-Biz if a taxpayer is not in compliance, thereby triggering a possible reduction in the amount of credit awarded. Any reduction would occur in the tax year in which the non-compliance occurs.

Fiscal Year 2013/2014 CCTC Awards

For fiscal year 2013/2014, the CCTC committee had \$30,000,000 in credits to award and ultimately recommended 29 businesses receive the credit.¹⁷ According to a GO-Biz press release, they received 396 applications requesting more than \$500,000,000 of CCTC and the focus was on job creation.¹⁸ The CCTC committee meeting notes demonstrate that not a single grant was awarded to a taxpayer who promised significant capital investment but no job growth; however, grants were awarded to taxpayers who promised significant job growth but no (or little) capital investment.¹⁹ Also, it appears that the CCTC committee recognized a wide variety of localities and industries throughout California.²⁰ Finally, based upon information released by the CCTC committee, the CBR for successful CCTC applications for large businesses was generally less than 2%.²¹ Given that the passage from Phase I to Phase II is based upon the mechanical comparison of a taxpayer’s CBR with that of other applicants, whether a taxpayer’s CBR is low enough to advance out of Phase I will likely be a critical factor.

Considerations

For fiscal year 2014/2015, funding will far eclipse that available in the prior fiscal year. GO-Biz intends to conduct three funding rounds with approximately \$150,000,000 of CCTC available. GO-Biz has announced the following application periods for fiscal year 2014/2015:²²

Application Period	Funds Available	Hearing Date
TBD – but likely Oct./Nov. 2014	\$45,000,000	January 15, 2015
January 5, 2015 – February 2, 2015	\$75,000,000	April 16, 2015
March 9, 2015 – April 6, 2015	\$30,000,000 (plus any remaining unallocated amounts)	June 18, 2015

¹³ *Id.*

¹⁴ Cal. Code. Regs., Tit. 10, § 8030(g)(2).

¹⁵ Cal. Code. Regs., Tit. 10, § 8030(l).

¹⁶ Cal. Code. Regs., Tit. 10, § 8060.

¹⁷ Fiscal Year 2013-2014 Approved Tax Credit Agreements Awardee List, available at:

<http://www.business.ca.gov/Portals/0/CA%20Competes/Docs/Agreements/CCTC%20report%20for%20website%20June%202014.pdf>.

¹⁸ Press Release, GO-Biz Releases California Competes Tax Credit Recommendations, (June 10, 2014).

¹⁹ Notice, California Competes Tax Committee Meeting Notes (June 19, 2014), available at:

<http://www.business.ca.gov/Portals/0/CA%20Competes/Docs/Meeting%20Agendas/CCTC%20June%2019%202014%20Committee%20Meeting.pdf>.

²⁰ Fiscal Year 2013-2014 Approved Tax Credit Agreements Awardee List, available at:

<http://www.business.ca.gov/Portals/0/CA%20Competes/Docs/Agreements/CCTC%20report%20for%20website%20June%202014.pdf>.

²¹ Notice, California Competes Tax Committee Meeting Notes (June 19, 2014), available at:

<http://www.business.ca.gov/Portals/0/CA%20Competes/Docs/Meeting%20Agendas/CCTC%20June%2019%202014%20Committee%20Meeting.pdf>.

²² Notice Regarding California Competes Tax Credit, GO-Biz (June 30, 2014), available at:

<http://www.business.ca.gov/Portals/0/CA%20Competes/Docs/Notice%20California%20Competes%20Tax%20Credit%20%2006-30-14.pdf>.

As explained in our earlier alert on this topic,²³ the CCTC has potential applicability to a wide range of taxpayers. Taxpayers contemplating expansion of existing California operations or relocation to the state may wish to consider an application under the CCTC.

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²³ Please see our July 9, 2013 Multistate Tax Alert summarizing the provisions of AB 93, available at: https://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_CA_070913.pdf.