
OLR Bill Analysis

sSB 899

AN ACT CONCERNING THE USE OF RESEARCH AND DEVELOPMENT TAX CREDITS FOR PROJECTS IN ENTERPRISE ZONES.

SUMMARY:

This bill establishes a mechanism by which corporations with unused research and development (R&D) tax credits can sell or otherwise transfer them to a partnership they form to fund commercial or residential projects in one of the 17 state-designated enterprise zones. It specifies the project eligibility criteria and expenditures permitted under the transaction.

Under the bill, the corporation can (1) contribute the credits to the partnership, which can then use them for a development project or transfer them to another taxpayer or (2) directly transfer the credits to another taxpayer. The taxpayer can then use the credits against its corporation business, insurance, sales and use, or personal income taxes or sell the credits to another taxpayer. If the corporation or the partnership sells the credits, the proceeds of any credit transfer must be used for the development project.

To be eligible, the corporation must form a partnership with one or more persons, and the partnership must obtain an eligibility certificate from the Department of Economic and Community Development (DECD). DECD cannot grant certificates after December 31, 2020. DECD, in consultation with the Department of Revenue Services (DRS), must adopt implementing regulations. The bill specifies conditions under which DECD can recapture credits and the parties from whom it and DRS can seek redress in cases of fraud or material misrepresentation.

EFFECTIVE DATE: July 1, 2011

ELIGIBILITY CRITERIA AND EXPENDITURES

The bill allows the DECD commissioner to issue a certificate of eligibility to a development company for a qualified development project. To be eligible, the development company must be a partnership between a corporation with R&D credits issued under CGS §§ 12-217j or 12-217n (see BACKGROUND) and one or more other persons. The partnership must be formed for purposes of conducting a qualified development project as described below. The bill specifies that the partnership can take the form of a limited partnership, limited liability company (LLC), or any other entity that is treated as a partnership for federal income tax purposes.

To be eligible, the development company must also receive a certificate of eligibility from the DECD commissioner. A company can only receive one eligibility certificate in any income year.

To be eligible as a qualified development project, the project must be:

1. a commercial or residential real estate development;
2. newly built or undergoing major expansion or renovation, as determined by the DECD commissioner;
3. in an enterprise zone (see BACKGROUND);
4. undertaken by an eligible development company;
5. in compliance with the prevailing wage laws that apply to public works projects, regardless of cost; and
6. not used as a facility for obscene performances or materials that arouse prurient, shameful, or morbid interests.

The bill specifies a wide range of eligible expenditures for qualified projects. These include expenditures for land acquisition and permitting; design; construction; demolition; remediation; site preparation and improvements; infrastructure improvements, such as roads, sidewalks, signage, or traffic controls; utility improvements for

sewer, water, gas, telecommunications, drainage or electricity generation, transmission, or distribution; alterations or renovations to existing structures, such as leasehold improvements and furniture, fixtures, and equipment necessary or appropriate for use in connection with the project; tenant procurement, including marketing, brokerage, rental concessions, and moving allowances; and financing or refinancing.

Within 48 months following the issuance of a certificate of eligibility, the development company must submit to the DECD commissioner an independent certification that all the proceeds from the transaction have been used to further the qualified project.

MECHANISM FOR CONTRIBUTING OR TRANSFERRING CREDITS

The bill allows corporations with R&D credits to (1) contribute all or part of them to an eligible development company or (2) sell, assign, or transfer all or part of them to other taxpayers so long as it contributes the proceeds to the eligible company within 90 days of receiving them. In either case, the development company must use the credits in furtherance of a qualified project, and the corporation must be a member or partner of the development company receiving the credits.

Development companies receiving credits through these mechanisms may then sell, assign, or transfer all or part of them to other taxpayers, so long as the company uses the sale proceeds solely to further qualified development projects.

The total value of R&D credits that a corporation may contribute or transfer to any one development company through either mechanism is capped at \$50 million a year in each of the corporation's income years. The corporation must provide the eligible company or transferee taxpayer a schedule showing when the corporation can use each R&D credit.

The bill does not cap (1) the total amount of credits a single corporation can contribute or transfer or (2) the aggregate amount of credits that can be contributed or transferred by all corporations in the

state.

Under the bill, a transferee of R&D credits may use them as a credit against its corporation business, insurance, sales and use, or personal income taxes for any income year in which the corporation could have claimed the credit. The transferee can also sell or otherwise transfer some or all of the credits to other taxpayers.

NOTICE TO DECD; TAX CREDIT VOUCHERS

If an eligible corporation or development company sells or otherwise transfers R&D credits to another taxpayer, the transferor and transferee must jointly notify DECD, in writing, within 30 days of the transfer. The notification must include the number of the certificate of eligibility, the transfer date, the amount of credits transferred, the parties' tax identification numbers, and any other information DECD requires. The tax credit is disallowed until both the transferor and transferee fully comply with the notice requirement. After receiving the notice, DECD must promptly issue a tax credit voucher to the transferee. Upon request, DECD must provide DRS with a copy of the notification of assignment and the tax credit voucher.

Transferees who sell or otherwise transfer credits to other taxpayers must also notify DECD in the manner described above. DECD must issue tax credit vouchers to subsequent transferees, adjusting for any vouchers issued previously.

RECAPTURE OF UNEXPENDED NET PROCEEDS

If a qualified project ends before an eligible company has spent the entire net proceeds of the R&D credits contributed or transferred as outlined above, the company must pay the DECD commissioner an amount equal to all of the net unexpended proceeds before distributing any such proceeds to eligible corporations.

FRAUD AND MISREPRESENTATION

If DECD or DRS finds anyone has committed material misrepresentation or fraud in connection with a submission of an application for a certificate of eligibility or tax credit voucher, and that

the misrepresentation or fraud resulted in the issuance of the certificate or voucher, they can seek redress only from the person that committed the fraud or misrepresentation, and not from any transferee of R&D credits. The bill does not specify what happens if the transferee is responsible for the fraud or misrepresentation.

BACKGROUND

Research and Development Tax Credits (CGS §§ 12-217j and 12-217n)

The R&D tax credits issued under CGS § 12-217j are based on the growth in a corporation's R&D expenditures, while the credits issued under CGS § 12-217n increase with the amount of such expenditures.

The credits can be carried forward. Qualified small businesses—those with gross incomes not exceeding \$70 million in the previous income year—can obtain a refund equal to 65% of their unused credits (CGS § 12-217ee).

Enterprise Zones

There are currently 17 municipalities with enterprise zones: Bridgeport, Bristol, East Hartford, Groton, Hamden, Hartford, Meriden, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Southington, Stamford, Waterbury, and Windham.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 17 Nay 0 (02/24/2011)