Policy Matters Ohio

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Policy Matters Ohio comments on Job Creation Tax Credit and Job Retention Tax Credit Program Proposed Rules, Sections 122:7-1-01 and 122:16-1-01

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We congratulate the Ohio Department of Development for moving forward on the recommendation of the Economic Development Incentive Study of May 2009 to increase the wage threshold for the job creation and job retention tax credits. We have two sets of comments with regard to proposed changes in the JRTC and the JCTC. One concerns exceptions to the 175% standard. The other concerns a lack of fiscal analysis of the proposed rules.

I. Exceptions to the 175% threshold

The proposed rules under consideration today, which implement some of the recommendations of the Economic Development Incentive Study enacted into law, represent an important improvement to Ohio's economic development policies in one respect. The Study was explicit in addressing the need to use incentives to move Ohio's lagging wage scale back up. The increase in required average wage levels of incentive recipients to 175% of the state minimum wage is a good and important policy improvement.

However, there's one loophole that weakens – really, cripples - the proposed policy change. In Section 122:7-1-05(2)(c), ODOD should not weaken the proposed 175% wage standard by allowing Job Creation Tax Credit recipients to pay lesser wages because of a 7% unemployment rate at the time the credit is granted. We recommend the same point, regarding the 175%-of-federal-minimum-wage floor, for the Job Retention Tax Credit, in sections 122:16-1-03(A)(3)(c) and 122.16-1-07(A), respectively.

The key changes in these two tax credits adopted by the General Assembly closely mirrored the recommendations made in May 2009 by the Ohio Economic Development Incentive Study, which was mandated by the General Assembly in a previous budget bill. The study called for a wage threshold of 175%, as do these proposed rules. Yet these rules diverge from the incentive study in allowing an exception from the 175% level based on monthly unemployment rates, instead of "for projects in counties where the county per capita income is less than 175% of the federal minimum wage." (see p. 33, incentive study http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Annual_Reports/IncentiveStudy(2).pdf).

We believe these rules diverge from the intent of legislature and should be rewritten.

Rationale

As of May 2010, not a single county in Ohio had an unemployment rate of 7% or below. In fact, only eleven counties had an unemployment rate below 9%. The economic forecaster used by the state, Global Insight, predicts that Ohio's average unemployment rate will remain above 8% in 2014, and will not drop below 7% anytime between now and 2016. Thus, the 175% requirement won't exist for much of the state for years into the future (except for those companies that add such small numbers of jobs that they must pay higher wages in order to meet the $660,000 payroll requirement).

Using the 7% unemployment rate requirement also would result in an arbitrary policy because of the fluctuation in county unemployment rates. For instance, in Cuyahoga County during 2008, this would have meant a 175% rate if the credit were approved between January and April; then, for May through September, the unemployment rate rose above 7%, so only the 150% rate would be required. In October, the rate fell to 6.9%, so the 175% rate would be required, but then the unemployment rate rose again to 7.2% in November, meaning the 150% rate would again be in force. To base long-term wage rates on a volatile monthly figure is clearly not a reasonable policy.

If Ohio is to tie its wage requirement under the JCTC to the unemployment rate, which we discourage, we recommend that the rate be set at a higher level than 7 percent (for instance, it could be set at 2 percentage points above the state average unemployment rate but only if Ohio's rate exceeds the national average). It should also use a longer period, not just a month, so that momentary fluctuations in rates do not influence wage levels for years to come.

The Ohio Economic Development Incentive Study last year noted that:

"*If a goal of economic development incentives is to promote higher paying jobs for all Ohioans, the 150 percent of minimum wage criteria is a very low threshold*."

As noted above, the study recommended a standard based on 175% of the federal minimum wage with an exception based on county per capita income. If the intent of this rule is to allow a 150% threshold to be used in lower-wage counties, such a standard should be set based on wage or income levels, not unemployment rates.

There are various measures of Ohio wages. However, by any measure, the 175% of minimum wage standard does not approach average Ohio wages:

- Based on the current federal minimum wage of $7.25 an hour, required average wages for a 40-hour workweek under the 175% standard would be $507.50, or only two thirds of the average weekly wage in the state last year, according to the Ohio Department of Job & Family Services.

- The latest data from a survey of employers estimates the average hourly wage for manufacturing production workers in Ohio at $18.67 an hour (ODJFS Bureau of Labor Marketing Information, Labor Market Review, May 2010), compared to the $12.69 rate under the 175% standard.

- According to the Current Population Survey (See The State of Working Ohio, Policy Matters Ohio, p. 15 at http://www.policymattersohio.org/pdf/SOWO2009.pdf), the Ohio median hourly wage was $15.04 in 2008. That represents 206% or 207% of the current state and federal minimum wage, respectively.

Setting our standard so it is higher than what half the workers in Ohio make is a minimal threshold. While increasing the required average to $12.69 an hour is an improvement over the current program, it is insufficient.

According to the latest JCTC annual report, real wage levels that companies are committing to under the program have been declining. While the report attributes the decline in 2008 to the economy, average inflation-adjusted wage level commitments have been falling since 2002. The 2008 average hourly wage commitment of $18.04 was $4.63 or 20 percent below the average commitment of $22.67 in 2002. The 2008 average wage commitment in real dollars was only marginally above the level of 1993. Many companies participating in the JCTC program commit to pay well in excess of the average Ohio wage. The JCTC program should bolster income in the state.

Investments supported with JCTCs should last well beyond the current economic slump. Projects approved in 2008 were covered for an average 6.4 years. Why would we give a break based on current business conditions which will presumably not last for all of the term of the credit? If we do allow this lower wage, it should only be for a specific period, not the whole term of the tax break. The lower wage requirement should end after no more than two years or the Tax Credit Authority should automatically review on an annual basis those instances where companies are paying less than the 175% requirement to see if the normal requirement should be applied.

II. Financial concerns with proposed JRTC and JCTC changes

The Job Retention Tax Credit was significantly expanded under House Bill 1. Requirements for the number of jobs were reduced from 1,000 full-time positions to 500 full-time equivalents, and the necessary minimum investment was reduced significantly. More projects will be able to qualify for this program than ever before. Yet the fiscal analysis provided by the Department for the estimated impact on the state budget says it will be zero.

We believe that a realistic fiscal analysis of the probable or estimated impact of the implementation of this legislation should be provided for legislative review and public scrutiny.

Rationale

The law itself set caps on how much in aggregate credits could be awarded each year, starting with $13 million in Fiscal Year 2010 and increasing by $13 million each year, to a total of $195 million in Fiscal Year 2024 and subsequent years. While this may not actually occur, it suggests strongly that this program is likely to cost a significant amount in addition to past expenditures. The creation of a cap illustrates that there is a cost to these incentives. Yet the fiscal analysis from the department says there will be no cost, either for the Department of Development or to school districts, counties, townships or municipal corporations.

ODOD's Economic Development Incentive Study of May, 2004, which served as the basis of these proposed rule changes, contained the following statement:

"*In crafting a tax credit for job retention, it is important to recognize that retention tax credits present a significant risk of tax base erosion if not limited and carefully managed. Unlike creation tax credits, which forgo incremental tax growth, retention tax credits eliminate revenue that is currently coming into the state treasury*."

The Job Creation Tax Credit also included a loosening of rules, allowing companies to qualify using full-time equivalents instead of jobs. Thus, part-time workers now may be included. More companies may be able to qualify than did before and since part-time workers now may be included, the income taxes withheld from their paychecks may add to the size of the tax credits awarded. The income taxes paid by part-timers were not included in the past incentives under current rules. Yet there was no recognition of any additional cost in the fiscal analysis on these points.

We believe that these rules do not meet the test of the Joint Committee on Agency Rule Review for an accurate fiscal analysis.