SENATE BILL 989

C8 (8lr2803)

ENROLLED BILL

— Budget and Taxation/Ways and Means —

Introduced by **Senators Edwards, Eckardt, Ferguson, Madaleno, Mathias, McFadden, Peters, and Serafini**

Read and Examined by Proofreaders:

_______________________________ Proofreader.

_______________________________ Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_______ day of _______________ at ________________________ o'clock, ________M.

_______________________________ President.

CHAPTER ______

AN ACT concerning

One Maryland Economic Development Tax Credits – Simplification and Alteration

FOR the purpose of ~~altering the definition of "qualified distressed county" by altering certain income levels in the definition and renaming it to be "Tier I county";~~ repealing a certain start–up tax credit under the One Maryland Economic Development Tax Credit Program; expanding the eligibility requirements for a certain project tax credit by altering, under certain circumstances, the number of qualified positions that a qualified business entity is required to create; altering the calculation of the project tax credit; requiring the Department of Commerce to certify the amount of the project tax credit; requiring a qualified business entity to report certain information to the Department for certain taxable years; providing that a failure to report the information shall disqualify the qualified business entity from claiming certain credits; repealing a certain limitation on the amount of the project tax credit

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets**]** indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.

allowed under certain circumstances; altering the circumstances under which a certain qualified business entity may claim the project tax credit; altering the circumstances under which a qualified business entity may carry forward and claim a refund of certain excess credits; prohibiting a qualified business entity from claiming a certain other credit under certain circumstances; ~~exempting certain property of a qualified business entity from a certain limitation on the applicability of certain Maryland income tax modifications for certain deductions for the cost of business property placed in service that is treated as an expense for federal income tax purposes; exempting certain property of a qualified business entity from a certain limitation on the applicability of certain Maryland income tax modifications for a certain additional depreciation allowance under the federal income tax;~~ requiring the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, to correct any cross–references or terminology rendered incorrect by this Act and to describe any corrections made in an editor's note following the section affected; altering certain definitions; defining a certain term; making conforming changes; providing for the application of this Act; and generally relating to the One Maryland Economic Development Tax Credit Program.

BY repealing and reenacting, with amendments,
Article – Economic Development
Section ~~1–101,~~ 6–401 through 6–403, 6–406, and 6–407
Annotated Code of Maryland
(2008 Volume and 2017 Supplement)

BY repealing
Article – Economic Development
Section 6–404 and 6–405
Annotated Code of Maryland
(2008 Volume and 2017 Supplement)

BY adding to
Article – Economic Development
Section 6–405
Annotated Code of Maryland
(2008 Volume and 2017 Supplement)

~~BY repealing and reenacting, with amendments,~~
~~Article – Tax – General~~
~~Section 10–210.1(a) and (b)(1) and (3)~~
~~Annotated Code of Maryland~~
~~(2016 Replacement Volume and 2017 Supplement)~~

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

Article – Economic Development

~~1–101.~~

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

~~(b) “County” means a county of the State or Baltimore City.~~

~~(c) “Department” means the Department of Commerce.~~

~~(d) “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity.~~

~~**[**(e) (1) “Qualified distressed 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 in the State by at least 2 percentage points; or~~

~~(iii) an average per capita personal income for the most recent 24–month period for which data are available that is equal to or less than 67% of the average per capita personal income for the State during that period.~~

~~(2) “Qualified distressed county” includes a county that:~~

~~(i) no longer meets either criterion 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.**]**~~

~~**[**(f)**] (E)** “Secretary” means the Secretary of Commerce.~~

~~**[**(g)**] (F)** (1) Except as provided in paragraph (2) of this subsection, “state” means:~~

~~(i) a state, possession, territory, or commonwealth of the United States; or~~

~~(ii) the District of Columbia.~~

~~(2) When capitalized, “State” means Maryland.~~

~~(G) (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 IN 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 EITHER CRITERION 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.~~

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.

[(b)**] (C)** "Eligible economic development project" means an economic development project that:

(1) establishes or expands a business facility within a **[**qualified distressed**]** **TIER I** county; and

(2) is approved for a project tax credit **[**or a start–up tax credit**]** in accordance with this subtitle.

[(c)**] (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; **[**and**]**

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

[(d) (1)**]** **(IV)** **[**"Eligible start–up cost" means**]** a qualified business entity's cost to furnish and equip a new location for ordinary business functions**[**.**], INCLUDING:**

[(2) "Eligible start–up cost" includes:**]**

[(i)**]** **1.** the cost of computers, nonrecurring costs of fixed telecommunications equipment, furnishings, and office equipment; and

[(ii)**]** **2.** expenditures for moving costs, separation costs, and other costs directly related to moving from outside of the State to a location in a **[**qualified distressed**]** **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 **[**§ 6–402 of**]** this subtitle as qualifying for a project tax credit **[**or a start–up 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 **[**150%**]** **120%** of the **[**federal**]** **STATE** minimum wage;

(iii) is in a **[**qualified distressed**]** **TIER I** county;

(iv) is newly created because a business facility begins or expands in one location in a **[**qualified distressed**]** **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) “Start–up tax credit” means a tax credit for eligible start–up costs allowed under § 6–404 of this subtitle.**]**

(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.

6–402.

(a) (1) To qualify for a project tax credit **[**or a start–up 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 **[**or a start–up tax credit**]**, a person shall:

(1) establish or expand a business facility that:

(i) is located in a **[**qualified distressed**]** **TIER I** county; and

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

2. 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;

(2) during any 24–month period, create at least [25] **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 [or a start–up 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.

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**]** **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 **[**$5,000,000**]** **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 **[**(e)**]** **(D)** and **[**(f)**]** **(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 **[**generated by or arising out of the eligible economic development project, as determined under subsections (c) and (d) of this section**]**.

(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) (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)**]** **(C)** 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**]** **AGAINST THE INSURANCE PREMIUM TAX**.

[(e)**]** **(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 **[**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**]** **10TH** taxable year following the **[**taxable year in which the project is placed in service**]** **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 **[**25**]** **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 **[**25**]** **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 **[**25**]** **THE MINIMUM NUMBER OF QUALIFIED POSITIONS REQUIRED TO QUALIFY FOR THE PROJECT TAX CREDIT**.

[(f)**]** **(E)** (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**]** **CREDIT YEAR**.

(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 **QUALIFIED BUSINESS ENTITY'S** 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] **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 [25] **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 [25] **THE MINIMUM**

NUMBER OF QUALIFIED POSITIONS REQUIRED TO QUALIFY FOR THE PROJECT TAX CREDIT.

[(g)**] (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.

[6–404.

(a) (1) A qualified business entity that locates in a qualified distressed county may claim a start–up tax credit in the amount provided in subsection (b) of this section.

(2) A qualified business entity is not entitled to a start–up tax credit for a cost incurred before notifying the Department of its intent to seek certification as qualifying for the start–up tax credit.

(b) The start–up tax credit allowed under this section for each taxable year equals the least of:

(1) the qualified business entity's total eligible start–up cost associated with establishing or expanding a business facility in the qualified distressed county, less the amount of the credit previously taken for the project;

(2) the product of multiplying $10,000 times the number of qualified employees employed at the new or expanded business facility; or

(3) $500,000.

(c) (1) Subject to paragraph (2) of this subsection, if the start–up tax credit allowed under subsection (b) of this section for the taxable year in which a qualified business entity locates in a qualified distressed county exceeds the total tax otherwise due from the qualified business entity for that taxable year, the qualified business entity may apply the excess as a credit for succeeding taxable years 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 qualified business entity locates in a qualified distressed county.

(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.

(d) (1) Subject to the limitation in paragraph (3) 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 qualified business entity locates in a qualified distressed county.

(2) A qualified business entity may claim a refund in the amount, if any, by which the qualified business entity's eligible start–up cost exceeds the cumulative amount used as a start–up tax credit for the taxable year and all prior taxable years.

(3) 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.

(4) (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.

(e) A qualified business entity shall attach the certification required under § 6–402(a) of this subtitle to the tax return on which the start–up tax credit is claimed.**]**

[6–405.

If the pay for the majority of the qualified positions created from the establishment or expansion of a business facility is at least 250% of the federal minimum wage, §§ 6–403(f) and 6–404(d) of this subtitle apply beginning with the taxable year after the 2nd taxable year that follows the taxable year when the qualified business entity locates in a qualified distressed county.**]**

[6–406.**]** **6–404.**

A refund payable to a qualified business entity under **[**§ 6–403(f) or § 6–404(d)**] § 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.

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.

[6–407.**] 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.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~Article – Tax – General~~

~~10–210.1.~~

~~(a) (1) In this section the following words have the meanings indicated.~~

~~(2) "Depreciation" includes any deduction allowed under § 179 of the Internal Revenue Code.~~

~~(3) "Heavy duty SUV" means a 4–wheeled vehicle that:~~

~~(i) is manufactured primarily for use on public streets, roads, and highways;~~

~~(ii) is rated at more than 6,000 but not more than 14,000 pounds gross vehicle weight; and~~

~~(iii) would be a passenger automobile as defined in § 280F of the Internal Revenue Code if it were rated at 6,000 pounds gross vehicle weight or less.~~

~~(4) (i) "Manufacturing entity" means a person conducting or operating a trade or business that is primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 2012 Edition, would be included in Sector 31, 32, or 33.~~

~~(ii) "Manufacturing entity" does not include a refiner, as defined in § 10–101 of the Business Regulation Article.~~

~~**(5) "QUALIFIED BUSINESS ENTITY" HAS THE MEANING STATED IN § 6–401 OF THE ECONOMIC DEVELOPMENT ARTICLE.**~~

~~(b) In addition to the modifications under §§ 10–204 through 10–210 of this subtitle, to determine Maryland adjusted gross income of an individual:~~

~~(1) (i) except as provided in item (ii) of this item, an amount is added to or subtracted from federal adjusted gross income to reflect the determination of the depreciation deduction provided under § 167(a) of the Internal Revenue Code and the adjusted basis of property without regard to the additional allowance under § 168(k) of the Internal Revenue Code; and~~

~~(ii) item (i) of this item does not apply to property placed in service by a manufacturing entity **OR QUALIFIED BUSINESS ENTITY** on or after January 1, 2019;~~

~~(3) (i) except as provided in item (ii) of this item, an amount is added to or subtracted from federal adjusted gross income to reflect the determination of the maximum aggregate costs that the taxpayer may treat as an expense under § 179 of the Internal Revenue Code for any taxable year without regard to any changes made to that section after December 31, 2002:~~

~~1. increasing above $25,000 the dollar limitation set forth in § 179(b)(1) of the Internal Revenue Code; or~~

~~2. increasing above $200,000 the phase–out threshold set forth in § 179(b)(2) of the Internal Revenue Code; and~~

~~(ii) item (i) of this item does not apply to property that is placed in service by a manufacturing entity **OR QUALIFIED BUSINESS ENTITY** on or after January 1, 2019;~~

SECTION ~~3.~~ _2._ AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross–references and terminology rendered incorrect by this Act or by any other Act of the General Assembly of 2018 that affects provisions enacted by this Act. The publisher shall adequately describe any correction that is made in an editor's note following the section affected.

~~SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be applicable to all taxable years beginning after December 31, 2018.~~

SECTION ~~5.~~ _3._ AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018, and shall be applicable to certifications of qualified business entities issued after June 30, ~~2019~~ 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.