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 qualified distressed 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) Subject to the limitation in paragraph (2) of this subsection, the project tax credit allowed under this section is the lesser of $5,000,000 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.

(2) Except as provided in subsections (e) and (f) 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 generated by or arising out of the eligible economic development project, as determined under subsections (c) and (d) of this section.

(c) (1) This subsection does not apply to a person subject to taxation under Title 6 of the Insurance Article.

(2) The State tax for the taxable year on a qualified business entity's income generated by or arising out of an eligible economic development project equals the difference between:

(i) the State tax without regard to this subtitle; and

(ii) the State tax on the qualified business entity's Maryland taxable income reduced by the amount of its net income attributable to the eligible economic development project.

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

(4) If the eligible economic development project is an expansion to a previously existing facility:

(i) net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses that are directly attributable to the facility and the overhead expenses apportioned to the facility; and

(ii) net income attributable to the eligible economic development project shall be determined by apportioning the net income of the entire facility, as calculated under item (i) of this paragraph, to the eligible economic development project by a formula approved by the Comptroller or the State Department of Assessments and Taxation.

(5) If the Comptroller or the State Department of Assessments and Taxation is satisfied that the nature and activities of a qualified business entity make it impractical to use the separate accounting method, the qualified business entity shall determine net income from the eligible economic development project using an alternative method approved by the Comptroller or the State Department of Assessments and Taxation.

(d) A qualified business entity that is subject to taxation under Title 6 of the Insurance Article may not claim the project tax credit for the taxable year in which the project is placed in service or for the next 4 taxable years.

(e) (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 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 project tax credit for succeeding taxable years against the State tax on the qualified business entity's income generated by or arising out of the project until the earlier of:

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

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

(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 25, but does not fall below 10; and

2. the qualified business entity has maintained at least 25 qualified positions 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 25.

(f) (1) Subject to the limitation in paragraph (4) of this subsection and subject to § 6–405 of this subtitle, this subsection applies to any taxable year after the 4th but before the 15th taxable year following the taxable year in which the project is placed in service.

(2) A qualified business entity other than a person 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 State tax for the taxable year on the qualified business entity's income other than income generated by or arising out of the project; and

(ii) 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 income other than income generated by or arising out of the project.

(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 used as a project tax credit and 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 25, but does not fall below 10; and

2. the qualified business entity has maintained at least 25 qualified positions 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 25.

(g) 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.