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Expansion of Ohio Opportunity Zones Tax Credit Program Creates Opportunities

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Currently, Ohio law allows taxpayers that invest in an opportunity zone fund holding 100% of its assets in a federally qualified Ohio opportunity zone to receive a nonrefundable state income tax credit equaling up to 10% of the taxpayers' investment in a project based in an Ohio opportunity zone. The tax credit may be used in the year of the investment or the following year, with unused credits carried forward for up to five years. In 2021 alone, the Ohio Department of Development (Development) received a record 400 applications for the Ohio Opportunity Zones Tax Credit Program and issued over \$26 million in tax credits.

On June 14th of this year, Governor Mike DeWine signed Substitute Senate Bill Number 225 (S.B. 225), effective September 13, 2022, which will, among other changes, make four important changes to current Ohio Revised Code (ORC) Section 122.84 that create opportunities for investors, including: (1) creating more frequent applications; (2) increasing the amount of credits available; (3) permitting more entities to be eligible to apply; and (4) allowing greater transferability of awarded tax credits.

First, the current one month application window for the Ohio Opportunity Zones Tax Credit Program will be replaced with two shortened application periods: from January 10 to February 1, and from July 10 to August 1. For the new application period, which should start January 10, 2023, the credit shall equal 10% of the amount of the applicant's investment in the fund that the fund invested during the immediately preceding six month period from July 1, 2022 to December 31, 2022. See O.R.C. Section 122.84(B). This may leave an open question for the transition year because the changes go into effect after what would have been the July application period for 2022, so it is not clear how investments made into a qualifying fund that the fund invested from January 1, 2022 – June 30, 2022 will be addressed based on the language of the amended statute. Going forward, though, this allows

for more timely awards from when the fund invests in projects located in Ohio opportunity zones.

Second, S.B. 225 increases the cap on the total amount of opportunity zones tax credits that Development can award from \$50 million to \$75 million over the 2022-2023 biennium (state fiscal years [SFY] from July 1, 2021 through June 30, 2023). Based on the approximately \$26 million awarded earlier this year, that will mean approximately \$49 million in credits will be available in SFY 2023. The credit funding cap will then be determined annually by credits awarded (not claimed), with a \$50 million cap in SFY 2024 (with awards being made within sixty [60] days following the two new statutory application deadlines), and a \$25 million annual cap for SFY 2025 and thereafter.

Third, S.B. 225 adds that non-taxpayers are eligible applicants (in other words, applicants no longer need to be subject to Ohio personal income tax, broadening eligibility to participate in the program). While credit transfers were already allowed, the combination of permitting additional applicants to qualify, together with broader transfer abilities described below, may bring additional applicants to the program.

Fourth, tax credit holders, including transferors not subject to Ohio personal income tax, will be able to transfer portions of their credit to different individuals an infinite number of times (rather than just once) with written notice to the Ohio Department of Taxation. Moreover, eligible tax credit recipients (those subject to Ohio personal income tax) will now be able to claim the credit in part or transfer the remainder. This increased transferability will allow investors to use part and transfer part of the credit, which may minimize carry forwards and have more credits used more quickly after issuance. We anticipate this more flexible use will further drive up the value of the tax credits in the secondary markets.

Importantly, S.B. 225 did not change some of the fundamentals of the program that applicants have often struggled to properly submit. For instance, Development has continued to emphasize that the correct applicant for the Ohio Opportunity Zone Tax Credit Program Application is the entity that directly made the capital investment into the Ohio Qualified Opportunity Fund. Simply put, whomever owns the bank account or investment fund that was used to provide the investment capital to the Opportunity Fund must be the applicant. Similarly, the applicant must demonstrate the investment being made into the Opportunity Fund, and must provide supporting documents from the qualified Opportunity Fund showing the investment into a qualifying project. These require two certifications (from the Ohio Qualified Opportunity Fund and from the Qualified Opportunity Zone Property Owner). Read more on that [here](#).

Vorys encourages you to contact your Vorys attorney or advisor with questions about Ohio's Opportunity Zone Tax Credit or any of the other programs that provide incentives. Please feel free to contact the following Vorys attorneys: Scott J. Ziance, 614.464.8287, sjziance@vorys.com; Aaron S. Berke, 330.208.1017, asberke@vorys.com, Christopher J. Knezevic, 614.464.5627, cjknezevic@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; Jonathan K. Stock, 614.464.5647, jkstock@vorys.com; or R. Elissa Wilson, 614.464.6224; rewilson@vorys.com.