

Article - Economic Development

§6—401.

(a) In this subtitle the following words have the meanings indicated.

(b) “Credit year” means the taxable year in which a qualified business entity claims the tax credit authorized under this subtitle.

(c) “Eligible economic development project” means an economic development project that:

(1) establishes or expands a business facility within a Tier I county;
and

(2) is approved for a project tax credit in accordance with this subtitle.

(d) (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;

(iii) legal, accounting, financial, printing, recording, filing, and other fees and expenses incurred to finance the project; and

(iv) a qualified business entity's cost to furnish and equip a new location for ordinary business functions, including:

1. the cost of computers, nonrecurring costs of fixed telecommunications equipment, furnishings, and office equipment; and

2. expenditures for moving costs, separation costs, and other costs directly related to moving from outside of the State to a location in a Tier I 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 this subtitle as qualifying for a project 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 120% of the State minimum wage;

(iii) is in a Tier I county;

(iv) is newly created because a business facility begins or expands in one location in a Tier I 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) (1) “Tier I county” means a county with:

(i) an average rate of unemployment for the most recent 24-month period for which data are available that exceeds 150% of the average rate of unemployment for the State during that period;

(ii) an average rate of unemployment for the most recent 24-month period for which data are available that exceeds the average rate of unemployment for the State by at least 2 percentage points; or

(iii) a median household income for the most recent 24-month period for which data are available that is equal to or less than 75% of the median household income for the State during that period.

(2) “Tier I county” includes a county that:

(i) no longer meets any of the criteria stated in paragraph (1) of this subsection; but

(ii) has met at least one of the criteria at some time during the preceding 24-month period.

Article - Economic Development

§6-402.

(a) (1) To qualify for a project 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, a person shall:

(1) establish or expand a business facility that:

(i) is located in a Tier I county; and

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

B. 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; or

2. is located in a qualified opportunity zone designated under § 1400Z-1 of the Internal Revenue Code in Allegany County, Garrett County, Somerset County, or Wicomico County;

(2) during any 24-month period, create at least the number of qualified positions at the new or expanded business facility specified in § 6-403(b) of this subtitle; 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, 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.

Article - Economic Development

§6—403.

(a) (1) A qualified business entity may claim a project tax credit for the cost of an eligible economic development project in a Tier I county if the total eligible project cost for the eligible economic development project 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) (i) Subject to the limitation in paragraph (2) of this subsection, the project tax credit allowed under this section is the lesser of the maximum amount specified in subparagraph (ii) of this paragraph 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.

(ii) For purposes of calculation of the credit under subparagraph (i) of this paragraph, the maximum amount is:

1. \$5,000,000, if the qualified business entity creates at least 50 qualified positions;
2. \$2,500,000, if the qualified business entity creates at least 25 qualified positions but fewer than 50 qualified positions; or
3. \$1,000,000, if the qualified business entity creates at least 10 qualified positions but fewer than 25 qualified positions.

(2) Except as provided in subsections (d) and (e) 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.

(3) The Department shall certify the amount of the project tax credit for which a qualified business entity is eligible.

(4) (i) A qualified business entity shall report to the Department the amount of the project tax credit that the entity claims on the entity's tax return for each taxable year that the entity claims any portion of the project tax credit.

(ii) The failure of the qualified business entity to provide the information required under subparagraph (i) of this paragraph shall disqualify the entity from claiming any unclaimed amount of the project tax credit.

(c) A qualified business entity that is subject to taxation under Title 6 of the Insurance Article may claim the project tax credit against the insurance premium tax.

(d) (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, 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 until the earlier of:

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

(ii) the expiration of the 10th taxable year following the credit year.

(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 the minimum number of qualified positions required to qualify for the project tax credit, but does not fall below 10; and

2. the qualified business entity has maintained at least the minimum number of qualified positions required to qualify for the project tax credit 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 the minimum number of qualified positions required to qualify for the project tax credit.

(e) (1) Subject to the limitation in paragraph (4) of this subsection, this subsection applies to any taxable year after the 4th credit year.

(2) A qualified business entity other than a person subject to taxation under Title 6 of the Insurance Article may claim a refund in the amount, if any, by which the qualified business entity's unused excess exceeds the State tax for the taxable year.

(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 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 the minimum number of qualified positions required to qualify for the project tax credit, but does not fall below 10; and

2. the qualified business entity has maintained at least the minimum number of qualified positions required to qualify for the project tax credit 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 the minimum number of qualified positions required to qualify for the project tax credit.

(f) 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.

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§6–404.

A refund payable to a qualified business entity under § 6–403(e) 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.

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§6—405.

For any taxable year, if a qualified business entity claims the project tax credit authorized under this subtitle, the qualified business entity may not also claim a credit authorized under Subtitle 3 of this title.

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§6—406.

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