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By: **Delegates Taylor and Rawlings**

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2001

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CHAPTER 729

1 AN ACT concerning

2 **One Maryland Economic Development Tax Credits - Insurers and**  
3 **Tax-Exempt Organizations**

4 FOR the purpose of clarifying that certain organizations exempt from taxation are  
5 included in the definition of "qualified business entity" for the purposes of  
6 certain tax credits allowed for certain costs of certain economic development  
7 projects and certain start-up costs; clarifying that certain individuals and  
8 certain organizations exempt from taxation may file an income tax return to  
9 claim certain refunds authorized under certain tax credits; providing that a  
10 person subject to the insurance premiums tax may claim a certain credit against  
11 the premium tax for certain taxable years for certain costs of certain economic  
12 development projects; clarifying the revenue effect of certain refunds payable  
13 under certain tax credits; providing for the application of this Act; and generally  
14 relating to certain tax credits allowed for certain costs of certain economic  
15 development projects and certain start-up costs.

16 BY repealing and reenacting, with amendments,  
17 Article 83A - Department of Business and Economic Development  
18 Section 5-1501(a)(7) and (b)  
19 Annotated Code of Maryland  
20 (1998 Replacement Volume and 2000 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article 83A - Department of Business and Economic Development  
23 Section ~~5-1501(e)~~ 5-1501(c)

1 Annotated Code of Maryland  
2 (1998 Replacement Volume and 2000 Supplement)

3 BY adding to  
4 Article 83A - Department of Business and Economic Development  
5 Section 5-1501(g)  
6 Annotated Code of Maryland  
7 (1998 Replacement Volume and 2000 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article - Insurance  
10 Section 6-119  
11 Annotated Code of Maryland  
12 (1997 Volume and 2000 Supplement)

13 BY repealing and reenacting, without amendments,  
14 Article - Tax - General  
15 Section 10-714  
16 Annotated Code of Maryland  
17 (1997 Replacement Volume and 2000 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article - Tax - General  
20 Section 10-809 and 10-812  
21 Annotated Code of Maryland  
22 (1997 Replacement Volume and 2000 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article 83A - Department of Business and Economic Development**

26 5-1501.

27 (a) (7) "Qualified business entity" means a person [conducting or  
28 operating] THAT:

29 (I) CONDUCTS OR OPERATES a trade or business in Maryland  
30 [who:] OR IS AN ORGANIZATION OPERATING IN MARYLAND THAT IS EXEMPT FROM  
31 TAXATION UNDER § 501(C)(3) OR (4) OF THE INTERNAL REVENUE CODE;

32 [(i)] (II) Establishes or expands a business facility that:

33 1. Is located in a qualified distressed county in the State; and



1 (i) 100% of the eligible project costs for the eligible economic  
2 development project, less the amount of the credit allowed with respect to the project  
3 for prior taxable years[; or].

4 (ii) [The] EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF  
5 THIS SUBSECTION, THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY  
6 TAXABLE YEAR MAY NOT EXCEED THE State tax for the taxable year on the qualified  
7 business entity's income generated by or arising out of the project, as determined  
8 under paragraph (3) of this subsection.

9 (3) (i) [The] FOR A QUALIFIED BUSINESS ENTITY OTHER THAN A  
10 PERSON SUBJECT TO TAXATION UNDER TITLE 6 OF THE INSURANCE ARTICLE, THE  
11 State tax for the taxable year on the qualified business entity's income generated by  
12 or arising out of an eligible economic development project shall equal the difference  
13 between:

14 1. The State tax without regard to this section; and

15 2. The State tax on the qualified business entity's Maryland  
16 taxable income reduced by the amount of its net income attributable to the eligible  
17 economic development project.

18 (ii) 1. If an eligible economic development project is a totally  
19 separate facility, net income attributable to the project shall be determined under the  
20 separate accounting method reflecting only the gross income, deductions, expenses,  
21 gains, and losses that are directly attributable to the facility and overhead expenses  
22 apportioned to the facility.

23 2. If the eligible economic development project is an  
24 expansion to a previously existing facility:

25 A. Net income attributable to the entire facility shall be  
26 determined under the separate accounting method reflecting only the gross income,  
27 deductions, expenses, gains, and losses that are directly attributable to the facility  
28 and overhead expenses apportioned to the facility; and

29 B. The net income attributable to the eligible economic  
30 development project shall be determined by apportioning the separate accounting net  
31 income of the entire facility to the eligible economic development project by a formula  
32 approved by the Comptroller or the Department of Assessments and Taxation.

33 3. If a qualified business entity can show to the satisfaction  
34 of the Comptroller or the Department of Assessments and Taxation that the nature of  
35 the operations and activities of the qualified business entity are such that it is not  
36 practical to use the separate accounting method to determine the net income from the  
37 facility at which the eligible economic development project is located, the qualified  
38 business entity shall determine net income from the eligible economic development  
39 project using an alternative method approved by the Comptroller or the Department  
40 of Assessments and Taxation.

1 (III) A QUALIFIED BUSINESS ENTITY THAT IS SUBJECT TO  
2 TAXATION UNDER TITLE 6 OF THE INSURANCE ARTICLE MAY NOT CLAIM THE CREDIT  
3 UNDER THIS SUBSECTION FOR THE TAXABLE YEAR IN WHICH THE PROJECT IS  
4 PLACED IN SERVICE OR FOR THE FIRST 4 TAXABLE YEARS FOLLOWING THE TAXABLE  
5 YEAR IN WHICH THE PROJECT IS PLACED IN SERVICE.

6 (4) If the eligible project costs for the eligible economic development  
7 project exceed the State tax on the qualified business entity's income generated by or  
8 arising out of the project for the taxable year in which the project is placed in service,  
9 the qualified business entity may apply any excess as a credit for succeeding taxable  
10 years against the State tax on the qualified business entity's income generated by or  
11 arising out of the project until the earlier of:

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

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

15 (5) (i) Subject to the limitation under subparagraph (ii) of this  
16 paragraph, for any taxable year after the 4th taxable year following the taxable year  
17 in which the project is placed in service but before the 15th taxable year following the  
18 taxable year in which the project is placed in service:

19 1. [Any] A QUALIFIED BUSINESS ENTITY OTHER THAN A  
20 PERSON SUBJECT TO TAXATION UNDER TITLE 6 OF THE INSURANCE ARTICLE:

21 A. MAY APPLY ANY excess of eligible project costs for the  
22 eligible economic development project over the cumulative amount used as a tax  
23 credit under this subsection for the taxable year and all prior taxable years [may be  
24 applied] as a tax credit against the State tax for the taxable year on the qualified  
25 business entity's income other than income generated by or arising out of the project;  
26 and

27 [2.] B. [The qualified business entity may] MAY claim a  
28 refund in the amount, if any, by which the unused excess exceeds the State tax for the  
29 taxable year on the qualified business entity's income other than income generated by  
30 or arising out of the project; AND

31 2. A QUALIFIED BUSINESS ENTITY THAT IS SUBJECT TO  
32 TAXATION UNDER TITLE 6 OF THE INSURANCE ARTICLE:

33 A. MAY APPLY ANY EXCESS OF ELIGIBLE PROJECT COSTS  
34 FOR THE ELIGIBLE ECONOMIC DEVELOPMENT PROJECT OVER THE CUMULATIVE  
35 AMOUNT USED AS A TAX CREDIT UNDER THIS SUBSECTION FOR THE TAXABLE YEAR  
36 AND ALL PRIOR TAXABLE YEARS AS A TAX CREDIT AGAINST THE PREMIUM TAX  
37 IMPOSED FOR THE TAXABLE YEAR; AND

38 B. MAY CLAIM A REFUND IN THE AMOUNT, IF ANY, BY WHICH  
39 THE UNUSED EXCESS EXCEEDS THE PREMIUM TAX FOR THE TAXABLE YEAR.

1 (ii) For any taxable year, the total of the amounts used as a tax  
2 credit and claimed as a refund as provided in this paragraph may not exceed the  
3 amount of taxes that the qualified business entity is required to withhold for the  
4 taxable year from the wages of qualified employees under § 10-908 of the Tax -  
5 General Article.

6 (c) (1) A qualified business entity that locates in a qualified distressed  
7 county may claim a tax credit in the amount provided in paragraph (2) of this  
8 subsection.

9 (2) The credit allowed under this subsection for each taxable year equals  
10 the lesser of:

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

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

17 (3) If the credit allowed under this subsection for the taxable year in  
18 which a qualified business entity locates in a qualified distressed county exceeds the  
19 total tax otherwise due from the qualified business entity for that taxable year, the  
20 qualified business entity may apply the excess as a credit for succeeding taxable years  
21 until the earlier of:

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

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

25 (4) (i) Subject to the limitation under subparagraph (ii) of this  
26 paragraph, for any taxable year after the 4th taxable year following the taxable year  
27 in which the qualified business entity locates in a qualified distressed county but  
28 before the 15th taxable year following the taxable year in which the qualified  
29 business entity locates in a qualified distressed county, the qualified business entity  
30 may claim a refund in the amount, if any, by which the qualified business entity's  
31 eligible start-up costs exceed the cumulative amount used as a tax credit under this  
32 subsection for the taxable year and all prior taxable years.

33 (ii) For any taxable year, the total amount claimed as a refund as  
34 provided in this paragraph may not exceed the amount of taxes that the qualified  
35 business entity is required to withhold for the taxable year from the wages of  
36 qualified employees under § 10-908 of the Tax - General Article.

37 (G) A REFUND PAYABLE TO A QUALIFIED BUSINESS ENTITY UNDER  
38 SUBSECTION (B)(5) OR (C)(4) OF THIS SECTION:

1 (1) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM  
2 CORPORATIONS IF THE QUALIFIED BUSINESS ENTITY IS A CORPORATION SUBJECT  
3 TO THE INCOME TAX UNDER TITLE 10 OF THE TAX - GENERAL ARTICLE;

4 (2) OPERATES TO REDUCE INSURANCE PREMIUM TAX REVENUES IF THE  
5 QUALIFIED BUSINESS ENTITY IS SUBJECT TO TAXATION UNDER TITLE 6 OF THE  
6 INSURANCE ARTICLE; AND

7 (3) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM  
8 INDIVIDUALS IF THE BUSINESS ENTITY IS:

9 (I) AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER TITLE 10  
10 OF THE TAX - GENERAL ARTICLE; OR

11 (II) AN ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3)  
12 OR (4) OF THE INTERNAL REVENUE CODE.

13 **Article - Insurance**

14 6-119.

15 An insurer may claim a credit against the premium tax for One Maryland  
16 PROJECT COSTS AND start-up costs as provided under Article 83A, § [5-1501(c)]  
17 5-1501(B) AND (C) of the Code.

18 **Article - Tax - General**

19 10-714.

20 An individual or corporation may claim a credit against the State income tax for  
21 One Maryland project costs and start-up costs as provided under Article 83A, §  
22 5-1501(b) and (c) of the Code.

23 10-809.

24 If an individual is not required to file an income tax return under § 10-805, §  
25 10-806 or § 10-813 of this subtitle, the individual:

26 (1) is not liable for income tax; and

27 (2) may file an income tax return to claim a refund of the income tax  
28 withheld or estimated income tax paid or a refund under § 10-704, § 10-707, OR §  
29 10-714 of this title.

30 10-812.

31 (A) A corporation exempt from income tax under § 10-104 of this title shall file  
32 an income tax return if the corporation:

1           (1)       has unrelated business taxable income, as defined under § 512 of the  
2 Internal Revenue Code;

3           (2)       is exempt from taxation under § 501(c)(2) of the Internal Revenue  
4 Code; or

5           (3)       is an S corporation that is incorporated or does business in the State.

6       (B)       AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OR  
7 (4) OF THE INTERNAL REVENUE CODE MAY FILE AN INCOME TAX RETURN TO CLAIM  
8 A REFUND UNDER § 10-714 OF THIS TITLE.

9       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 July 1, 2001 and shall be applicable to all taxable years beginning after December 31,  
11 1999.