Title 24 DEPARTMENT OF COMMERCE

Subtitle 05 ECONOMIC DEVELOPMENT

Chapter 24 One Maryland Economic Development Tax Credits

Authority: Economic Development Article, Title 6, Subtitle 4, Annotated Code of Maryland

.01 Scope and Administration.

Certification for the tax credits 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 credits.

.02 Definitions.

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

B. Terms Defined.

(1) "Act" means Economic Development Article, Title 6, Subtitle 4, Annotated Code of Maryland.

(2) 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 its region where functions such as personnel, planning, general management, accounting and financial, purchasing, advertising, legal, data processing, and research and development are performed.

(3) "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.

(4) "Central management or administrative functions" includes general management, accounting, information technology, purchasing, transportation or shipping, advertising, legal, financial, and research and development.

(5) "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.

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

(7) "Eligible economic development project" means an economic development project establishing or expanding a business facility within a qualified distressed county that is approved by the Secretary to receive the tax credits under this chapter.

(8) Eligible Project Costs.

(a) "Eligible project costs" means up to $5,000,000 of costs and expenses incurred by a business entity in connection with the acquisition, construction, rehabilitation, installation, and equipping of an eligible economic development project.

(b) "Eligible project costs" includes:

(i) The costs of acquiring, constructing, rehabilitating, installing, and equipping the project, including obligations incurred for labor and to contractors, subcontractors, builders, and materialmen;

(ii) The costs of acquiring land or rights in land, and costs incidental to acquiring land or rights in land, to the extent that the amount of land acquired is reasonably necessary for the project;

(iii) The costs of contract bonds and insurance that are required or necessary during the acquisition, construction, or installation of the project;

(iv) The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction;

(v) The costs for the performance of all the duties required by or consequent to the acquisition, construction, and installation of the project;

(vi) The costs required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities;

(vii) The interest costs before and during the acquisition, construction, installation, and equipment of the project and for a period of up to 2 years after completing of the project;

(viii) The costs, expenses, and fees incurred in connection with the financing of the project, including legal, accounting, financial, printing, recording, filing costs, fees, and expenses;

(ix) The costs of obtaining bond insurance, letters of credit, or other forms of credit enhancement or liquidity facilities;

(x) The cost of the land on which an existing building is located, the cost of renovating or upgrading existing improvements to real property, and other costs specifically permitted under this chapter;

(xi) If approved in writing by the Secretary, a portion of the value of a capitalized lease for a newly constructed or purchased asset, so long as that portion is directly related to the eligible project costs, including only those interest costs described in §B(8)(b)(vii) of this regulation, actually expended on the asset after notice to the Department, but the portion of the value of a capitalized lease that is attributable to other interest costs and lease fees is not an eligible project cost; and

(xii) If approved in writing by the Secretary, the present value of that portion of the value of a long term lease expense that is directly related to eligible project costs, including only those interest costs described in §B(8)(b)(vii) of this regulation, that are actually expended on the real property portion of the project after notice to the Department.

(c) "Eligible project costs" does not include:

(i) Any costs incurred by a business entity before notifying the Department of its intent to seek certification as qualifying for the tax credit under this chapter;

(ii) Any costs incurred in dealings between related parties;

(iii) Any costs paid for with local, State, or federal government funds unless those funds are the proceeds of a loan that will be repaid by the business entity;

(iv) The cost of acquiring an existing building or improvement, unless the Secretary determines that the acquisition of the existing building or improvement is being made in connection with a project to reuse a vacant or underused facility, including the reuse of a property determined by the Department under Economic Development Article, §5-338, Annotated Code of Maryland, to be a qualified brownfields site; or

(v) Any costs of acquiring vehicles to be used in whole or in part off the premises of an eligible economic development project.

(9) Eligible Start-Up Costs.

(a) "Eligible start-up costs" means up to a total of $500,000 of a company's:

(i) Cost to furnish and equip a new location for ordinary business functions, including computers, the initial software needed to operate the computers or other computerized equipment, nonrecurring costs of fixed telecommunications equipment, furnishings, and office equipment; and

(ii) Reasonable expenditures for moving costs, separation costs, including severance pay and lease cancellation charges, and any other reasonable expenditure incurred by a company directly related to a move from an existing location outside of Maryland to a location in a qualified distressed county in Maryland.

(b) "Eligible start-up costs" does not include any costs incurred by a business entity before notifying the Department of its intent to seek certification as qualifying for the tax credit under this chapter.

(10) "Federal minimum wage" means the wage established by the Fair Labor Standards Act of 1938 as amended from time to time. 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.

(11) "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.

(12) "Person" means 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.

(13) "Project tax credit" means the tax credit for up to $5,000,000 in eligible project costs as further described in Regulation .07 of this chapter.

(14) "Qualified business entity" means a person that:

(a) Conducts or operates a trade or business in Maryland or is an organization operating in Maryland that is exempt from taxation under §501(c)(3) or (4) of the Internal Revenue Code;

(b) Establishes or expands a business facility that is located:

(i) In a qualified distressed county in the State, and

(ii) Within a priority funding area under State Finance and Procurement Article, §5-7B-02, Annotated Code of Maryland, or is eligible for funding outside of a priority funding area under State Finance and Procurement Article, §5-7B-05 or 5-7B-06, Annotated Code of Maryland;

(c) During any 24-month period creates at least 25 qualified positions at the new or expanded business facility; and

(d) Is certified by the Secretary under Regulation .04 of this chapter as qualifying for the tax credits under this chapter.

(15) "Qualified distressed county" means a county, including Baltimore City, for which the average:

(a) Rate of unemployment for the most recent 18-month period for which data are available is greater than 150 percent of the average rate of unemployment for the entire State during that same period; or

(b) Per capita personal income for the most recent 24-month period for which data are available is equal to or less than 67 percent of the average personal per capita income for the entire State during that same period.

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

(17) 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 a qualified distressed county in Maryland;

(v) Is newly created, as a result of the establishment or expansion of a business facility in a single location in the qualified distressed county; 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 Maryland 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 or acquisition of existing assets;

(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;

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

(vi) A temporary training position; or

(vii) Filled before the business entity has notified the Department in writing of its intent to seek certification for a tax credit.

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

(d) For a position to be "located in a qualified distressed county", the qualified employee filling that position must be physically present in the qualified distressed county for a majority of the qualified employee's work time.

(18) "Recreational business" means a business providing facilities for golf, water sports, skiing, or other similar sports or recreation activities, excluding adult entertainment.

(19) "Resort" means a lodging facility that includes, or is closely associated with, a recreational business, excluding adult entertainment.

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

(21) "Start-up tax credit" means the tax credit for up to $500,000 in eligible start-up costs as further described in Regulation .06 of this chapter.

(22) "Tax credit" means the One Maryland Economic Development Tax Credits, including either the start-up tax credit or the project tax credit or both.

.03 Notification Required.

A business entity shall notify the Department in writing of its intent to seek certification for a tax credit before:

A. Hiring any qualified employees to fill the 25 qualified positions necessary to satisfy the employment threshold required to qualify for the tax credit; and

B. Incurring any costs or expenses for which it intends to take a tax credit.

.04 Certification Procedures.

A. Application.

(1) To obtain a preliminary certification as a qualified business entity, a business entity may apply to the Department on an application approved by the Department.

(2) To be certified as a qualified business entity, a business entity shall submit the information required in Regulation .11 of this chapter to the Department on an application approved by the Department.

B. A business entity may not be certified as qualifying for the tax credit if an announcement, including a press conference or press coverage regarding the project, of intent to establish or expand the business facility was made on or before April 10, 1999.

C. The Department may require any information required by this chapter to be verified by a certified public accountant selected by the qualified business entity.

D. The Secretary shall determine whether or not to approve a tax credit for a business entity and shall deny approval of a tax credit or limit the amount of the tax credit if:

(1) The business entity has failed to meet the qualifications for the tax credit;

(2) Approving the tax credit would have a significant deleterious effect on another State location, county, or region by inducing a business entity to move a substantial number of existing positions from an existing State location to a project in a qualified distressed county; or

(3) Granting the tax credit would create a vacant Maryland facility, unless the Secretary determines that the vacant facility will not have a significant deleterious effect on the area.

E. For a project that is or will be located in a qualified distressed county with an unemployment rate that is equal to or greater than 150 percent of the Statewide average unemployment rate, if the proportion of qualified positions at the project to the total number of new positions at the project is projected to be:

(1) Less than 50 percent, the Secretary shall deny approval of a tax credit; and

(2) Equal to or greater than 50 percent, the Secretary shall limit the tax credit to the proportion of qualified positions at the project to the total number of new positions at the project applied to the eligible costs at the project that would otherwise be allowed.

F. A qualified business entity shall obtain and submit to the appropriate State taxing agency with the tax return on which the credit is claimed, certification from the Secretary that the entity has met the tax credit requirements and is eligible for the credit.

G. A project in a county that loses its eligibility as a qualified distressed county is eligible for a tax credit if:

(1) The county qualified as a qualified distressed county on the earlier of the date on which the:

(a) Business entity notified the Department in writing that it intended to apply for a tax credit for a project in that county, or

(b) Qualified business entity provided a written application to the Department for a tax credit for a project in that county; and

(2) The qualified business entity meets the project timing requirements set forth in Regulation .08 of this chapter.

.05 Eligible Business Activities.

A. To qualify for a 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) Filmmaking;

(6) Resort/recreational business (excluding adult entertainment);

(7) Agriculture;

(8) Forestry;

(9) Fishing;

(10) Research, development, or testing;

(11) Biotechnology;

(12) Computer programming, data processing, or other computer-related services;

(13) Central financial, real estate, or insurance services;

(14) The operation of central administrative offices or a company headquarters;

(15) A public utility;

(16) Warehousing; or

(17) Business services.

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. Office of Management and Budget's Standard Industrial Classification Manual or North American Industrial Classification Ma

.06 Start-Up Tax Credit.

A. Eligibility. A qualified business entity that locates in a qualified distressed county and hires at least 25 qualified employees within a 24-month period may claim a start-up tax credit in the amount provided in §C of this regulation.

B. Limit. The start-up tax credit for a qualified business entity and all of its related entities and successors generally may not exceed $500,000 for all projects in a particular qualified distressed county. In extraordinary circumstances, the Secretary may make a written determination approving the maximum start-up tax credit for more than one proposed project in the same qualified distressed county if the proposed project is beyond the scope of the original project and is of significant value to the county due to number of jobs to be created, quality of jobs, job training programs to be offered, or other economic development factors.

C. Calculation. The start-up tax credit allowed for eligible start-up costs for each taxable year equals the lesser of:

(1) 100 percent of the qualified business entity's eligible start-up costs associated with establishing or expanding a business facility in a qualified distressed county, less the amount of the credit allowed with respect to the project for prior taxable years; or

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

D. Application of Start-Up Tax Credit against Taxes.

(1) If the tax credits allowed under this regulation for the taxable year in which a qualified business entity places the project in service 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 the:

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

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

(2) Subject to the limitation based on the amount of qualified employee withholding under §D(3) of this regulation and subject to §D(4) of this regulation, for any taxable year after the 4th taxable year following the taxable year in which the qualified business entity locates in a qualified distressed county but before the 15th taxable year following the taxable year in which the eligible economic development project is placed in service in a qualified distressed county, the qualified business entity may claim a refund in the amount, if any, by which the qualified business entity's eligible start-up costs exceed the cumulative amount used as a tax credit under this section for the taxable year and all prior taxable years.

(3) For any taxable year, the total amount claimed as a refund as provided in this section may not exceed the amount of taxes that the qualified business entity is required to withhold and has actually remitted for the taxable year from the wages of qualified employees under Tax-General Article, §10-908, Annotated Code of Maryland.

(4) If the pay for the majority of the qualified positions created as a result of the establishment or expansion of a business facility is at least 250 percent of the federal minimum wage, the provisions of §D(2) of this regulation shall apply beginning with the taxable year after the 2nd taxable year following the taxable year in which the qualified business entity locates in a qualified distressed county.

.07 Project Tax Credit.

A. Eligibility. A qualified business entity may claim a project tax credit for the costs of an eligible economic development project in a qualified distressed county if the amount of the qualified business entity's total eligible project costs for the eligible economic development project is at least $500,000.

B. Limit. The project tax credit for a qualified business entity and all of its related entities and successors generally may not exceed $5,000,000 for all projects in a particular qualified distressed county. In extraordinary circumstances, the Secretary may make a written determination approving the maximum project tax credit for more than one proposed project in the same qualified distressed county if the proposed project is beyond the scope of the original project and is of significant value to the county due to number of jobs to be created, quality of jobs, job training programs to be offered, or other economic development factors.

C. Calculation.

(1) Subject to the limitation under §C(2) of this regulation, the project tax credit allowed for an eligible economic development project is equal to 100 percent of the eligible project costs for the eligible economic development project, less the amount of the credit allowed with respect to the project for prior taxable years.

(2) Except as provided in §D(1) and (2) of this regulation, the credit allowed under this regulation for any taxable year may not exceed the State tax for the taxable year on the qualified business entity's income generated by or arising out of the project (the "project income"), as determined by the Comptroller and the Department of Assessments and Taxation.

D. Application of Project Tax Credit against Taxes.

(1) If the eligible project costs for the eligible economic development project exceed 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 credit for succeeding taxable years against the State tax on the qualified business entity's project income until the earlier of the:

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

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

(2) In addition to taking the tax credit against State tax on project income, subject to the limitation under §D(3) and E of this regulation, and subject to §D(4) of this regulation, for any taxable year after the 4th taxable year following the taxable year in which the project is placed in service but before the 15th taxable year following the taxable year in which the project is placed in service, a qualified business entity other than a person subject to taxation under Insurance Article, Title 6, Annotated Code of Maryland:

(a) May apply any excess of eligible project costs for the eligible economic development project over the cumulative amount used as a tax credit under this section 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 (the "non-project income"); and

(b) May 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 non-project income.

(3) For any taxable year, the total of the amount used as a tax credit against State tax on non-project income plus the amount claimed as a refund as provided in this section may not exceed the amount of taxes that the qualified business entity is required to withhold and has actually remitted for the taxable year from the wages of qualified employees under Tax-General Article, §10-908, Annotated Code of Maryland.

(4) If the pay for the majority of the qualified positions created as a result of the establishment or expansion of a business facility is at least 250 percent of the federal minimum wage, the provisions of §D(2) of this regulation shall apply beginning with the taxable year after the 2nd taxable year following the taxable year in which the qualified business entity locates in a qualified distressed county.

E. Insurer Ineligible for 4 years. A qualified business entity that is subject to taxation under Insurance Article, Title 6, Annotated Code of Maryland, may not claim the credit under this regulation for the taxable year in which the project is placed in service or for the first 4 taxable years following the taxable year in which the project is placed in service.

F. Insurer Eligibility.

(1) A qualified business entity that is subject to taxation under Insurance Article, Title 6, Annotated Code of Maryland:

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

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

(2) For any taxable year, the total of the amount used as a tax credit against the premium tax plus the amount claimed as a refund as provided in this regulation may not exceed the amount of taxes that the qualified business entity is required to withhold and has actually remitted for the taxable year from the wages of qualified employees under Tax-General Article, §10-908, Annotated Code of Maryland.

.08 Earning the Tax Credits.

Before a qualified business entity earns a tax credit, it shall meet the following timing requirements:

A. Construction, acquisition, or installation of the project shall begin within 12 months after the earlier of the date on which the qualified business entity:

(1) Notifies the Department in writing that it intends to apply for a tax credit for a project in that county, or

(2) Provides a written application to the Department for a tax credit for a project in that county;

B. The project shall be completed and placed in service within 3 years after the date on which the beginning of the construction, acquisition, or installation of the project;

C. The qualified business entity shall have created and filled at least 25 qualified positions at the project within 24 months after the date on which a project is placed in service; and

D. The 25 qualified positions shall have been filled for 12 months, which need not be consecutive.

.09 Claiming the Tax Credit.

A. The same tax credit may not be claimed more than once against different taxes by the same taxpayer.

B. A tax credit may not be claimed against taxes resulting from the sale of the project without the written consent of the Secretary.

C. A tax credit may be claimed only once against a particular project.

D. An organization that is exempt from taxation under §501(c)(3) or (4) of the Internal Revenue Code may file an income tax return to claim a refund under Tax-General Article, §10-714, Annotated Code of Maryland.

E. An insurer may file for the credit on the insurance premiums tax return form.

.10 Carryover of Tax Credit.

A. A qualified business entity may carry over a tax credit to a succeeding tax year if:

(1) The tax credit allowed exceeds the total tax otherwise due from the qualified business entity; and

(2) During the succeeding tax year, the qualified business entity continues to employ at least 25 qualified employees at the project.

B. A temporary vacancy in a qualified position does not constitute the abolition of that qualified position if the vacancy is filled within 4 months and not more than 10 percent of the qualified positions at the business facility are vacant at any given time.

C. A 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 14th taxable year following the taxable year in which the project is placed in service.

D. A tax credit may not be carried back to a preceding taxable year.

.11 Information Required from Entity.

A. To be eligible to receive a tax credit, a business entity shall notify the Department in writing of its intent to seek certification for a tax credit as set forth in Regulation .03 of this chapter.

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

C. To obtain certification, the qualified business entity shall provide the Secretary with a completed application for certification, which shall contain the following:

(1) General information about the business, including name, address, contact person, federal employment identification number, North American Industrial Classification System number, and type of entity;

(2) General information about the project, including location, business activities undertaken, and project and startup costs incurred;

(3) The effective date of the start-up or expansion;

(4) The date of the first announcement or press notice of the project, if any;

(5) For the period before the start-up or expansion, both for any existing operations at the project site and Statewide, the number of full-time employees, the number of full-time employees earning at least 150 percent of federal minimum wage, and the payroll of the existing employees;

(6) For the project, the number of qualified positions created, the number of qualified employees hired, and the payroll of those employees;

(7) A statement allowing the Department to have access to any information provided to the Comptroller or another appropriate agency by a qualified business entity in connection with eligibility for a tax credit allowed under this chapter; and

(8) Any other information that the Secretary requires.

D. By April 1 of each year after the year in which the project is placed in service, 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;

(2) Information regarding the costs and expenses incurred at the project; and

(3) Any other information requested by the Department.

.12 Period of Availability.

The tax credit is applicable to all taxable years beginning after December 31, 1999.

.13 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

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Regulation .02B amended effective April 14, 2003 (30:7 Md. R. 489); April 11, 2005 (32:7 Md. R. 686)

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