

Chapter 478

(Senate Bill 296)

AN ACT concerning

Income Tax Credit – Security Clearance Expenses Clearances – Employer Costs

FOR the purpose of allowing an individual or a corporation to claim a credit against the State income tax for certain costs incurred to obtain federal security clearances and to construct or renovate certain sensitive compartmented information facilities; requiring the Department of Business and Economic Development to provide an application process for the credit at least a certain number of times each fiscal year; providing for the total amount of credit certificates that may be issued during a certain application period; providing for the distribution of credit certificates providing for applications to the Department of Business and Economic Development for approval of the credit and certification by the Department to taxpayers of approved credit amounts; limiting the total amount of credits that the Department may approve for any calendar year to a certain amount; requiring the Department to approve a prorated credit for each applicant if the total amount applied for exceeds the maximum that may be approved; requiring certain individuals or certain corporations to file amended tax returns in a certain manner to claim a certain tax credit; ~~providing for the carryforward of the credit; providing that the total amount of credits that may be claimed may not exceed the amount of certificates issued to the individual or corporation; requiring the Department to notify the Comptroller of the maximum amount of each credit certificate; requiring the Comptroller to transfer the amount stated in the credit certificate from a certain Reserve Fund to the General Fund; establishing the Security Clearance Income Tax Credit Reserve Fund as a special, nonlapsing fund; requiring the Secretary of Business and Economic Development to administer the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying the contents of the Fund; specifying the purpose for which the Fund may be used; providing for the investment of money in and expenditures from the Fund; requiring the Governor to make certain appropriations in certain fiscal years;~~ requiring the Department, in consultation with the Comptroller, to adopt certain regulations; requiring the Department to report to the Governor and the General Assembly on or before a certain date each year; defining certain terms; providing for the application of this Act; and generally relating to a credit against the State income tax for certain costs ~~incurred to obtain~~ related to federal security clearances.

BY repealing and reenacting, without amendments,
Article – Tax – General

Section 10–204(a) and 10–305(a)
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY adding to

Article – Tax – General
Section 10–204(j) and 10–731
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General
Section 10–305(d)
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

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

Article – Tax – General

10–204.

(a) To the extent excluded from federal adjusted gross income, the amounts under this section are added to the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

(J) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES ANY AMOUNT DEDUCTED FOR ~~THE COSTS INCURRED TO OBTAIN A FEDERAL SECURITY CLEARANCE~~ COSTS, AS DEFINED UNDER § 10–731 OF THIS TITLE, FOR SECURITY CLEARANCE ADMINISTRATIVE EXPENSES AND CONSTRUCTION AND EQUIPMENT COSTS INCURRED TO CONSTRUCT OR RENOVATE A SENSITIVE COMPARTMENTED INFORMATION FACILITY IF ~~THE AN~~ AN AMOUNT IS INCLUDED IN THE APPLICATION FOR A CREDIT ~~CERTIFICATE~~ UNDER § 10–731 OF THIS TITLE.

10–305.

(a) To the extent excluded from federal taxable income, the amounts under this section are added to the federal taxable income of a corporation to determine Maryland modified income.

(d) The addition under subsection (a) of this section includes the additions required for an individual under:

- (1) § 10-204(b) of this title (Dividends and interest from another state or local obligation);
- (2) § 10-204(c)(2) of this title (Federal tax-exempt income);
- (3) § 10-204(e) of this title (Oil percentage depletion allowance); [and]
- (4) § 10-204(i) of this title (Deduction for qualified production activities income); AND

(5) § 10-204(J) OF THIS TITLE (DEDUCTION FOR COSTS ~~INCURRED TO OBTAIN A FEDERAL SECURITY CLEARANCE FOR SECURITY CLEARANCE ADMINISTRATIVE EXPENSES AND CONSTRUCTION AND EQUIPMENT COSTS INCURRED TO CONSTRUCT OR RENOVATE A SENSITIVE COMPARTMENTED INFORMATION FACILITY~~).

10-731.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COSTS" MEANS THE COSTS TO AN INDIVIDUAL OR CORPORATION FOR:

(I) SECURITY CLEARANCE ADMINISTRATIVE EXPENSES INCURRED WITH REGARD TO AN EMPLOYEE IN THE STATE INCLUDING, BUT NOT LIMITED TO:

1. PROCESSING APPLICATION REQUESTS FOR CLEARANCES FOR EMPLOYEES IN THE STATE;

2. MAINTAINING, UPGRADING, OR INSTALLING COMPUTER SYSTEMS IN THE STATE REQUIRED TO OBTAIN FEDERAL SECURITY CLEARANCES; AND

3. TRAINING EMPLOYEES IN THE STATE TO ADMINISTER THE APPLICATION PROCESS; AND

(II) CONSTRUCTION AND EQUIPMENT COSTS INCURRED TO CONSTRUCT OR RENOVATE A SENSITIVE COMPARTMENTED INFORMATION FACILITY ("SCIF") LOCATED IN THE STATE AS REQUIRED BY THE FEDERAL GOVERNMENT.

~~(2)~~ **(3)** “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

~~(3)~~ ~~“RESERVE FUND” MEANS THE SECURITY CLEARANCE INCOME TAX CREDIT RESERVE FUND ESTABLISHED UNDER SUBSECTION (E) OF THIS SECTION.~~

(4) “SECRETARY” MEANS THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT.

~~(B) (1) THREE TIMES EACH FISCAL YEAR THE DEPARTMENT SHALL ALLOW AN INDIVIDUAL OR CORPORATION TO APPLY FOR CREDIT CERTIFICATES FOR THE COSTS INCURRED TO OBTAIN FEDERAL SECURITY CLEARANCES.~~

~~(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, DURING EACH APPLICATION PERIOD, THE TOTAL AMOUNT OF CREDIT CERTIFICATES THE DEPARTMENT MAY ISSUE MAY NOT EXCEED ONE THIRD OF THE AMOUNT APPROPRIATED IN THE STATE BUDGET TO THE RESERVE FUND.~~

~~(II) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE CREDIT CERTIFICATES ISSUED DURING THE APPLICATION PERIOD TOTAL LESS THAN THE TOTAL AMOUNT THE DEPARTMENT MAY ISSUE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, ANY EXCESS AMOUNT SHALL REMAIN IN THE RESERVE FUND AND MAY BE ISSUED UNDER CREDIT CERTIFICATES DURING THE NEXT APPLICATION PERIOD.~~

~~(3) IF THE TOTAL AMOUNT OF CREDITS SOUGHT DURING THE APPLICATION PERIOD EXCEED THE AMOUNT AUTHORIZED TO BE ISSUED, THE DEPARTMENT SHALL APPROVE CREDIT CERTIFICATES IN AMOUNTS THAT ARE~~

(B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2012, BUT BEFORE JANUARY 1, 2019 2017, AN INDIVIDUAL OR A CORPORATION MAY CLAIM CREDITS AGAINST THE STATE INCOME TAX FOR:

(1) SECURITY CLEARANCE ADMINISTRATIVE EXPENSES, NOT TO EXCEED \$100,000; AND

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, CONSTRUCTION AND EQUIPMENT COSTS INCURRED TO CONSTRUCT OR RENOVATE A SINGLE SCIF IN AN AMOUNT EQUAL TO THE LESSER OF 50% OF THE COSTS OR \$100,000.

(II) THE TOTAL AMOUNT OF CONSTRUCTION AND EQUIPMENT COSTS INCURRED TO CONSTRUCT OR RENOVATE MULTIPLE SCIF'S FOR WHICH AN INDIVIDUAL OR A CORPORATION IS ELIGIBLE TO CLAIM AS A CREDIT AGAINST THE STATE INCOME TAX IS \$250,000.

(C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF THE TAXABLE YEAR IN WHICH THE COSTS WERE INCURRED, AN INDIVIDUAL OR A CORPORATION SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT FOR THE CREDITS ALLOWED UNDER SUBSECTION (B)(1) AND (2) OF THIS SECTION.

(2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION MAY NOT EXCEED \$2,000,000 FOR ANY CALENDAR YEAR.

(II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B) OF THIS SECTION EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION (B) OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL CREDITS APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B) OF THIS SECTION IN THE CALENDAR YEAR.

(3) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF THE TAXABLE YEAR IN WHICH THE COSTS WERE INCURRED, THE DEPARTMENT SHALL CERTIFY TO THE INDIVIDUAL OR CORPORATION THE AMOUNT OF TAX CREDITS APPROVED BY THE DEPARTMENT FOR THE INDIVIDUAL OR CORPORATION UNDER THIS SECTION.

(4) TO CLAIM THE APPROVED CREDITS ALLOWED UNDER THIS SECTION, AN INDIVIDUAL OR A CORPORATION SHALL:

(I) FILE AN AMENDED INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH THE COSTS WERE INCURRED; AND

~~(II) ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF THE APPROVED CREDIT AMOUNT TO THE AMENDED INCOME TAX RETURN, IN PROPORTION TO THE VALUE OF THE CREDIT CERTIFICATES APPLIED FOR DURING THE APPLICATION PERIOD.~~

~~(C) (D) (1) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR CORPORATION MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN THE AMOUNT STATED IN THE CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR COSTS AS PROVIDED UNDER THIS SECTION.~~

~~(2) IF THE CREDIT ALLOWED FOR ANY TAXABLE YEAR UNDER THIS SECTION EXCEEDS THE TOTAL TAX OTHERWISE DUE, AN INDIVIDUAL OR CORPORATION MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME TAX FOR SUCCEEDING TAXABLE YEARS UNTIL THE FULL AMOUNT OF THE EXCESS IS USED.~~

~~(D) (1) THE TOTAL AMOUNT OF CREDITS AN INDIVIDUAL OR CORPORATION MAY CLAIM MAY NOT EXCEED THE AMOUNT OF THE CREDIT CERTIFICATES ISSUED TO THE INDIVIDUAL OR CORPORATION.~~

~~(2) (I) WITHIN 15 DAYS AFTER THE END OF EACH APPLICATION PERIOD, THE DEPARTMENT SHALL NOTIFY THE COMPTROLLER OF THE MAXIMUM AMOUNT STATED IN EACH CREDIT CERTIFICATE ISSUED DURING THE APPLICATION PERIOD.~~

~~(H) THE COMPTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO THE CREDIT AMOUNT STATED IN THE CREDIT CERTIFICATE FROM THE RESERVE FUND TO THE GENERAL FUND.~~

~~(E) (1) THERE IS A SECURITY CLEARANCE INCOME TAX CREDIT RESERVE FUND.~~

~~(2) THE PURPOSE OF THE RESERVE FUND IS TO PROVIDE A BUDGETARY LIMIT ON THE AMOUNT OF TAX CREDITS THE DEPARTMENT MAY ISSUE EACH FISCAL YEAR.~~

~~(3) THE SECRETARY SHALL ADMINISTER THE RESERVE FUND.~~

~~(4) (I) THE RESERVE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

~~(H) THE STATE TREASURER SHALL HOLD THE RESERVE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE RESERVE FUND.~~

~~(5) (I) THE RESERVE FUND CONSISTS OF MONEY APPROPRIATED IN THE STATE BUDGET TO THE RESERVE FUND.~~

~~(H) FOR EACH OF FISCAL YEAR 2014 AND FISCAL YEAR 2015, THE GOVERNOR SHALL APPROPRIATE AT LEAST \$6,000,000 TO THE RESERVE FUND.~~

~~(6) THE RESERVE FUND MAY BE USED ONLY TO REIMBURSE THE GENERAL FUND FOR THE AMOUNT OF CREDIT CERTIFICATES ISSUED UNDER THIS SECTION.~~

~~(7) (I) THE STATE TREASURER SHALL INVEST THE MONEY OF THE RESERVE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.~~

~~(H) ANY INVESTMENT EARNINGS OF THE RESERVE FUND SHALL BE CREDITED TO THE GENERAL FUND OF THE STATE.~~

~~(F)~~ (E) THE DEPARTMENT, IN CONSULTATION WITH THE COMPTROLLER, SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION ~~AND TO SPECIFY THE COSTS ELIGIBLE FOR THE INCOME TAX CREDIT.~~

~~(G)~~ (F) ON OR BEFORE DECEMBER 31 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE NUMBER OF ~~CREDIT CERTIFICATES ISSUED~~ CREDITS CERTIFIED IN THE PREVIOUS ~~FISCAL~~ CALENDAR YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012, ~~and shall be applicable to all taxable years beginning after December 31, 2011.~~

Approved by the Governor, May 22, 2012.