
By: Delegates Busch, Hixson, Gordon, Kopp, Kach, Rawlings, Holt, Linton, and McKee

Introduced and read first time: February 7, 1996

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Major Business Facility Job Tax Credit**

3 FOR the purpose of allowing a credit against the State income tax, financial institution
4 franchise tax, public service company franchise tax, and insurance premiums tax for
5 the establishment or expansion of a major business facility in the State under certain
6 circumstances; providing for calculation of the credit based on the number of new
7 jobs created as a result of the establishment or expansion of the major business
8 facility; limiting the credit allowed in any taxable year to the total tax otherwise
9 payable for that taxable year; providing for the carryforward of unused credit;
10 providing for recapture of the credit under certain circumstances; requiring the
11 Comptroller and the Secretary of Business and Economic Development to adopt
12 certain regulations; providing for the termination of the credit under certain
13 circumstances; providing that the provisions of this Act are not severable; defining
14 certain terms; providing for the future codification of certain provisions of this Act;
15 and generally relating to a credit against the State income tax, financial institution
16 franchise tax, public service company franchise tax, and insurance premiums tax for
17 the establishment or expansion of a major business facility in the State.

18 BY adding to

19 Article 83A - Department of Business and Economic Development
20 Section 5-1101 through 5-1106 to be under the new subtitle "Subtitle 11. Major
21 Business Facility Job Tax Credit"
22 Annotated Code of Maryland
23 (1995 Replacement Volume)

24 BY adding to

25 Article 48A - Insurance Code
26 Section 632(e)
27 Annotated Code of Maryland
28 (1994 Replacement Volume and 1995 Supplement)

29 BY adding to

30 Article - Tax - General
31 Section 8-214, 8-411, and 10-704.4
32 Annotated Code of Maryland

2

1 (1988 Volume and 1995 Supplement)

2 BY adding to

3 Article - Insurance

4 Section 6-114

5 Annotated Code of Maryland

6 (1995 Volume)

7 (As enacted by Chapter 36 of the Acts of the General Assembly of 1995)

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

10 **Article 83A - Department of Business and Economic Development**

11 SUBTITLE 11. MAJOR BUSINESS FACILITY JOB TAX CREDIT.

12 5-1101.

13 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
14 INDICATED.

15 (B) "BUSINESS ENTITY" MEANS A PERSON CONDUCTING A TRADE OR
16 BUSINESS IN THE STATE.

17 (C) "CREDIT YEAR" MEANS THE FIRST TAXABLE YEAR FOLLOWING THE
18 TAXABLE YEAR IN WHICH A MAJOR BUSINESS FACILITY COMMENCED OR
19 EXPANDED OPERATIONS.

20 (D) "MAJOR BUSINESS FACILITY" INCLUDES:

21 (1) A HEADQUARTERS, OR A PORTION OF A FACILITY WHERE A
22 BUSINESS ENTITY'S STAFF EMPLOYEES ARE PHYSICALLY EMPLOYED AND WHERE
23 THE MAJORITY OF THE BUSINESS ENTITY'S FINANCIAL, PERSONNEL, LEGAL, OR
24 PLANNING FUNCTIONS ARE HANDLED EITHER ON A REGIONAL OR NATIONAL BASIS;

25 (2) A FACILITY THAT PERFORMS A CENTRAL MANAGEMENT OR
26 ADMINISTRATIVE FUNCTION FOR OTHER ESTABLISHMENTS OF THE SAME
27 ENTERPRISE SUCH AS GENERAL MANAGEMENT, ACCOUNTING, COMPUTER,
28 TABULATING, DATA PROCESSING, PURCHASING, TRANSPORTATION OR SHIPPING,
29 ENGINEERING AND SYSTEMS PLANNING, ADVERTISING, LEGAL, FINANCIAL, AND
30 RESEARCH AND DEVELOPMENT; OR

31 (3) ANY FACILITY PRIMARILY ENGAGED IN A BUSINESS ACTIVITY THAT
32 THE SECRETARY DESIGNATES IN REGULATION AS UNIQUELY SUITED TO THE
33 STRATEGIC ECONOMIC DEVELOPMENT ASSETS OF THE STATE.

34 (E) (1) "NEW PERMANENT FULL-TIME POSITION" MEANS:

35 (I) A JOB OF AN INDEFINITE DURATION THAT:

3

1 1. IS CREATED BY THE COMPANY AS A RESULT OF THE
2 ESTABLISHMENT OR EXPANSION OF A MAJOR BUSINESS FACILITY IN THIS STATE;
3 AND

4 2. REQUIRES A MINIMUM OF 35 HOURS OF AN EMPLOYEE'S
5 TIME PER WEEK FOR THE ENTIRE NORMAL YEAR OF THE COMPANY'S OPERATIONS,
6 WHICH "NORMAL YEAR" CONSISTS OF AT LEAST 48 WEEKS; OR

7 (II) A POSITION OF INDEFINITE DURATION THAT REQUIRES A
8 MINIMUM OF 35 HOURS OF AN EMPLOYEE'S TIME PER WEEK FOR THE PORTION OF
9 THE TAXABLE YEAR IN WHICH THE EMPLOYEE WAS INITIALLY HIRED FOR, OR
10 TRANSFERRED TO, THE MAJOR BUSINESS FACILITY IN THIS STATE.

11 (2) "NEW PERMANENT FULL-TIME POSITION" DOES NOT INCLUDE:

12 (I) A SEASONAL OR TEMPORARY POSITION; OR

13 (II) A JOB CREATED WHEN A JOB FUNCTION IS SHIFTED FROM AN
14 EXISTING LOCATION IN THIS STATE TO THE NEW OR EXPANDED MAJOR BUSINESS
15 FACILITY.

16 (F) "QUALIFIED BUSINESS ENTITY" MEANS A BUSINESS ENTITY THAT THE
17 SECRETARY HAS CERTIFIED AS HAVING ESTABLISHED OR EXPANDED A MAJOR
18 BUSINESS FACILITY IN THE STATE RESULTING IN THE CREATION OF AT LEAST THE
19 THRESHOLD NUMBER OF JOBS FOR QUALIFIED FULL-TIME EMPLOYEES IN
20 ACCORDANCE WITH § 5-1102 OF THIS SUBTITLE.

21 (G) "QUALIFIED FULL-TIME EMPLOYEE" MEANS AN EMPLOYEE FILLING A
22 NEW PERMANENT FULL-TIME POSITION IN A MAJOR BUSINESS FACILITY IN THIS
23 STATE.

24 5-1102.

25 (A) (1) THE SECRETARY SHALL CERTIFY A BUSINESS ENTITY AS
26 QUALIFYING FOR THE TAX CREDIT PROVIDED UNDER THIS SUBTITLE IF THE
27 BUSINESS ENTITY SATISFIES THE CRITERIA SET FORTH IN THIS SECTION.

28 (2) IF THE SECRETARY CERTIFIES A BUSINESS ENTITY AS A
29 QUALIFYING BUSINESS ENTITY, THE DEPARTMENT SHALL CERTIFY THE DATE ON
30 WHICH THE NEWLY ESTABLISHED OR EXPANDED FACILITY OF THE BUSINESS
31 ENTITY COMMENCED OR EXPANDED OPERATIONS.

32 (B) TO QUALIFY FOR THE TAX CREDIT PROVIDED UNDER THIS SUBTITLE, A
33 BUSINESS ENTITY SHALL ESTABLISH OR EXPAND A MAJOR BUSINESS FACILITY IN
34 THE STATE THAT RESULTS IN THE CREATION OF AT LEAST THE THRESHOLD
35 NUMBER OF JOBS FOR QUALIFIED FULL-TIME EMPLOYEES DETERMINED UNDER
36 SUBSECTION (D) OF THIS SECTION.

37 (C) (1) A BUSINESS ENTITY IS NOT ELIGIBLE FOR THE TAX CREDIT UNDER
38 THIS SUBTITLE UNLESS:

4

1 (I) THE BUSINESS ENTITY IS PRIMARILY ENGAGED IN A BUSINESS
2 ACTIVITY THAT THE SECRETARY DESIGNATES IN REGULATION AS UNIQUELY
3 SUITED TO THE STRATEGIC ECONOMIC DEVELOPMENT ASSETS OF THE STATE; OR

4 (II) REGARDLESS OF WHAT INDUSTRY THE BUSINESS ENTITY IS
5 ENGAGED IN, THE FOLLOWING ACTIVITIES, WHETHER OPERATED AS A SEPARATE
6 TRADE OR BUSINESS OR AS A SEPARATE SUPPORT OPERATION OF ANOTHER
7 BUSINESS, ARE CONDUCTED AT THE NEWLY ESTABLISHED OR EXPANDED FACILITY:

8 1. CENTRAL ADMINISTRATIVE OFFICES AND WAREHOUSES;

9 2. RESEARCH, DEVELOPMENT, AND TESTING
10 LABORATORIES;

11 3. COMPUTER PROGRAMMING, DATA PROCESSING, AND
12 OTHER COMPUTER-RELATED SERVICES FACILITIES; OR

13 4. FINANCIAL, INSURANCE, AND REAL ESTATE SERVICES.

14 (2) THE TERMS USED IN THIS SUBSECTION TO REFER TO VARIOUS
15 TYPES OF BUSINESSES HAVE THE SAME MEANINGS AS THOSE TERMS COMMONLY
16 DEFINED IN THE STANDARD INDUSTRIAL CLASSIFICATION MANUAL.

17 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
18 THRESHOLD NUMBER OF JOBS REQUIRED TO QUALIFY FOR THE TAX CREDIT
19 ALLOWED UNDER THIS SUBTITLE IS 100.

20 (2) (I) IN THIS PARAGRAPH, "ECONOMICALLY DISTRESSED AREA"
21 MEANS A COUNTY, INCLUDING BALTIMORE CITY, THAT HAS AN UNEMPLOYMENT
22 RATE FOR THE PRECEDING YEAR OF AT LEAST 0.5 PERCENTAGE POINTS HIGHER
23 THAN THE AVERAGE STATEWIDE UNEMPLOYMENT RATE FOR THE YEAR.

24 (II) THE THRESHOLD AMOUNT REQUIRED TO QUALIFY FOR THE
25 TAX CREDIT UNDER THIS SUBTITLE SHALL BE REDUCED FROM 100 TO 50 IF A MAJOR
26 BUSINESS FACILITY IS LOCATED IN AN AREA THAT DURING THE CREDIT YEAR IS:

27 1. AN ENTERPRISE ZONE AS DEFINED IN § 5-401 OF THIS
28 TITLE; OR

29 2. AN ECONOMICALLY DISTRESSED AREA.

30 (III) THE DEPARTMENT SHALL IDENTIFY AND PUBLISH A LIST OF
31 ALL ECONOMICALLY DISTRESSED AREAS AT LEAST ANNUALLY.

32 5-1103.

33 (A) (1) A QUALIFIED BUSINESS ENTITY MAY CLAIM A TAX CREDIT IN THE
34 AMOUNT DETERMINED UNDER THIS SECTION FOR THE ESTABLISHMENT OR
35 EXPANSION OF A MAJOR BUSINESS FACILITY IN THE STATE.

36 (2) THE SAME TAX CREDIT MAY NOT BE APPLIED MORE THAN ONCE
37 AGAINST DIFFERENT TAXES BY THE SAME TAXPAYER.

1 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, FOR
2 ANY QUALIFIED BUSINESS ENTITY, THE CREDIT EARNED UNDER THIS SECTION
3 EQUALS \$1,000 MULTIPLIED TIMES THE AMOUNT BY WHICH THE NUMBER OF
4 QUALIFIED FULL-TIME EMPLOYEES EMPLOYED DURING THE CREDIT YEAR
5 EXCEEDS THE THRESHOLD AMOUNT DETERMINED UNDER § 5-1102(D) OF THIS
6 SUBTITLE.

7 (2) THE CREDIT EARNED UNDER PARAGRAPH (1) OF THIS SUBSECTION
8 SHALL BE ALLOWED RATABLY, WITH ONE-THIRD OF THE CREDIT AMOUNT
9 ALLOWED ANNUALLY FOR 3 YEARS BEGINNING WITH THE CREDIT YEAR.

10 (3) THE PORTION OF THE \$1,000 CREDIT EARNED WITH RESPECT TO ANY
11 QUALIFIED FULL-TIME EMPLOYEE WHO IS EMPLOYED IN THIS STATE FOR LESS
12 THAN 12 FULL MONTHS DURING THE CREDIT YEAR SHALL BE DETERMINED BY
13 MULTIPLYING THE CREDIT AMOUNT BY A FRACTION:

14 (I) THE NUMERATOR OF WHICH IS THE NUMBER OF FULL MONTHS
15 THAT THE QUALIFIED FULL-TIME EMPLOYEE WORKED FOR THE QUALIFIED
16 COMPANY IN THIS STATE DURING THE CREDIT YEAR; AND

17 (II) THE DENOMINATOR OF WHICH IS 12.

18 (4) EACH DISTINCT MAJOR BUSINESS FACILITY OF A SINGLE TAXPAYER
19 SHALL HAVE A SEPARATE CREDIT YEAR AND 3 YEAR ALLOWANCE PERIOD.

20 (C) (1) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE
21 YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE BUSINESS ENTITY
22 FOR THAT TAXABLE YEAR, A BUSINESS ENTITY MAY APPLY THE EXCESS AS A
23 CREDIT FOR SUCCEEDING YEARS UNTIL THE EARLIER OF:

24 (I) THE FULL AMOUNT OF THE EXCESS IS USED; OR

25 (II) THE EXPIRATION OF THE 10TH TAXABLE YEAR AFTER THE
26 CREDIT YEAR.

27 (2) IF A TAXPAYER IS ALLOWED ANOTHER CREDIT AGAINST A TAX
28 AGAINST WHICH THE CREDIT UNDER THIS SECTION IS ALLOWED OR HAS A CREDIT
29 CARRYOVER FROM A PRECEDING TAXABLE YEAR, THE TAXPAYER SHALL BE
30 CONSIDERED TO HAVE FIRST USED ANY CREDIT THAT DOES NOT HAVE A
31 CARRYOVER PROVISION, AND THEN ANY CREDIT THAT IS CARRIED FORWARD
32 FROM A PRECEDING TAXABLE YEAR, BEFORE USING ANY CREDIT ALLOWED UNDER
33 THIS SECTION.

34 (D) (1) IN THIS SUBSECTION, "RELATED PARTY" MEANS:

35 (I) A RELATED PERSON WITHIN THE MEANING OF § 267(B) OF THE
36 INTERNAL REVENUE CODE; OR

37 (II) A TRADE OR BUSINESS UNDER COMMON CONTROL WITHIN
38 THE MEANING OF § 52(B) OF THE INTERNAL REVENUE CODE.

39 (2) A BUSINESS ENTITY MAY NOT CLAIM THE CREDIT UNDER THIS
40 SECTION FOR ANY EMPLOYEE:

6

1 (I) FOR WHICH A CREDIT UNDER THIS SECTION WAS PREVIOUSLY
2 EARNED BY A RELATED PARTY;

3 (II) WHO WAS PREVIOUSLY EMPLOYED IN THE SAME JOB
4 FUNCTION IN MARYLAND BY A RELATED PARTY;

5 (III) WHOSE JOB FUNCTION WAS PREVIOUSLY PERFORMED AT A
6 DIFFERENT LOCATION IN MARYLAND BY AN EMPLOYEE OF THE BUSINESS ENTITY
7 OR A RELATED PARTY; OR

8 (IV) WHOSE JOB FUNCTION PREVIOUSLY QUALIFIED FOR A CREDIT
9 UNDER THIS SECTION AT A DIFFERENT MAJOR BUSINESS FACILITY OF THE BUSINESS
10 ENTITY OR A RELATED PARTY.

11 (E) (1) FOR ANY OF THE 5 TAXABLE YEARS SUCCEEDING THE TAXABLE
12 YEAR IN WHICH THE MAJOR BUSINESS FACILITY COMMENCED OR EXPANDED
13 OPERATIONS, IF THE NUMBER OF QUALIFIED FULL-TIME EMPLOYEES AT A MAJOR
14 BUSINESS FACILITY FOR WHICH THE CREDIT UNDER THIS SECTION HAS BEEN
15 EARNED DECREASES BELOW THE AVERAGE NUMBER OF QUALIFIED FULL-TIME
16 EMPLOYEES EMPLOYED DURING THE CREDIT YEAR, THE CREDIT SHALL BE
17 RECAPTURED BY INCREASING THE BUSINESS ENTITY'S TAX FOR THAT TAXABLE
18 YEAR.

19 (2) THE AMOUNT RECAPTURED UNDER PARAGRAPH (1) OF THIS
20 SUBSECTION SHALL EQUAL THE DIFFERENCE BETWEEN:

21 (I) THE AMOUNT OF CREDIT PREVIOUSLY EARNED; AND

22 (II) THE AMOUNT OF THE CREDIT THAT WOULD HAVE BEEN
23 EARNED FOR THE ORIGINAL CREDIT YEAR USING THE DECREASED NUMBER OF
24 QUALIFIED FULL-TIME EMPLOYEES.

25 (3) IF THE AVERAGE NUMBER OF QUALIFYING FULL-TIME EMPLOYEES
26 EMPLOYED AT A MAJOR BUSINESS FACILITY FALLS BELOW THE THRESHOLD
27 AMOUNT DETERMINED UNDER § 5-1102(D) OF THIS SUBTITLE IN ANY OF THE 5
28 TAXABLE YEARS SUCCEEDING THE CREDIT YEAR, ALL CREDITS EARNED WITH
29 RESPECT TO THE MAJOR BUSINESS FACILITY SHALL BE RECAPTURED.

30 (4) A CREDIT AMOUNT MAY NOT BE RECAPTURED MORE THAN ONCE
31 UNDER THIS SUBSECTION.

32 (5) ANY AMOUNTS RECAPTURED UNDER THIS SUBSECTION SHALL
33 FIRST REDUCE CREDITS EARNED BUT NOT YET ALLOWED AND CREDITS ALLOWED
34 BUT NOT YET CARRIED FORWARD BEFORE THE TAXPAYER'S TAX LIABILITY MAY BE
35 INCREASED.

36 5-1104.

37 (A) THE COMPTROLLER SHALL ADOPT REGULATIONS TO:

38 (1) PROVIDE FOR THE COMPUTATION, CARRYOVER, AND RECAPTURE
39 OF THE CREDIT UNDER THIS SUBTITLE; AND

40 (2) DEFINE CRITERIA FOR:

7

1 (I) A MAJOR BUSINESS FACILITY;

2 (II) QUALIFYING JOBS FOR A MAJOR BUSINESS FACILITY; AND

3 (III) ECONOMICALLY DISTRESSED AREAS.

4 (B) THE SECRETARY SHALL ADOPT REGULATIONS TO ESTABLISH
5 CATEGORIES OF BUSINESS ACTIVITIES UNIQUELY SUITED TO THE STRATEGIC
6 ECONOMIC DEVELOPMENT ASSETS OF THE STATE.

7 5-1105.

8 (A) THE PROVISIONS OF THIS SUBTITLE SHALL APPLY ONLY IN INSTANCES
9 WHERE AN ANNOUNCEMENT OF INTENT TO ESTABLISH OR EXPAND A MAJOR
10 BUSINESS FACILITY IS MADE ON OR AFTER JANUARY 1, 1996.

11 (B) AN ANNOUNCEMENT OF INTENT TO ESTABLISH OR EXPAND A MAJOR
12 BUSINESS FACILITY INCLUDES A PRESS CONFERENCE OR EXTENSIVE PRESS
13 COVERAGE, PROVIDING INFORMATION WITH RESPECT TO THE IMPACT OF THE
14 PROJECT ON THE ECONOMY OF THE AREA WHERE THE MAJOR BUSINESS FACILITY
15 IS TO BE ESTABLISHED OR EXPANDED AND THE STATE AS A WHOLE.

16 5-1106.

17 (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF THIS
18 SUBTITLE AND THE TAX CREDIT AUTHORIZED UNDER THIS SUBTITLE SHALL
19 TERMINATE AS OF JANUARY 1, 2007.

20 (B) (1) THE TAX CREDITS AUTHORIZED UNDER THIS SUBTITLE:

21 (I) MAY BE CLAIMED ONLY FOR A NEWLY ESTABLISHED OR
22 EXPANDED FACILITY THAT COMMENCES OPERATIONS BEFORE JANUARY 1, 2006;
23 AND

24 (II) MAY NOT BE EARNED FOR ANY CREDIT YEAR BEGINNING ON
25 OR AFTER JANUARY 1, 2007.

26 (2) SUBJECT TO THE LIMITATIONS UNDER THIS SUBTITLE, FOR
27 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2007, TAX CREDITS EARNED
28 IN CREDIT YEARS BEGINNING BEFORE JANUARY 1, 2007:

29 (I) MAY BE ALLOWED RATABLY OVER A 3-YEAR PERIOD AS
30 PROVIDED IN § 5-1103 OF THIS SUBTITLE;

31 (II) MAY BE CARRIED FORWARD AS PROVIDED IN § 5-1103 OF THIS
32 SUBTITLE; AND

33 (III) ARE SUBJECT TO RECAPTURE AS PROVIDED IN § 5-1103 OF THIS
34 SUBTITLE.

8

1 **Article 48A - Insurance Code**

2 632.

3 (E) AN INSURANCE COMPANY MAY CLAIM A CREDIT AGAINST THE PREMIUM
4 TAX FOR THE ESTABLISHMENT OR EXPANSION OF A MAJOR BUSINESS FACILITY IN
5 THE STATE AS PROVIDED UNDER ARTICLE 83A, § 5-1103 OF THE CODE.

6 **Article - Tax - General**

7 8-214.

8 A FINANCIAL INSTITUTION MAY CLAIM A CREDIT AGAINST THE FINANCIAL
9 INSTITUTION FRANCHISE TAX FOR THE ESTABLISHMENT OR EXPANSION OF A
10 MAJOR BUSINESS FACILITY IN THE STATE AS PROVIDED UNDER ARTICLE 83A, §
11 5-1103 OF THE CODE.

12 8-411.

13 A PUBLIC SERVICE COMPANY MAY CLAIM A CREDIT AGAINST THE PUBLIC
14 SERVICE COMPANY FRANCHISE TAX FOR THE ESTABLISHMENT OR EXPANSION OF A
15 MAJOR BUSINESS FACILITY IN THE STATE AS PROVIDED UNDER ARTICLE 83A, §
16 5-1103 OF THE CODE.

17 10-704.4.

18 AN INDIVIDUAL OR CORPORATION MAY CLAIM A CREDIT AGAINST THE STATE
19 INCOME TAX FOR THE ESTABLISHMENT OR EXPANSION OF A MAJOR BUSINESS
20 FACILITY IN THE STATE AS PROVIDED UNDER ARTICLE 83A, § 5-1103 OF THE CODE.

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

23 **Article - Insurance**

24 6-114.

25 AN INSURANCE COMPANY MAY CLAIM A CREDIT AGAINST THE PREMIUM TAX
26 FOR THE ESTABLISHMENT OR EXPANSION OF A MAJOR BUSINESS FACILITY IN THE
27 STATE AS PROVIDED UNDER ARTICLE 83A, § 5-1103 OF THE CODE.

28 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the
29 provisions of Article 1, § 23 of the Annotated Code of Maryland, the provisions of this
30 Act are not severable, and if any provision of this Act or the application thereof to any
31 person or circumstance is held invalid for any reason in a court of competent jurisdiction,
32 no other provision or application of this Act may be given effect.

33 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
34 take effect October 1, 1997.

35 SECTION 5. AND BE IT FURTHER ENACTED, That except as provided in
36 Section 4 of this Act, this Act shall take effect July 1, 1996.