

## California Competes Tax Credit Application Period Opened March 9<sup>th</sup>

March 10, 2015

### Overview

The California Competes Tax Credit (“CCTC”) is an income tax credit available to businesses expanding in or relocating to California.<sup>1</sup> The CCTC was enacted on July 11, 2013, and was first available to taxpayers in 2014 for fiscal year 2013/2014. For fiscal year 2014/2015, the Governor’s Office of Business and Economic Development (“GO-Biz”) authorized \$151.1 million in available CCTC to be allocated over three application periods.<sup>2</sup> The third and final fiscal year 2014/2015 application period opened on March 9, 2015, and will run through April 6, 2015. In this Tax Alert we summarize the CCTC and provide information on the application process.

### Summary of the CCTC

The CCTC is a competitive negotiated incentive income tax credit that is subject to application, review and award.<sup>3</sup> 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, subject to a minimum amount of \$20,000 and a maximum amount of no more than 20% of the aggregate amount of CCTC available in a fiscal year.<sup>4</sup> Once GO-Biz opens an application period, a taxpayer seeking to obtain the credit is required to fill out an online form requesting information about the taxpayer’s 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 its newly hired or retained employees
- Aggregate investment by the taxpayer in the project
- Material litigation and violations
- Amount of CCTC requested, and over what time period<sup>5</sup>

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.<sup>6</sup> Phase I involves the automatic, mechanical ranking of the applications based upon a quantitative cost-benefit ratio (“CBR”).<sup>7</sup> The CBR is a fraction, the numerator of which is the taxpayer’s requested amount of credit and the denominator is total future investment proposed (*i.e.*, aggregate net new employee compensation and aggregate new investment).<sup>8</sup> The applications are then 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 percentage, until the aggregate CCTC requested by all taxpayers is at least 200% of the amount of CCTC available for the application period.<sup>9</sup> Notwithstanding the CBR, any application can move immediately from Phase I to Phase II if an owner, president, chief executive officer or other equivalent person certifies in writing to GO-Biz that absent consideration for the CCTC, either: (1) the project

<sup>1</sup> Cal. Rev. & Tax. Code §§ 17059.2, 18410.2 and 23689.

<sup>2</sup> CCTC September 10, 2014, *Notice Regarding California Competes Tax Credit*, available, [here](#).

<sup>3</sup> Cal. Rev. & Tax. Code §§ 17059.2, 18410.2 and 23689; Cal. Code. Regs. tit. 10, §§ 8020 and 8030.

<sup>4</sup> Cal. Rev. & Tax. Code § 23689(g)(3).

<sup>5</sup> Cal. Code. Regs. tit. 10, § 8030.

<sup>6</sup> Cal. Code. Regs. tit. 10, § 8030(f).

<sup>7</sup> Cal. Code. Regs. tit. 10, § 8030(g)(1).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

will/may occur in another state; or (2) the applicant will/may terminate all or a portion of its employees in California or relocate all or a portion of its California employees to another state.<sup>10</sup>

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 net 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.<sup>11</sup> In Phase II, if any of the quantifiable information provided in Phase I (e.g., number of jobs created, aggregate investment, etc.) changes by more than 5%, the application may be rejected by GO-Biz.<sup>12</sup>

All CCTC awards will be made publicly available upon approval.<sup>13</sup> 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 with the agreement, thereby triggering a possible reduction and/or recapture of the amount of credit awarded. Any reduction and/or recapture would occur in the tax year in which the non-compliance occurs.<sup>14</sup>

### Previously Approved CCTC Awards

For the first period in fiscal year 2014/2015 (September 29, 2014, through October 27, 2014), the CCTC committee had \$45 million in credits to award and ultimately recommended that 56 businesses receive the credit.<sup>15</sup> According to a GO-Biz press release, they received 286 applications requesting more than \$329 million of CCTC.<sup>16</sup> Based upon a review of the successful fiscal year 2014/2015 first round contracts, the focus of the CCTC was on job creation, much more so than on capital investment.<sup>17</sup> Also, it appears that the CCTC committee recognized a variety of localities and industries throughout California.<sup>18</sup> Finally, based upon information released by the CCTC committee, the CBR for successful CCTC applications for large businesses in the first period of fiscal year 2014/2015 was generally less than 1.383%.<sup>19</sup> The largest award credit amount was \$2,700,000 and the smallest award amount was \$20,000.<sup>20</sup> Given that the passage from Phase I to Phase II is based upon the mechanical comparison of a taxpayer’s CBR to that of other applicants, whether a taxpayer’s CBR is low enough to advance out of Phase I is an important factor.

The second period in fiscal year 2014/2015 (January 5, 2015 through February 2, 2015) is currently in process and in Phase II evaluations. The Committee hearing date will be held on April 16, 2015. GO-Biz received 253 applications with a combined credit request of \$289 million for this application period.<sup>21</sup>

In fiscal year 2013/2014, the CCTC Committee awarded approximately \$28,904,663 in tax credits.<sup>22</sup> In total, 29 taxpayers received awards. The largest award amount was \$6,000,000 and the smallest award amount was \$20,000.<sup>23</sup>

### Considerations

The CCTC has potential applicability to a wide range of taxpayers. For the last application period in fiscal year 2014/2015 (March 9, 2015 through April 6, 2015), GO-Biz authorized \$31.1 million in credit available plus any remaining unallocated amount from the first two application periods.<sup>24</sup> A taxpayer that is contemplating expanding or relocating to California, or has done so in the recent past, may wish to consider submitting an application to obtain this credit.

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<sup>10</sup> CCTC Application (February 2, 2015).

<sup>11</sup> Cal. Code. Regs. tit. 10, §§ 8030(g)(2).

<sup>12</sup> Cal. Code. Regs. tit. 10, §§ 8030(l).

<sup>13</sup> Cal. Code. Regs. tit. 10, §§ 8030(l).

<sup>14</sup> FTB Notice 2014-02 (Nov. 7, 2014), available [here](#).

<sup>15</sup> CCTC Jan. 15, 2015, *Committee Meeting Agenda*, available [here](#).

<sup>16</sup> Press Release, *California Competes Committee Approves \$31 Million in Tax Credit for 56 Companies Adding Jobs in CA* (Jan. 16, 2015).

<sup>17</sup> CCTC Jan. 15, 2015, *Committee Meeting Agenda*, available [here](#).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> CCTC Awardee List, available [here](#).

<sup>21</sup> Press Release, *Go-Biz receives 253 Applications from Businesses seeking California Competes Tax Credit to Add Jobs* (Feb. 6, 2015).

<sup>22</sup> CCTC Awardee List, available [here](#).

<sup>23</sup> *Id.*

<sup>24</sup> *Notice Regarding CCTC*, Governor’s Office of Business and Economic Development (Sept. 10, 2014). Note that for fiscal years 2015/2016 and 2017/2018, \$200 million in credit will be available each year. See, CCTC Application Presentation, available [here](#).

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