



Ohio Administrative Code

Rule 5703-29-22 Explanation of the commercial activity tax credits.

Effective: May 28, 2022

(A)

(1) For purposes of the commercial activity tax, the law provides different credits taxpayers may apply against their tax liability: (a) a nonrefundable jobs retention credit; (b) a nonrefundable credit for qualified research expenses; (c) a nonrefundable credit for a borrower's qualified research and development loan payments; (d) a credit for unused franchise tax net operating loss deductions, which operates as both a nonrefundable credit or a refundable credit, depending on the year in which the taxpayer claims the credit; (e) a refundable motion picture and Broadway theatrical production credit; and (f) a refundable jobs creation or jobs retention credit. A taxpayer may not claim as a credit against the commercial activity tax any credit amount that such taxpayer previously (or simultaneously) claimed as a credit and received the benefit of such credit against any other tax, including but not limited to the individual income tax, financial institutions tax, insurance premiums tax, or, if applicable, any credit amount that a pass-through entity passed through to its owners to the extent the owners received the benefit of such credit. If authorized by statute, the recipient of a credit that is a pass-through entity may elect to pass through the credit to such entity's owners. A recipient that makes that election may not claim as a credit against its commercial activity tax liability any portion of the credit passed through to the pass-through entity's owners. Unless otherwise authorized by statute, credits are nontransferable. In addition, in no event may a taxpayer claim a nonrefundable credit against its commercial activity tax annual minimum tax liability.

(2) In the event a taxpayer is entitled to claim more than one credit against its commercial activity tax liability, section 5751.98 of the Revised Code dictates the order in which such taxpayer must claim each credit. If authorized by statute, a taxpayer may carry forward to future years any nonrefundable credits not used in the year generated; however, the carryforward period is often limited and varies from credit to credit. After the carryforward period for a particular credit expires, any credit amount that remains unused is lost. The unused amount of a particular credit carried forward to a later year must be used after any preceding credit listed in section 5751.98 of the Revised Code but prior to the same credit generated in the later year and prior to any credit



subsequently listed in that section.

(3) Pursuant to section 5703.0510 of the Revised Code, a taxpayer claiming a credit against the commercial activity tax must do all of the following:

(a) Complete a schedule promulgated by the tax commissioner for the purpose of tracking the credits claimed. The schedule shall include identifying information that links the primary/reporting entity to the member claiming the credit, including the primary/reporting entity's name and address, commercial activity tax account number, and federal identification number, as well as the name(s) and account number(s) of those entities claiming the credit, if applicable. On the schedule, the taxpayer must indicate the amount of each credit the taxpayer claims for that period and include any other information requested by the commissioner to verify the credits claimed.

(b) Provide to the commissioner a copy of the certificate issued by the director of development for any tax credit for which a certificate is issued, including the jobs creation and retention credits, the motion picture and Broadway theatrical production credit, and the credit for research and development loan payments. If the director of development provides an amended credit certificate, the taxpayer shall provide both the original and the amended certificate to the commissioner.

(c) If the taxpayer fails to provide a copy of the certificate(s), if applicable, and schedule with its return, the commissioner shall deny the credit until the taxpayer provides a copy of the certificate(s) and schedule.

(B)

(1) Pursuant to section 5751.51 of the Revised Code, the nonrefundable credit for qualified research expenses is available to taxpayers to apply against their commercial activity tax liability. The term "qualified research expenses" is defined in section 41 of the Internal Revenue Code. For purposes of this paragraph, "Internal Revenue Code" has the same meaning as in division (K) of section 5751.01 of the Revised Code.

(2) Regardless of a taxpayer's commercial activity tax filing frequency, a taxpayer must compute the credit for qualified research expenses based on expenses incurred during the calendar year (not the



taxpayer's federal taxable year). Thus, a taxpayer must first claim the credit for qualified research expenses on its annual return due in May following the calendar year for which the credit is claimed, or, for calendar quarter taxpayers, on the fourth quarter return due in February of the year following the calendar year for which the credit is claimed. Any portion of the nonrefundable credit that remains unused after the taxpayer applies the credit against the commercial activity tax liability on a return in which the credit is properly first claimed may be carried forward to the subsequent return for no more than seven years.

(3) Eligible taxpayers may calculate the available nonrefundable credit under section 5751.51 of the Revised Code by multiplying seven per cent by the difference between the taxpayer's qualified research expenses incurred in Ohio during the calendar year and the taxpayer's average annual qualified research expenses incurred in Ohio during the three preceding calendar years.