

## **ECONOMIC DEVELOPMENT ARTICLE**

### **TITLE 6: ECONOMIC DEVELOPMENT TAX INCENTIVES.**

#### **ONE MARYLAND ECONOMIC DEVELOPMENT TAX CREDIT.**

##### **§ 6–401. Definitions.**

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Eligible economic development project” means an economic development project that:
- (1) establishes or expands a business facility within a qualified distressed county; and
  - (2) is approved for a project tax credit or a start–up tax credit in accordance with this subtitle.
- (c) (1) “Eligible project cost” means the cost and expense a qualified business entity incurs to acquire, construct, rehabilitate, install, or equip an eligible economic development project.
- (2) “Eligible project cost” includes:
- (i) the cost of:
    1. obligations for labor and payments made to contractors, subcontractors, builders, and suppliers;
    2. acquiring land, rights in land, and costs incidental to acquiring land or rights in land;
    3. contract bonds and insurance needed during the acquisition, construction, or installation of the project;
    4. test borings, surveys, estimates, plans, specifications, preliminary investigations, environmental mitigation, supervision of construction, and other architectural and engineering services;
    5. performing duties required by or consequent to the acquisition, construction, and installation of the project;
    6. installing water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar utilities; and
    7. bond insurance, letters of credit, or other forms of credit enhancement or liquidity facilities;
  - (ii) the interest cost before and during the acquisition, construction, installation, and equipping of the project, and for up to 2 years after project completion; and
  - (iii) legal, accounting, financial, printing, recording, filing, and other fees and expenses incurred to finance the project.
- (d) (1) “Eligible start–up cost” means a qualified business entity’s cost to furnish and equip a new location for ordinary business functions.
- (2) “Eligible start–up cost” includes:
- (i) the cost of computers, nonrecurring costs of fixed telecommunications equipment, furnishings, and office equipment; and

(ii) expenditures for moving costs, separation costs, and other costs directly related to moving from outside of the State to a location in a qualified distressed county.

(e) “Project tax credit” means a tax credit for eligible project costs allowed under § 6–403 of this subtitle.

(f) “Qualified business entity” means a person that:

(1) (i) conducts or operates a trade or business in the State; or

(ii) operates in the State and is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; and

(2) is certified in accordance with § 6–402 of this subtitle as qualifying for a project tax credit or a start–up tax credit under this subtitle.

(g) (1) “Qualified position” means a position that:

(i) is a full–time position and is of indefinite duration;

(ii) pays at least 150% of the federal minimum wage;

(iii) is in a qualified distressed county;

(iv) is newly created because a business facility begins or expands in one location in a qualified distressed county; and

(v) is filled.

(2) “Qualified position” does not include a position that is:

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

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

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

(h) “Start–up tax credit” means a tax credit for eligible start–up costs allowed under § 6–404 of this subtitle.

**§ 6-402. Eligibility; Certification.**

(a) (1) To qualify for a project tax credit or a start-up tax credit, a person shall be certified by the Secretary as meeting the requirements of this subtitle and as being eligible for the tax credit.

(2) The Secretary may not certify a person as a qualified business entity unless the person notifies the Department of its intent to seek certification before hiring any qualified employees to fill the qualified positions necessary to satisfy the employment threshold under subsection (b)(2) of this section.

(b) To be eligible for a project tax credit or a start-up tax credit, a person shall:

(1) establish or expand a business facility that:

(i) is located in a qualified distressed county; and

(ii) 1. is located in a priority funding area under § 5-7B-02 of the State Finance and Procurement Article; or

2. is eligible for funding outside of a priority funding area under § 5-7B-05 or § 5-7B-06 of the State Finance and Procurement Article;

(2) during any 24-month period, create at least 25 qualified positions at the new or expanded business facility; and

(3) be primarily engaged at the new or expanded business facility in any combination of:

(i) manufacturing or mining;

(ii) transportation or communications;

(iii) filmmaking, resort business, or recreational business;

(iv) agriculture, forestry, or fishing;

(v) research, development, or testing;

(vi) biotechnology;

(vii) computer programming, information technology, or other computer-related services;

(viii) central services for a business entity engaged in financial services, real estate services, or insurance services;

(ix) the operation of central administrative offices;

(x) the operation of a company headquarters other than the headquarters of a professional sports organization;

(xi) the operation of a public utility;

(xii) warehousing; or

(xiii) other business services.

(c) To be certified as a qualified business entity for a project tax credit or a start-up tax credit, a person shall submit to the Secretary an application that specifies:

- (1) the 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 number of qualified positions created and qualified employees hired and the payroll of the new qualified employees; and
- (4) any other information that the Secretary requires by regulation.

(d) The Secretary may require any information required under this section to be verified by an independent auditor that the qualified business entity selects.

**NOTE: Subparagraphs (e) and (f)(5) shall be applicable to all taxable years beginning after December 31, 2010.**

**§ 6-403. Project Tax Credit.**

(a) (1) A qualified business entity may claim a project tax credit for the cost of an eligible economic development project in a qualified distressed county if the total eligible project cost for the eligible economic development project cost is at least \$500,000.

(2) A qualified business entity is not entitled to a project tax credit for a cost incurred before notifying the Department of its intent to seek certification as qualifying for the project tax credit.

(b) (1) Subject to the limitation in paragraph (2) of this subsection, the project tax credit allowed under this section is the lesser of \$5,000,000 and the total eligible project cost for the eligible economic development project, less the amount of the credit previously taken for the project in prior taxable years.

(2) Except as provided in subsections (e) and (f) of this section, the project tax credit allowed in a taxable year may not exceed the State tax for that year on the qualified business entity's income generated by or arising out of the eligible economic development project, as determined under subsections (c) and (d) of this section.

(c) (1) This subsection does not apply to a person subject to taxation under Title 6 of the Insurance Article.

(2) The State tax for the taxable year on a qualified business entity's income generated by or arising out of an eligible economic development project equals the difference between:

- (i) the State tax without regard to this subtitle; and
- (ii) the State tax on the qualified business entity's Maryland taxable income reduced by the amount of its net income attributable to the eligible economic development project.

(3) If an eligible economic development project is a totally separate facility, net income attributable to the project shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses that are directly attributable to the facility and the overhead expenses apportioned to the facility.

(4) If the eligible economic development project is an expansion to a previously existing facility:

(i) net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses that are directly attributable to the facility and the overhead expenses apportioned to the facility; and

(ii) net income attributable to the eligible economic development project shall be determined by apportioning the net income of the entire facility, as calculated under item (i) of this paragraph, to the eligible economic development project by a formula approved by the Comptroller or the State Department of Assessments and Taxation.

(5) If the Comptroller or the State Department of Assessments and Taxation is satisfied that the nature and activities of a qualified business entity make it impractical to use the separate accounting method, the qualified business entity shall determine net income from the eligible economic development project using an alternative method approved by the Comptroller or the State Department of Assessments and Taxation.

(d) A qualified business entity that is subject to taxation under Title 6 of the Insurance Article may not claim the project tax credit for the taxable year in which the project is placed in service or for the next 4 taxable years.

(e) (1) Subject to paragraph (2) of this subsection, if the eligible project cost for the eligible economic development project exceeds the State tax on the qualified business entity's income generated by or arising out of the project for the taxable year in which the project is placed in service, the qualified business entity may apply any excess as a project tax credit for succeeding taxable years against the State tax on the qualified business entity's income generated by or arising out of the project until the earlier of:

(i) the full amount of the excess is used; or

(ii) the expiration of the 14th taxable year following the taxable year in which the project is placed in service.

(2) (i) A qualified business entity may claim a prorated share of the credit under this subsection if:

1. during any taxable year after the qualified business entity is certified for the tax credit, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has maintained at least 25 qualified positions for at least 5 years.

(ii) The prorated share of the credit is calculated based on the number of qualified positions filled for the taxable year divided by 25.

(f) (1) Subject to the limitation in paragraph (4) of this subsection and subject to § 6-405 of this subtitle, this subsection applies to any taxable year after the 4th but before the 15th taxable year following the taxable year in which the project is placed in service.

(2) A qualified business entity other than a person subject to taxation under Title 6 of the Insurance Article may:

(i) apply any excess of eligible project costs for the eligible economic development project over the cumulative amount used as a project tax credit for the taxable year and all prior taxable years as a tax credit against the State tax for the taxable year on the qualified business entity's income other than income generated by or arising out of the project; and

(ii) claim a refund in the amount, if any, by which the unused excess exceeds the State tax for the taxable year on the qualified business entity's income other than income generated by or arising out of the project.

(3) A qualified business entity that is subject to taxation under Title 6 of the Insurance Article may:

(i) apply any excess of eligible project costs for the eligible economic development project over the cumulative amount used as a project tax credit for the taxable year and all prior taxable years as a tax credit against the premium tax imposed for the taxable year; and

(ii) claim a refund in the amount, if any, by which the unused excess exceeds the premium tax for the taxable year.

(4) For any taxable year, the total amount used as a project tax credit and claimed as a refund under this subsection may not exceed the amount of tax that the qualified business entity is required to withhold for the taxable year from the wages of qualified employees under § 10-908 of the Tax – General Article.

(5) (i) A qualified business entity may claim a prorated share of the credit under this subsection if:

1. during any taxable year after the qualified business entity is certified for the tax credit, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has maintained at least 25 qualified positions for at least 5 years.

(ii) The prorated share of the credit is calculated based on the number of qualified positions filled for the taxable year divided by 25.

(g) A qualified business entity shall attach the certification required under § 6-402 of this subtitle to the tax return on which the project tax credit is claimed.

**NOTE: Subparagraphs (c) and (d)(4) shall be applicable to all taxable years beginning after December 31, 2010.**

**§ 6-404. Start-Up Tax Credit.**

(a) (1) A qualified business entity that locates in a qualified distressed county may claim a start-up tax credit in the amount provided in subsection (b) of this section.

(2) A qualified business entity is not entitled to a start-up tax credit for a cost incurred before notifying the Department of its intent to seek certification as qualifying for the start-up tax credit.

(b) The start-up tax credit allowed under this section for each taxable year equals the least of:

(1) the qualified business entity's total eligible start-up cost associated with establishing or expanding a business facility in the qualified distressed county, less the amount of the credit previously taken for the project;

(2) the product of multiplying \$10,000 times the number of qualified employees employed at the new or expanded business facility; or

(3) \$500,000.

(c) (1) Subject to paragraph (2) of this subsection, if the start-up tax credit allowed under subsection (b) of this section for the taxable year in which a qualified business entity locates in a qualified distressed county exceeds the total tax otherwise due from the qualified business entity for that taxable year, the qualified business entity may apply the excess as a credit for succeeding taxable years until the earlier of:

(i) the full amount of the excess is used; or

(ii) the expiration of the 14th taxable year following the taxable year in which the qualified business entity locates in a qualified distressed county.

(2) (i) A qualified business entity may claim a prorated share of the credit under this subsection if:

1. during any taxable year after the qualified business entity is certified for the tax credit, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has maintained at least 25 qualified positions for at least 5 years.

(ii) The prorated share of the credit is calculated based on the number of qualified positions filled for the taxable year divided by 25.

(d) (1) Subject to the limitation in paragraph (3) of this subsection and subject to § 6-405 of this subtitle, this subsection applies to any taxable year after the 4th but before the 15th taxable year following the taxable year in which the qualified business entity locates in a qualified distressed county.

(2) A qualified business entity may claim a refund in the amount, if any, by which the qualified business entity's eligible start-up cost exceeds the cumulative amount used as a start-up tax credit for the taxable year and all prior taxable years.

(3) For any taxable year, the total amount claimed as a refund under this subsection may not exceed the amount of tax that the qualified business entity is required to withhold for the taxable year from the wages of qualified employees under § 10-908 of the Tax – General Article.

(4) (i) A qualified business entity may claim a prorated share of the credit under this subsection if:

1. during any taxable year after the qualified business entity is certified for the tax credit, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has maintained at least 25 qualified positions for at least 5 years.

(ii) The prorated share of the credit is calculated based on the number of qualified positions filled for the taxable year divided by 25.

(e) A qualified business entity shall attach the certification required under § 6–402(a) of this subtitle to the tax return on which the start–up tax credit is claimed.

**§ 6–405. Tax Credit Application.**

If the pay for the majority of the qualified positions created from the establishment or expansion of a business facility is at least 250% of the federal minimum wage, §§ 6–403(f) and 6–404(d) of this subtitle apply beginning with the taxable year after the 2nd taxable year that follows the taxable year when the qualified business entity locates in a qualified distressed county.

**§ 6–406. Tax Revenue Reduction.**

A refund payable to a qualified business entity under § 6–403(f) or § 6–404(d) of this subtitle reduces:

(1) the income tax revenue from corporations if the qualified business entity is a corporation subject to the income tax under Title 10 of the Tax – General Article;

(2) the income tax revenue from individuals if the qualified business entity is:

(i) an individual subject to the income tax under Title 10 of the Tax – General Article; or

(ii) an organization exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; and

(3) insurance premium tax revenues if the qualified business entity is subject to taxation under Title 6 of the Insurance Article.

**§ 6–407. Adoption of Regulations.**

The Secretary shall adopt regulations to specify criteria and procedures for application and approval of projects for the tax credit under this subtitle.