House Bill 91
2014 EITC & OSTC Amendments

The following document is a summary of the amendments to the EITC and OSTC statutes that were adopted in House Bill 91. This bill consolidates the EITC and OSTC business tax credit programs into one statute and will make changes intended to improve the operation of the tax credit programs.

1. Career and Technical School Eligibility

The amendments allow for career and technical schools with eligibility to receive business donations within the Educational Improvement Organization (EIO) program of the Educational Improvement Tax Credit.

2. Pre-K Student Age Increase

The amendments add five and six year old students to the definition of Pre-k program under the Educational Improvement Tax Credit.

3. Pre-K Commitment Expansion

The amendments will allow businesses applying for Pre-k credits under the Educational Improvement Tax Credit to apply for a two year commitment.

4. Additional Tax

The amendments will add the Malt Beverage Tax (Tax Reform Code Article XX) to the list of taxes to which credits could be applied.

5. Multiple Pass-Throughs

The amendments will permit the distribution of tax credits through more than one level of pass-through entities. The amendment will align the statutes with the basic principle that partnerships and other flow-throughs generally speaking are not taxpayers; rather their individual, estate, trust and corporate partners, members or shareholders are taxpayers. When HB 91 is signed by the Governor, large partnerships and LLC's will be able to create smaller subsidiary partnerships whose members can then participate in the EITC and OSTC programs.

6. Special Purpose Business Firms

Under the current statutes, a business firm applies for credits. The amendments would include within the definition of business firm an entity funded by the owners or employees of one or more other business firms, the special purpose of which is to make contributions that will qualify for credits. This will also allow smaller subsets of the owners of large entities to more easily participate in the programs.

7. Spousal Use

The amendments will permit credits distributed to a partner, member or shareholder to be applied not just to the income of the partner, member or shareholder but also to a spouse who files a joint return with the partner, member or shareholder.

8. Alternative Credits

The amendments will make four changes to facilitate the use of credits by participating business entities:

(a) Upon application, a business firm may elect to apply for an alternate credit should its preferred credit be unavailable. For example, a business firm could apply for an Educational Improvement Tax Credit, and alternatively, an Opportunity Scholarship Tax Credit.

(b) The department will re-award credits from a waiting list if an awardee does not timely make the required contribution.

(c) The $750,000 cap ($200,000 for pre-kindergarten) on tax credits for contributions to scholarship, opportunity scholarship and pre-kindergarten scholarship organizations will be lifted from October 1 through November 30 under the particular program if credits have gone unclaimed. The per-business caps go back in place after November 30.

(d) After January 1st of each fiscal year, the department will be permitted to transfer unused credits from one program to another. For example, a business firm applicant that unsuccessfully applied for an Educational Improvement Tax Credit may elect to have the department transfer unused Opportunity Scholarship Tax Credits to the Educational Improvement Tax Credit program.

(i) In the case of the EITC Program, the department will contact SO and Pre-K applicants who have been placed on the waiting list to inquire about credit transfers and subsequent application approval.

(ii) Applicants receiving approval due to credit transfers after January 1st will receive a 75% credit for a one-year commitment.