

California Competes Tax Credit application period opens July 20

July 10, 2015

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, and was first available to taxpayers in 2014 for fiscal year 2013/2014. For fiscal year 2015/2016, the Governor's Office of Business and Economic Development (GO-Biz) authorized \$200.9 million in available CCTC to be allocated over three application periods.² The first application period of fiscal year 2015/2016 opens on July 20, 2015, and runs through August 17, 2015, with \$75 million allocated to this period. The CCTC Committee will approve awards for this period on November 10, 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.³ The CCTC, unlike most tax incentives, is awarded on a competitive basis, as applicants compete 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 percent of the aggregate amount of CCTC available in a fiscal year.⁴ 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 period⁵

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.⁶ Phase I involves the automatic, mechanical ranking of the applications based upon a quantitative cost-benefit ratio (CBR).⁷ 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).⁸ 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 applicants who are included in Phase II is at least 200 percent of the amount of CCTC available for the application period.⁹ 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

¹ Cal. Rev. & Tax. Code §§ 17059.2, 18410.2, and 23689.

² CCTC Jun. 29, 2015, *Notice Regarding California Competes Tax Credit*, available, [here](#).

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

⁴ Cal. Rev. & Tax. Code § 23689(g)(3).

⁵ Cal. Code. Regs. tit. 10, § 8030.

⁶ Cal. Code. Regs. tit. 10, § 8030(f).

⁷ Cal. Code. Regs. tit. 10, § 8030(g)(1).

⁸ *Id.*

⁹ *Id.*

CCTC, either: (1) the project will or may occur in another state; or (2) the applicant will or may terminate all or a portion of its employees in California or relocate all or a portion of its California employees to another state.¹⁰

Phase II involves GO-Biz considering 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.¹¹ 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 percent, the application may be rejected by GO-Biz.¹²

All CCTC awards will be made publicly available upon approval.¹³ Once the CCTC committee approves an agreement, the California Franchise Tax Board (FTB) will be notified. The FTB will review a taxpayer's progress against the agreement and notify GO-Biz if a taxpayer is not in compliance with the agreement, thereby triggering a possible reduction or recapture of the amount of credit awarded. Any reduction or recapture would occur in the tax year in which the noncompliance occurs.¹⁴

Previously approved CCTC awards

For the last period in fiscal year 2014/2015 (March 9, 2014, through April 6, 2015), the CCTC committee had \$49.8 million in credits to award and ultimately recommended that 63 businesses receive the credit.¹⁵ According to a GO-Biz press release, they received 267 applications requesting more than \$320 million of CCTC.¹⁶ 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 1.34 percent.¹⁷ The largest awarded credit amount was \$15 million and the smallest amount was \$20,000.¹⁸ 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.

Considerations

The CCTC has potential applicability to a wide range of taxpayers. For the next application period in fiscal year 2015/2016 (July 20, 2015 through August 17, 2015), GO-Biz authorized \$75 million in available credits.¹⁹ There will be two more application rounds in the fiscal year 2015/2016 as follows:

- January 4, 2016 through January 25, 2016 (\$75 million available)
- March 7, 2016 through March 28, 2016 (\$50.9 million available, plus any remaining unallocated amounts from the previous application periods)

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.

Contacts

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¹⁰ CCTC Application (February 2, 2015).

¹¹ Cal. Code. Regs. tit. 10, § 8030(g)(2).

¹² Cal. Code. Regs. tit. 10, § 8030(l).

¹³ *Id.*

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

¹⁵ CCTC Jun. 18, 2015, *Committee Meeting Agenda*, available [here](#).

¹⁶ Press Release, *Go-Biz Receives 267 Applications from Businesses Seeking California Competes Tax Credit* (Apr. 20, 2015).

¹⁷ *Id.*

¹⁸ CCTC Awardee List, available [here](#).

¹⁹ CCTC Jun. 29, 2015, *Notice Regarding California Competes Tax Credit*, available, [here](#).

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