

SENATE BILL 498

Q3

3lr1491
CF HB 564

By: **Senators Pugh, Benson, Conway, Forehand, Garagiola, Jones–Rodwell,
and McFadden**

Introduced and read first time: January 31, 2013

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Subtraction Modification and Credit – Creation of a Qualifying**
3 **Business Enterprise**

4 FOR the purpose of providing a subtraction modification under the Maryland income
5 tax for certain income from certain qualifying sales that result in the creation of
6 certain business enterprises; providing a subtraction modification to sellers of
7 certain business enterprises for income earned while working for certain
8 business enterprises; providing for the recapture of a certain subtraction
9 modification under certain circumstances; providing a certain addition
10 modification under certain circumstances; allowing an individual or a
11 corporation to claim a credit against the State income tax for certain
12 investments that create certain business enterprises; authorizing the
13 Department of Business and Economic Development to issue a certain amount
14 of credit certificates each fiscal year; providing for the total amount of credit
15 certificates that may be issued and the total amount of credits that may be
16 claimed; allowing any excess credit to be claimed as a refund; requiring the
17 Comptroller at the end of each fiscal year to transfer a certain amount from a
18 certain reserve fund to the General Fund; establishing the Investment Income
19 Tax Credit Reserve Fund as a special, nonlapsing fund; specifying the purpose
20 of the Fund; requiring the Secretary to administer the Fund; requiring the State
21 Treasurer to hold the Fund and the Comptroller to account for the Fund;
22 specifying the contents of the Fund; specifying the purpose for which the Fund
23 may be used; providing for the investment of money in and expenditures from
24 the Fund; requiring the Secretary, in consultation with the Comptroller, to issue
25 certain regulations; defining certain terms; providing for the application of this
26 Act; and generally relating to a Maryland income tax subtraction modification
27 and credit for certain sales that result in the creation of certain business
28 enterprises.

29 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Tax – General
 2 Section 10–205(a), 10–207(a), 10–306(a), and 10–307(a)
 3 Annotated Code of Maryland
 4 (2010 Replacement Volume and 2012 Supplement)

5 BY adding to
 6 Article – Tax – General
 7 Section 10–205(l), 10–207(aa), and 10–733
 8 Annotated Code of Maryland
 9 (2010 Replacement Volume and 2012 Supplement)

10 BY repealing and reenacting, with amendments,
 11 Article – Tax – General
 12 Section 10–306(b) and 10–307(g)
 13 Annotated Code of Maryland
 14 (2010 Replacement Volume and 2012 Supplement)

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

17 **Article – Tax – General**

18 10–205.

19 (a) In addition to the modification under § 10–204 of this subtitle, the
 20 amounts under this section are added to the federal adjusted gross income of a
 21 resident to determine Maryland adjusted gross income.

22 **(L) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES**
 23 **THE AMOUNT REQUIRED AS A RESULT OF A RECAPTURE EVENT UNDER § 10–207**
 24 **OF THIS SUBTITLE.**

25 10–207.

26 (a) To the extent included in federal adjusted gross income, the amounts
 27 under this section are subtracted from the federal adjusted gross income of a resident
 28 to determine Maryland adjusted gross income.

29 **(AA) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE**
 30 **THE MEANINGS INDICATED.**

31 **(II) “QUALIFIED BUYER” MEANS:**

32 **1. A. A SMALL BUSINESS THAT MEETS THE**
 33 **QUALIFICATIONS ESTABLISHED UNDER § 14–203 OF THE STATE FINANCE AND**
 34 **PROCUREMENT ARTICLE;**

1 **B. A SMALL BUSINESS CERTIFIED BY THE UNITED**
2 **STATES SMALL BUSINESS ADMINISTRATION; OR**

3 **C. A SMALL BUSINESS THAT IS NOT DOMINANT IN ITS**
4 **FIELD OF OPERATION, WHOSE OWNERS HAVE DEMONSTRATED AT LEAST FIVE**
5 **YEARS OF RELEVANT INDUSTRY AND SENIOR MANAGEMENT EXPERIENCE, AND**
6 **QUALIFIES UNDER THE CRITERIA AND SIZE STANDARDS UNDER 13 C.F.R. PART**
7 **121;**

8 **2. A DISABLED VETERAN-OWNED SMALL BUSINESS**
9 **AS DEFINED IN § 14-201 OF THE STATE FINANCE AND PROCUREMENT ARTICLE**
10 **AND THAT IS RECOGNIZED AS A SERVICE DISABLED VETERAN-OWNED SMALL**
11 **BUSINESS BY THE UNITED STATES VETERANS ADMINISTRATION;**

12 **3. A. A MINORITY BUSINESS ENTERPRISE AS**
13 **DEFINED IN § 14-301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;**
14 **OR**

15 **B. A BUSINESS THAT IS RECOGNIZED AS BEING**
16 **MINORITY OWNED BY THE NATIONAL MINORITY SUPPLIER DEVELOPMENT**
17 **COUNCIL; OR**

18 **4. A WOMAN-OWNED BUSINESS ENTERPRISE THAT IS**
19 **RECOGNIZED AS A WOMAN-OWNED BUSINESS ENTERPRISE BY THE WOMEN'S**
20 **BUSINESS ENTERPRISE NATIONAL COUNCIL.**

21 **(III) "QUALIFYING BUSINESS ENTERPRISE" MEANS ANY**
22 **LEGAL ENTITY, EXCEPT A JOINT VENTURE, WHOSE OWNERS ARE CITIZENS OF**
23 **THE UNITED STATES THAT:**

24 **1. HAS ITS HEADQUARTERS AND BASE OF**
25 **OPERATIONS IN THIS STATE;**

26 **2. IS ORGANIZED TO ENGAGE IN COMMERCIAL**
27 **TRANSACTIONS;**

28 **3. IS MORE THAN 50% CONTROLLED BY A QUALIFIED**
29 **BUYER;**

30 **4. A. IS MORE THAN 30% OWNED BY A QUALIFIED**
31 **BUYER IF THE QUALIFIED BUYER ACCEPTS EQUITY CAPITAL FROM**

1 PROFESSIONAL INSTITUTIONAL INVESTORS WHO CONTRIBUTE A MAJORITY OF
2 THE EQUITY; OR

3 B. IS MORE THAN 50% OWNED BY A QUALIFIED
4 BUYER; AND

5 5. IS MANAGED BY, AND HAS ITS DAILY BUSINESS
6 OPERATIONS CONTROLLED BY, A QUALIFIED BUYER.

7 (IV) "QUALIFYING SALE" MEANS A SALE OF AN ENTITY TO A
8 QUALIFIED BUYER THAT RESULTS IN THE CREATION OF A QUALIFYING
9 BUSINESS ENTERPRISE.

10 (V) "RECAPTURE EVENT" MEANS ANY SALE OF THE ASSETS
11 OF, OR STOCK OR OTHER OWNERSHIP INTEREST IN, A BUSINESS ENTERPRISE
12 THAT RESULTS IN THE BUSINESS ENTERPRISE NO LONGER QUALIFYING AS A
13 QUALIFIED BUSINESS ENTERPRISE.

14 (2) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION
15 INCLUDES INCOME RECEIVED BY A SELLER OF A BUSINESS ENTERPRISE:

16 (I) FROM A QUALIFYING SALE;

17 (II) FROM FINANCING ANY PART OF A QUALIFYING SALE; OR

18 (III) AS COMPENSATION FOR ONGOING INVOLVEMENT IN
19 THE QUALIFYING BUSINESS ENTERPRISE.

20 (3) IF A RECAPTURE EVENT OCCURS WITHIN 5 YEARS AFTER THE
21 QUALIFYING SALE, AN AMOUNT EQUAL TO THE SUBTRACTION PROVIDED UNDER
22 THIS SUBSECTION SHALL BE ADDED TO THE FEDERAL ADJUSTED GROSS
23 INCOME OF THE QUALIFIED BUYER TO DETERMINE MARYLAND ADJUSTED
24 GROSS INCOME.

25 10-306.

26 (a) In addition to the modification under § 10-305 of this subtitle, the
27 amounts under this section are added to the federal taxable income of a corporation to
28 determine Maryland modified income.

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

1 (1) § 10–205(b) of this title (Enterprise zone wage credit, employment
2 opportunity credit, disability credit, and qualified ex–felon employee credit);

3 (2) § 10–205(c) of this title (Reforestation and timber stand
4 modification);

5 (3) § 10–205(e) of this title (Net operating loss modification);

6 (4) § 10–205(g) of this title (Unlicensed child care facility operating
7 expenses); [and]

8 (5) § 10–205(i) of this title (Maryland research and development tax
9 credit); **AND**

10 **(6) § 10–205(L) OF THIS TITLE (RECAPTURE OF GAIN FROM SALE**
11 **OF A QUALIFIED BUSINESS ENTERPRISE).**

12 10–307.

13 (a) To the extent included in federal taxable income, the amounts under this
14 section are subtracted from the federal taxable income of a corporation to determine
15 Maryland modified income.

16 (g) The subtraction under subsection (a) of this section includes the amounts
17 allowed to be subtracted for an individual under:

18 (1) § 10–207(i) of this title (Profits on sale or exchange of State or local
19 bonds);

20 (2) § 10–207(k) of this title (Relocation and assistance payments);

21 (3) § 10–207(m) of this title (State or local income tax refunds); [or]

22 (4) § 10–207(c–1) of this title (State tax exempt interest from mutual
23 funds); **OR**

24 **(5) § 10–207(AA) OF THIS TITLE (GAIN FROM SALE OF A**
25 **QUALIFIED BUSINESS ENTERPRISE).**

26 **10–733.**

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

29 **(2) “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND**
30 **ECONOMIC DEVELOPMENT.**

1 **(3) “QUALIFYING BUSINESS ENTERPRISE” HAS THE MEANING**
2 **STATED IN § 10–207(AA) OF THIS TITLE.**

3 **(4) “QUALIFYING SALE” HAS THE MEANING STATED IN §**
4 **10–207(AA) OF THIS TITLE.**

5 **(5) “RESERVE FUND” MEANS THE INVESTMENT INCOME TAX**
6 **CREDIT RESERVE FUND ESTABLISHED UNDER THIS SECTION.**

7 **(6) “SECRETARY” MEANS THE SECRETARY OF BUSINESS AND**
8 **ECONOMIC DEVELOPMENT.**

9 **(B) (1) SUBJECT TO THE LIMITATIONS OF THIS SECTION, THE**
10 **DEPARTMENT SHALL ISSUE A CREDIT CERTIFICATE TO EACH INDIVIDUAL OR**
11 **CORPORATION THAT APPLIES FOR A CREDIT CERTIFICATE AND MAKES AN**
12 **INVESTMENT IN A QUALIFYING BUSINESS ENTERPRISE AS PART OF A**
13 **QUALIFYING SALE.**

14 **(2) THE CREDIT CERTIFICATE SHALL STATE THE AMOUNT OF THE**
15 **TAX CREDIT FOR WHICH THE INDIVIDUAL OR CORPORATION IS ELIGIBLE.**

16 **(3) THE CREDIT CERTIFICATE ISSUED FOR ANY INDIVIDUAL OR**
17 **CORPORATION SHALL EQUAL THE LESSER OF:**

18 **(I) 50% OF THE INVESTMENT IN A QUALIFYING BUSINESS**
19 **ENTERPRISE; OR**

20 **(II) \$500,000.**

21 **(C) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
22 **PARAGRAPH, DURING EACH FISCAL YEAR THE TOTAL AMOUNT OF CREDIT**
23 **CERTIFICATES THE DEPARTMENT MAY ISSUE MAY NOT EXCEED THE AMOUNT**
24 **APPROPRIATED IN THE STATE BUDGET TO THE RESERVE FUND.**

25 **(II) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE**
26 **CREDIT CERTIFICATES ISSUED DURING THE APPLICATION PERIOD TOTAL LESS**
27 **THAN THE TOTAL AMOUNT THE DEPARTMENT MAY ISSUE UNDER**
28 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, ANY EXCESS AMOUNT SHALL REMAIN**
29 **IN THE RESERVE FUND AND MAY BE ISSUED UNDER CREDIT CERTIFICATES**
30 **DURING THE NEXT FISCAL YEAR.**

1 **(2) THE DEPARTMENT SHALL ISSUE CREDIT CERTIFICATES ON A**
2 **FIRST-COME, FIRST-SERVED BASIS.**

3 **(D) (1) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A CREDIT**
4 **AGAINST THE STATE INCOME TAX IN AN AMOUNT EQUAL TO THE CREDIT**
5 **CERTIFICATE ISSUED BY THE DEPARTMENT.**

6 **(2) IF THE CREDIT ALLOWABLE UNDER THIS SECTION EXCEEDS**
7 **THE STATE INCOME TAX FOR THE TAXABLE YEAR, THE INDIVIDUAL OR**
8 **CORPORATION MAY CLAIM THE EXCESS AS A REFUND.**

9 **(E) (1) WITHIN 15 DAYS AFTER THE END OF EACH FISCAL YEAR, THE**
10 **DEPARTMENT SHALL NOTIFY THE COMPTROLLER AS TO THE AMOUNT OF EACH**
11 **CREDIT CERTIFICATE ISSUED DURING THE FISCAL YEAR.**

12 **(2) THE COMPTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO**
13 **THE CREDIT AMOUNT STATED IN THE CREDIT CERTIFICATES FROM THE**
14 **RESERVE FUND TO THE GENERAL FUND.**

15 **(F) THE COMPTROLLER SHALL RECAPTURE A CREDIT CLAIMED UNDER**
16 **THIS SECTION IF WITHIN 2 YEARS AFTER THE CREDIT IS CLAIMED:**

17 **(1) THE INVESTOR SELLS, TRANSFERS, OR OTHERWISE DISPOSES**
18 **OF THE OWNERSHIP INTEREST IN THE QUALIFYING BUSINESS ENTERPRISE; OR**

19 **(2) THE QUALIFYING BUSINESS ENTERPRISE CEASES TO**
20 **HEADQUARTER ITS BUSINESS WITHIN THE STATE.**

21 **(G) (1) THERE IS AN INVESTMENT INCOME TAX CREDIT RESERVE**
22 **FUND.**

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

26 **(3) THE SECRETARY SHALL ADMINISTER THE RESERVE FUND.**

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

1 **(II) THE STATE TREASURER SHALL HOLD THE RESERVE**
2 **FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE**
3 **RESERVE FUND.**

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

6 **(II) THE GOVERNOR SHALL APPROPRIATE MONEY TO THE**
7 **RESERVE FUND.**

8 **(6) THE RESERVE FUND MAY BE USED ONLY TO REIMBURSE THE**
9 **GENERAL FUND FOR THE AMOUNT OF CREDIT CERTIFICATES ISSUED UNDER**
10 **SUBSECTION (C) OF THIS SECTION.**

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

14 **(II) ANY INVESTMENT EARNINGS OF THE RESERVE FUND**
15 **SHALL BE CREDITED TO THE GENERAL FUND.**

16 **(H) THE SECRETARY, IN CONSULTATION WITH THE COMPTROLLER,**
17 **SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2013, and shall be applicable to all taxable years beginning after December 31,
20 2012.