

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Housing and Community Development
(DLS Control No. 15-166)**

Overview and Legal and Fiscal Impact

These regulations establish procedures for the administration of the Endow Maryland tax credit created by Chapter 511 of 2014.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Housing and Community Development:

Neighborhood and Community Assistance Programs: Endow Maryland:
COMAR 05.14.02.01-.11

Legal Analysis

Background

Chapter 511 of 2014 created a tax credit against the State income tax for donations made to a qualified permanent endowment fund at an eligible community foundation. The Department of Housing and Community Development is required to administer the credit and adopt regulations implementing the credit, and this action adds COMAR 05.14.02 to implement the credit.

Summary of Regulations

The regulations provide eligibility standards and requirements for approved qualified endowment funds (COMAR 05.14.02.03). The regulations also clarify that a community foundation may propose more than one qualified permanent endowment fund in any fiscal year and specify document submission requirements for community foundations (COMAR 05.14.02.04). Additionally, the regulations outline procedures for taxpayers claiming and using the tax credit; of note, the regulations authorize the department to refuse a request for a certification of a donation under specified circumstances and clarify that the same tax credit may not be applied more than once against different taxes by the same taxpayer (COMAR 05.14.02.05). The regulations outline matters related to the administration of the credit by the department (COMAR 05.14.02.07) and authorize the Secretary of Housing and

Community Development to waive or vary provisions of the regulations to the extent that the waiver or variance is consistent with statute and if, in the written determination of the Secretary, the application of a regulation in a specific case or an emergency situation would be inequitable or contrary to the purposes of the statute (COMAR 05.14.02.10).

The regulations require community foundations receiving an allocation of tax credits for an approved qualified permanent endowment fund to keep and retain specified records and provide the department with specified reports on a quarterly basis (COMAR 05.14.02.08). In addition, the regulations require community foundations participating in the allocation of tax credits to comply with specified nondiscrimination and drug and alcohol free workplace requirements (COMAR 05.14.02.09).

Finally, the regulations prohibit an individual from knowingly making or causing to be made a false statement of report in any document required by the department or in an agreement relating to the tax credits; in addition to any other penalties authorized by law, a violation is subject to cancellation or withdrawal of an allocation of credits or a certification of a donation (COMAR 05.14.02.11).

Legal Issue

The department's original submission contained one legal issue of concern, but the department has agreed to resolve this issue. The Statement of Purpose states that the tax credit program is applicable to a community foundation that provides charitable services to priority funding areas. However, Chapter 511 does not specify that services must be provided to priority funding areas. Likewise, COMAR 05.14.02.04 requires that a community foundation submit information about whether the endowment fund benefits priority funding areas. This requirement is beyond the scope of Chapter 511. The department has agreed to remove these references to priority funding areas. With these revisions, the regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites Title 10, Subtitle 7 of the Tax – General Article as statutory authority for the regulations. This authority, while correct, is overly broad. More specifically, the department is authorized to adopt these regulations under 10-736 of the Tax – General Article. The department has agreed to revise its citation of legal authority accordingly.

With the revision, the relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations increase State administrative costs at the department and may have a positive impact on local revenues. The Department of Legislative Services disagrees. The regulations merely implement Chapter 511 of 2014 (Senate Bill 486). Any fiscal impact has already been accounted for in the fiscal and policy note for Senate Bill 486. The fiscal and policy note for Senate Bill 486 estimated that general fund revenues decrease by \$225,900 in fiscal 2016 due to tax credits claimed against the income tax and that Transportation Trust Fund revenues and Higher Education Investment Fund revenues are also affected. The fiscal and policy note also estimated administrative costs of \$150,600 in fiscal 2016, including costs to hire one program administrator in the department and one-time costs of \$79,000 for the Comptroller's Office to add the credit to the personal and corporate income tax forms. Finally, the fiscal and policy note estimated that local highway user revenues decrease by about \$700 annually as a result of credits claimed against the corporate income tax. Local income tax revenues increase minimally due to an add-back requirement.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful beneficial impact on small businesses. The Department of Legislative Services disagrees. Any impact has already been accounted for in the fiscal and policy note for Senate Bill 486 of 2014. Further, the fiscal and policy note indicated that the bill has a minimal impact on small businesses.

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