

Title 24 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

Subtitle 05 ECONOMIC DEVELOPMENT

**Chapter 06 Security Clearance Administrative Expenses and Construction and Equipment
Costs Tax Credit**

**Authority: Tax-General Article, §§2-103 and 10-732; Economic Development Article,
§2-108; Annotated Code of Maryland**

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Business entity” means an individual, sole proprietorship, partnership, limited partnership, corporation, limited liability company, or other entity that is:
 - (a) Doing business in the State; and
 - (b) Organized and operated for profit.
- (2) “Comptroller” means the Maryland Comptroller of the Treasury, or the Comptroller’s designee.
- (3) “Costs” means the allowed costs as certified by the Department and incurred by a business entity for:
 - (a) Security clearance administrative expenses of the business entity incurred with regard to an employee in the State which may include but are not limited to expenses for:
 - (i) Processing application requests for clearances in the State;
 - (ii) Maintaining, upgrading, or installing computer systems in the State required to obtain federal security clearances;
 - (iii) Training employees in the State to administer the application process; and
 - (iv) Such other and additional administrative expenses related to obtaining security clearances as the Secretary may approve.
 - (b) “Costs” means the allowed costs as certified by the Department and incurred by a business entity for construction and equipment costs incurred to construct or renovate a sensitive compartmentalized information facility located in the State.
 - (c) “Costs” does not include wages and salaries of the employees of the business entity who apply for, or with respect to whom the business entity sponsors or applies for, a security clearance.
- (4) “Credit” means the security clearance administrative expenses and construction and equipment costs tax credit described in Regulation .02A of this chapter.
- (5) “Credit year” means the year for which the credit is being claimed.
- (6) “Department” means the Department of Business and Economic Development.
- (7) “Secretary” means the Secretary of the Department, or the Secretary's designee.
- (8) “Sensitive compartmented information (SCI)” means classified intelligence information concerning or derived from sensitive sources, methods or analytical processes which is

required to be handled exclusively within a formal access control system established by the Director of National Intelligence.

- (9) "Sensitive compartmented information facility (SCIF)" means an area, room, group of rooms, or installation accredited by the proper authority to store, use, host discussions of, or process SCI.
- (10) "Small Business" means a firm that:
 - (a) Is independently owned and operated;
 - (b) Is not a subsidiary of another firm;
 - (c) Is not dominate in its field of operation; and
 - (d) In its most recently completed fiscal year, did not employ in its operations more than 25 individuals.
- (11) "State" means the State of Maryland.

.02 Calculation of Amount of Credit.

- A. For a taxable year beginning after December 31, 2012, but before January 1, 2017, a business entity may claim credits against the State income tax for:
 - (1) Allowed security clearance administrative expenses, not to exceed \$200,000;
 - (2) Expenses incurred for rental payments owed during the first year of a rental agreement for spaces leased in the State for a small business that performs security-based contracting, not to exceed \$200,000; and
 - (3) Subject to §B of this regulation, approved construction and equipment costs incurred to construct or renovate a single SCIF in an amount equal to the lesser of 50 percent of the costs or \$200,000.
- B. The total amount of construction and equipment costs incurred to construct or renovate multiple SCIFs for which a business entity is eligible to claim as a credit against the State income tax is \$500,000.

.03 Application and Approval of Credit.

- A. Application for Tax Credit. To claim eligibility for a tax credit and to be certified as eligible for a tax credit, a business entity shall submit to the Department, by not later than September 15 of the calendar year following the end of the taxable year in which the costs were incurred, an application on a form approved by the Department.
- B. Each application shall include the following:
 - (1) The legal name of the business entity;
 - (2) The street address of the principal place of business of the business entity, the business entity's mailing address, the business entity's email address, and the business entity's telephone number;
 - (3) The name, business mailing address, telephone number, and email address of an individual with authority to act on behalf of the business entity;
 - (4) The federal employer identification number of the business entity or, if the business entity is an individual or sole proprietorship, the federal taxpayer identification number of the individual or proprietor;

- (5) Verification of the accreditation of the SCIF or SCIFs by the appropriate federal agency;
 - (6) An account, which may be in the form of a spreadsheet, showing in detail and with specificity the eligible costs incurred by the business entity; and
 - (7) Any other information required or requested by the Department.
- C. By December 15 of the calendar year following the end of the taxable year in which the costs were incurred, the Department shall certify to the business entity the amount of tax credits approved by the Department for the business entity.

.04 Maximum Annual Credits.

- A. The total amount of credits approved by the Department under Regulation .03C of this chapter may not exceed \$2,000,000 for any calendar year.
- B. If the total amount of credits applied for by all business entities under Regulation .03C of this chapter exceeds the maximum specified under §A of this regulation, the Department shall approve a credit under Regulation .03 of this chapter for each business entity in an amount equal to the product of multiplying the credit applied for by the business entity times a fraction:
 - (1) The numerator of which is the maximum specified under §A of this regulation; and
 - (2) The denominator of which is the total of all credits applied for by all business entities under Regulation .03 of this chapter in the calendar year.

.05 Certification of Credit.

The Department shall certify to the business entity the amount of the allowed tax credits approved by the Department for the business entity. The Department shall issue the certification by December 15 of the calendar year following the end of the taxable year in which the costs were incurred.

.06 Claiming the Credit.

To claim the credits approved by the Department, a business entity shall:

- A. File with the Comptroller an amended income tax return for the taxable year in which the costs were incurred; and
- B. Attach a copy of the Department's certification of the approved credit amount to the amended income tax return.

.07 Carryover of Tax Credits.

- A. If the credit allowed in any taxable year exceeds the State income tax for that taxable year, the business entity may apply the excess as a credit against the State income tax for succeeding taxable years until the full amount of the excess is used.
- B. A tax credit may not be carried back to a preceding taxable year.

.08 Mergers and Acquisitions.

- A. In determining the carryover of unused credits and the effect of a merger or acquisition, federal law shall be applied to the business entities as if they were separate business entities. Any provisions under federal law that would allow separate corporations that are merged or

acquired to carry forward unused credits on the surviving corporation's returns shall apply to the carryover of this credit for State purposes.

B. Unused Credits.

- (1) In a transaction involving an asset purchase, unused credits:
 - (a) Do not transfer from the business entity to the purchaser; and
 - (b) Remain with the business entity to whom the certification was issued.
- (2) Unused credits may not be sold or purchased.

.09 Short Taxable Years.

- A. Eligible Costs. A business entity may only claim the credit for allowed costs incurred during its taxable year. If the business entity has a short taxable year, only the allowed costs incurred during the short taxable year are allowed on the short year return.
- B. If the business entity incurs allowed costs in 2 taxable years during a calendar year, one of which is a short taxable year, the business entity may only claim a credit on the short taxable year return in an amount equal to the total credits certified by the Department multiplied by a fraction:
 - (1) The numerator of which is the allowed costs incurred during the short taxable year; and
 - (2) The denominator of which is the allowed costs incurred during the entire calendar year.

.10 Addition Modifications.

- A. Individuals. To the extent an individual is allowed a credit on the State individual income tax return, the amount of the credit claimed shall be added to federal adjusted gross income to calculate the individual's State adjusted gross income.
- B. Corporations. To the extent that a corporation is allowed a credit on its State income tax return, the amount of the credit claimed shall be added to federal taxable income to calculate the corporation's State modified income.

.11 Partnerships, S Corporations, Limited Liability Companies, Business Trusts, Estates, and Trusts.

- A. Partnerships, S Corporations, Limited Liability Companies, and Business Trusts. In the case of a subchapter S corporation, partnership, limited liability company, or business trust, the amount of the credits computed for the pass-through entity shall be allocated among the owners as agreed to in writing by the owners in accordance with Internal Revenue Service rules.
- B. Estates and Trusts. In the case of an estate or trust, the amount of the credits computed for the estate or trust for any taxable year shall be apportioned among the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.
- C. Statements to Partners, Shareholders, Members, and Beneficiaries.
 - (1) Requirements. A partnership, S corporation, limited liability company, business trust, estate, or trust shall provide each of its partners, shareholders, members, or beneficiaries with a Maryland Form 510, Schedule K-1.

(2) Statement Attached to Return. A partner, shareholder, member, or beneficiary shall attach a copy of the Maryland Form 510, Schedule K-1, to the income tax return on which the credit is claimed.

D. Year in Which Credits are Claimed. The credit apportioned to a partner, shareholder, member, or beneficiary under this regulation shall be claimed on the partner's, shareholder's, member's, or beneficiary's State tax return in the taxable year of the partner, shareholder, member, or beneficiary within which the taxable year of the pass through entity ends.

.12 Audits and Inquiries.

A. Audits.

- (1) If the Department becomes aware of facts and circumstances that reasonably warrant an audit of the factual or accounting basis of a business entity's claim of eligibility for a tax credit under this chapter or of a claim of tax credit under this chapter, the Department may require at any reasonable time before or after the issuance of a certificate of eligibility for tax credit that any information provided to the Department by a business entity be audited.
- (2) The Department may require at any reasonable time an audit of any information submitted to the Department:
 - (a) By any business entity that applies for certification by the Department of tax credits under this chapter; and
 - (b) By any business entity that has been certified by the Department for a tax credit.
- (3) An audit under §A(2) of this regulation shall be directed to the business entity's basis for its claim of eligibility for the tax credit under this chapter.
- (4) An audit under §A(2) of this regulation shall be conducted at the business entity's expense by an independent auditor selected by the business entity and reasonably satisfactory to the Department.
- (5) The Department may initiate an audit by delivering to the business entity a written request for the performance of an audit stating the scope of the audit to be undertaken and the matters to be examined in the course of the audit.
- (6) Within 10 business days after a business entity receives a request from the Department for the performance of an audit under this regulation, the business entity shall submit to the requesting agency a written response naming the independent auditor selected by the business entity.
- (7) If the Department approves the auditor, it shall give written notice to the business entity that it approves the auditor and shall provide instructions to the auditor for the scope and conduct of the audit.
- (8) If the Department disapproves of the selected auditor, it shall give written notice to the business entity of the disapproval and of the reasons for it. The business entity shall, within 5 business days after receipt of notice of the Department's disapproval of an auditor, select an alternative auditor and submit to the Department a written response naming the alternative independent auditor selected by the business entity.
- (9) The process pursuant to §A(5)—(8) of this regulation for the selection and approval of an auditor will continue until the Department approves an alternative proposed auditor pursuant to §A(7) of this regulation.

- (10) The approved auditor shall proceed to conduct the audit with due diligence and dispatch, and in accordance with the Department's instructions. Within 90 days of the Department's notice approving the selection of an auditor, the auditor shall submit to the Department and to the business entity a full report of its audit procedures, tests, matters examined, and findings.
- (11) The Comptroller retains its audit authority under the Tax-General Article, Annotated Code of Maryland.

B. Inquiries; Duty of Business Entities to Respond.

- (1) If the Department becomes aware of facts and circumstances that reasonably warrant further inquiry into the factual basis of a business entity's claim of eligibility for a tax credit under this chapter, or the basis of the business entity's claim of a tax credit under this chapter, the Department may make written inquiry, including a request for the production, inspection, or copying of documents specified in the inquiry, of any business entity or holder of a certificate of eligibility for a tax credit under this chapter to obtain information bearing on the eligibility of the business entity or of the business entity's partners, shareholders, members, or beneficiaries for that credit. The inquiry may include, but may not be limited to, whether the claimed costs were in fact incurred in the State.
- (2) A business entity to which a written inquiry from the Department is directed under §B(1) of this regulation shall submit a full and complete written response, with copies of all requested documents, within 45 days of the date of the inquiry. The response shall be verified as true and correct by oath or affirmation made under penalty of perjury by the individual proprietor or by an individual officer, partner, or member of the business entity.

.13 Waiver.

The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with Tax-General Article, §10-732, Annotated Code of Maryland.

Administrative History

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