

# **Title 24 DEPARTMENT OF COMMERCE**

## **Subtitle 05 ECONOMIC DEVELOPMENT**

### **Chapter 20 Job Creation Tax Credit**

**Authority: Economic Development Article, Title 6, Subtitle 3, Annotated Code of Maryland**

#### **.01 Objective.**

The objective of the job creation tax credit is to increase the number and quality of new jobs in the State by encouraging:

- A. Significant expansions of existing private sector enterprises;
- B. Establishment of new private sector enterprises;
- C. Creation of family supporting jobs; and
- D. Revitalization of neighborhoods and commercial area

#### **.02 Purpose.**

This chapter describes the procedures that will be used by the Secretary of Commerce to establish the requirements necessary to qualify for the tax credit program.

#### **.03 Scope and Administration.**

Certification for the job creation tax credit is administered by the Secretary of Commerce. The Comptroller of the Treasury, the Department of Assessments and Taxation, and the Insurance Commissioner shall administer the tax credit.

#### **.04 Definitions.**

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

B. Terms Defined.

(1) "Act" means the Job Creation Tax Credit Act at Economic Development Article, Title 6, Subtitle 3, Annotated Code of Maryland.

(2) "Average wage" means the average wage for all employment in the State as reported from time to time by the Department of Labor, Licensing, and Regulation.

(3) Central Administrative Offices.

(a) "Central administrative offices" means a facility where a business entity's central management or administrative functions are handled on either a regional or national basis.

(b) "Central administrative offices" includes offices or locations in the region where functions such as personnel, planning, general management, accounting and financial, purchasing, advertising, legal, data processing, and research and development are performed.

(4) "Central financial, real estate, or insurance services" means the performance of central management or administrative functions for a business entity engaged in financial, real estate, or insurance services.

(5) "Central management or administrative functions" includes general management, accounting, computer tabulating, data processing, purchasing, transportation or shipping, advertising, legal, financial, and research and development.

(6) Company Headquarters.

(a) "Company headquarters" means a facility where the majority of a business entity's financial, personnel, legal, and planning functions are handled either on a regional or national basis.

(b) "Company headquarters" does not include the headquarters of a professional sports organization.

(7) "Credit year" means the taxable year for which a qualified business entity claims the tax credit.

(8) "Department" means the Department of Commerce.

(9) "Federal minimum wage" means the wage established by the Fair Labor Standards Act of 1938 as amended. For purposes of the tax credit, hourly wages may include bonuses and commissions, prorated on an hourly basis, if these bonuses and commissions are reported on the W-2 Wage and Tax Statements of the qualified employees.

(10) "Full-time position" means a position requiring at least 840 hours of an employee's time during at least 24 weeks in a 6-month period (an average of 35 hours per week).

(11) "Person" includes an individual, corporation, business trust, partnership, limited liability company, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(12) "Qualified business entity" has the meaning stated in §C of this regulation.

(13) "Qualified employee" means an employee filling a qualified position.

(14) Qualified Position.

(a) "Qualified position" means a position that:

(i) Is a full-time position;

(ii) Is of indefinite duration;

(iii) Pays at least 150 percent of the federal minimum wage;

(iv) Is located in Maryland;

(v) Is newly created, as a result of the establishment or expansion of a business facility in a single location in the State; and

(vi) Is filled.

(b) "Qualified position" does not include a position that is:

(i) Created when an employment function is shifted from an existing business facility of the business entity located in the State to another business facility of the same business entity if the position does not represent a net new job in the State;

(ii) Created through a change in ownership of a trade or business;

(iii) Created through a consolidation, merger, or restructuring of a business entity if the position does not represent a net new job in the State;

(iv) Created when an employment function is contractually shifted from an existing business entity located in the State to another business entity if the position does not represent a net new job in the State; or

(v) Filled for a period of less than 12 months.

(c) "Qualified position" is limited to the following positions if the entity is engaged in the operation of entertainment, recreational, cultural, or tourism-related activities:

(i) Positions engaged in the operation of entertainment, recreational, cultural, or tourism-related activities for the multiuse facility in which the entertainment, recreational, cultural, or tourism-related activities are operated; or

(ii) Positions engaged in management, marketing, building maintenance, hotel services, and security for the facility.

(d) "Qualified position" does not include a temporary training position but does include a permanent position which is filled by hiring a successful trainee from a temporary training position that does not exceed 3 months in length.

(15) "Retention period" means the 3-year period after the credit year during which the qualified business entity is required to maintain the qualified positions. The retention period may be extended under Regulation .10 of this chapter.

(16) "Revitalization area" means an area designated as:

(a) An enterprise zone by the Secretary under Economic Development Article, §5-704, Annotated Code of Maryland;

(b) An empowerment zone by the United States Government pursuant to 26 U.S.C. §1391 et seq.; or

(c) A neighborhood that is eligible for economic revitalization assistance under Housing and Community Development Article, §6-303, Annotated Code of Maryland.

(17) "Secretary" means the Secretary of Commerce or the Secretary's designee.

(18) State Priority Funding Area.

(a) "State priority funding area" includes the following areas:

- (i) An incorporated municipality;
  - (ii) A designated neighborhood, as defined in Housing and Community Development Article, §6-305, Annotated Code of Maryland;
  - (iii) An enterprise zone as designated under Economic Development Article, §5-704, Annotated Code of Maryland, or by the United States government;
  - (iv) Those areas of the State located between Interstate 495 and the District of Columbia;
  - (v) Those areas of the State located between Interstate 695 and Baltimore City;
  - (vi) Not more than one area in a county designated in writing to the Department by the county as a priority funding area under State Finance and Procurement Article, §5-7B-03(d), Annotated Code of Maryland; and
  - (vii) That portion of the port land use development zone, as defined in Transportation Article, §6-501(e), Annotated Code of Maryland, that has been designated as an area appropriate for growth in the county comprehensive master plan.
- (b) "State priority funding area", for purposes of qualifying for the tax credit, includes the entire area of a business facility, if at least 25 percent of the business facility is located within a State priority funding area.
- (19) "Tax credit" means job creation tax credit.

#### C. Qualified Business Entity.

- (1) "Qualified business entity" means a person conducting or operating a qualified type of business in Maryland who:
- (a) Is engaged in an activity specified in Regulation .07 of this chapter;
  - (b) During any 24-month period creates at least:
    - (i) 60 qualified positions,
    - (ii) 30 qualified positions if the aggregate payroll for the qualified positions is greater than a threshold amount equal to the product of multiplying 60 times the State's average annual salary, as determined by the Department, or
    - (iii) 25 qualified positions if the business facility established or expanded by the business entity is located in a State priority funding area; and
  - (c) Is certified by the Secretary under Regulation .06 of this chapter as qualifying for the tax credit.
- (2) "Qualified business entity" includes the persons owning or operating a multiuse facility in which the entertainment, recreation, cultural, or tourism-related activities are operated.
- (3) "Qualified business entity" does not include any separate entity that leases retail space at a multiuse facility.

## **.05 Notification Required.**

A business entity shall notify the Department of its intent to seek certification for the tax credit before hiring any qualified employees to fill the qualified positions necessary to satisfy the requirements for a qualified business entity establishing or expanding the business facility on which the tax credit is based.

## **.06 Certification Procedures.**

A. To be preliminarily certified as a qualified business entity, a business entity shall submit the following to the Department on an application form approved by the Department:

- (1) The proposed effective date of the start-up or expansion;
- (2) The number of full-time employees before the start-up or expansion and the payroll of the existing employees;
- (3) The expected number of qualified positions expected to be created, qualified employees expected to be hired, and the estimated payroll of those employees; and
- (4) Any other information required by the Department.

B. To be certified as a qualified business entity, a business entity shall submit the following to the Department on an application form approved by the Department:

- (1) The effective date of the start-up or expansion;
- (2) The number of qualified positions created, qualified employees hired, and the estimated payroll of those employees; and
- (3) Any other information required by the Department.

C. The Department may require any information required by this regulation to be verified by an independent auditor selected by the business entity.

D. If a business entity satisfies the definition of qualified business entity, the Secretary shall certify the business as a qualified business entity eligible for the tax credit.

## **.07 Eligible Business Activities.**

A. To qualify for the tax credit, a qualified business entity shall establish or expand a business facility in the State that is primarily engaged in one or more of the following qualifying activities:

- (1) Manufacturing;
- (2) Mining;
- (3) Transportation;
- (4) Communications;
- (5) Agriculture;

- (6) Forestry;
- (7) Fishing;
- (8) Research, development, or testing;
- (9) Biotechnology;
- (10) Computer programming, data processing, or other computer-related services;
- (11) Central financial, real estate, or insurance services;
- (12) The operation of central administrative offices or a company headquarters;
- (13) A public utility;
- (14) Warehousing;
- (15) Business services, if the business facility established or expanded by the business entity is located in a State priority funding area; or
- (16) Operation of entertainment, recreation, cultural, or tourism-related activities in a multiuse facility located within a revitalization area, if the facility:
  - (a) Generates a minimum of 1,000 new full-time equivalent filled positions in a 24-month period, and
  - (b) Is not primarily used by a professional sports franchise or for gaming.

B. In determining whether a business facility is engaged in a qualifying activity, the Department shall consider the definitions set forth in the U.S. Department of Labor's Standard Industrial Classification Manual.

### **.08 Amount of Tax Credit.**

A. Standard Tax Credit. The standard tax credit earned under this section equals the lesser of:

- (1) \$1,000 multiplied by the number of qualified employees employed by the qualified entity during the credit year; and
- (2) 2.5 percent of the wages paid by the qualified business entity during the credit year to all qualified employees.

B. Tax Credit for Facility in Revitalization Area. The tax credit for qualified employees working in a facility located in a revitalization area equals the lesser of:

- (1) \$1,500 multiplied by the number of qualified employees employed by the qualified entity during the credit year; and
- (2) 5 percent of the wages paid by the qualified business entity during the credit year to the qualified employees.

C. Earning the Tax Credit.

(1) The tax credit is earned by the business entity at the end of the 12-month period during which the requisite number of qualified positions have been filled.

(2) The 12 months need not be consecutive.

D. Time That Tax Credit May Be Taken. The tax credit shall be allowed ratably with 1/2 of the tax credit amount allowed annually for 2 years beginning with the credit year.

E. Limitations on the Tax Credit.

(1) The tax credit earned by a qualified business entity may not exceed \$1,000,000 for any credit year.

(2) The same tax credit may not be applied more than once against different taxes by the same taxpayer.

(3) The tax credit shall be taken in only 1 credit year for each qualified position.

(4) The tax credit shall be based on 12 months' wages for each qualified employee.

### **.09 Carryover of Tax Credit.**

A. A business entity may carry over the tax credit to a successive tax year if the tax credit allowed exceeds the total tax otherwise due from the entity.

B. The tax credit may only be carried over until the earlier of the:

(1) Full amount of the excess is used; or

(2) Expiration of the fifth taxable year from the credit year.

C. The tax credit may not be carried back to a preceding taxable year.

### **.10 Recapture Provisions.**

A. Except as provided in §D of this regulation, the tax credit shall be recaptured if, during any of the retention period following the credit year, the number of qualified positions of the qualified business entity falls more than 5 percent below the average number of qualified positions during the credit year on which the tax credit was computed.

B. A temporary vacancy in a qualified position does not constitute the abolition of that qualified position if:

(1) The vacancy is filled within 4 months; and

(2) Not more than 10 percent of the qualified positions at the business facility are vacant at any given time.

C. Except as provided in §D of this regulation, the tax credit shall be recaptured in its entirety if, during the retention period following the credit year, the average number of qualified positions falls below the applicable minimum threshold number of positions specified in Regulation .04C(1)(b) of this chapter.

D. If, during the retention period, for a period of time more than 5 percent of qualified positions are vacant due to a labor action or due to a fire, flood, or other cause beyond the control of the qualified business entity, instead of recapture of the tax credit, the retention period shall be extended by that period of time.

E. The tax credit shall be recaptured in the following manner:

- (1) The tax credit shall be recomputed to reduce the tax credit by the percentage reduction of the number of qualified employees;
- (2) The recomputed tax credit shall be subtracted from the amount of tax credit previously allowed; and
- (3) The qualifying business entity shall pay the difference as taxes payable to the State for the taxable year in which the number of qualified positions falls more than 5 percent below the average number of qualified positions during the credit year.

## **.11 Information Required from Entity.**

A. To be eligible to receive the tax credit, a firm shall notify the Department in writing of its intention to use the tax credit before hiring the qualified employees necessary for establishing or expanding a facility.

B. To obtain preliminary certification, the qualified business entity shall provide the Department with a completed application for preliminary certification.

C. To obtain certification, the qualified business entity shall provide the Department with a completed application for certification.

D. By April 1 of each year after the credit year, the qualified business entity shall provide the Department with the following information:

(1) Employment information regarding the tax year for which the credit is being claimed, the number of qualified positions created and filled by qualified employees during the tax year, whether the qualified positions still existed and were still filled by qualified employees at the end of the tax year, and whether the qualified business entity has complied with all the requirements of the Act; and

(2) Any other employment information requested by the Department.

E. At the end of the retention period for a given credit year, an independent certified public accountant selected by the qualified business entity shall provide the Department and the appropriate taxing authority with a written statement stating either:

(1) That no refund of the tax credit is due to the State; or

(2) If a refund is due, the original amount of tax credit earned, the amount taken, and the amount to be refunded to the State.

## **.12 Confidentiality Protections for Business Entities.**

A. Any information provided to the Comptroller or the appropriate agency by a qualified business entity in connection with eligibility for a tax credit allowed under this chapter shall be shared by the Comptroller or the appropriate agency with the Department.

B. Information provided under §A of this regulation shall be subject to the confidentiality requirements applicable to the Comptroller or the appropriate agency.

## **.13 Repealed.**

## **.14 Waiver.**

The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with the Act if:

A. Conformance to the requirement of any federal, State, or local program necessitates waiver or variance of a regulation; or

B. In the determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

### **Administrative History**

**Effective date: June 15, 1998 (25:12 Md. R. 949)**

**Regulation .04B amended effective March 6, 2000 (27:4 Md. R. 455); April 11, 2005 (32:7 Md. R. 686)**

**Regulation .06 amended effective December 25, 2000 (27:25 Md. R. 2285)**

**Regulation .11 amended effective December 25, 2000 (27:25 Md. R. 2285)**

**Regulation .11D amended effective April 11, 2005 (32:7 Md. R. 686)**

**Regulation .13 repealed effective November 12, 2001 (28:22 Md. R. 1937)**