

CF 7lr0583

By: The Speaker (Administration) and Delegates Marriott, C. Davis, Gordon, Kopp, Leopold, Bozman, Rawlings, McKee, Hecht, Dypski, Howard, Workman, Goldwater, Pitkin, and Shriver ~~Shriver, Cryor, Healey, and Finifter~~

Introduced and read first time: January 27, 1997

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 1997

CHAPTER _____

1 AN ACT concerning

2 **Job Creation Tax Credit Act of 1997**

3 FOR the purpose of altering a certain notice requirement for certification as a qualifying
4 business entity under the Job Creation Tax Credit; altering certain criteria for a
5 business entity to qualify for the credit; defining certain terms; repealing a certain
6 credit; providing for the application of this Act; and generally relating to the Job
7 Creation Tax Credit.

8 BY repealing and reenacting, with amendments,
9 Article 83A - Department of Business and Economic Development
10 Section 5-1101
11 Annotated Code of Maryland
12 (1995 Replacement Volume and 1996 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article 83A - Department of Business and Economic Development
15 Section 5-1102
16 Annotated Code of Maryland
17 (1995 Replacement Volume and 1996 Supplement)
18 (As enacted by Section 2 of Chapter 84 of the Acts of the General Assembly of
19 1996)

20 BY repealing and reenacting, without amendments,
21 Article 83A - Department of Business and Economic Development
22 Section 5-1103

2

1 Annotated Code of Maryland
 2 (1995 Replacement Volume and 1996 Supplement)

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

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

6 5-1101.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) "Central financial, real estate, or insurance services" means the performance
 9 of central management or administrative functions for a business entity engaged in
 10 financial, real estate, or insurance services, such as general management, accounting,
 11 computer tabulating, data processing, purchasing, transportation or shipping, advertising,
 12 legal, financial, and research and development.

13 (c) (1) "Company headquarters" means a facility where the majority of a
 14 business entity's financial, personnel, legal, and planning functions are handled either on
 15 a regional or national basis.

16 (2) "Company headquarters" does not include the headquarters of a
 17 professional sports organization.

18 (d) "Credit year" means the taxable year in which a qualified business entity
 19 claims the credit allowed under this subtitle.

20 (e) "Full-time position" means a position requiring at least 840 hours of an
 21 employee's time during at least 24 weeks in a 6-month period.

22 (f) (1) "Qualified business entity" means a person conducting or operating a
 23 trade or business in Maryland who:

24 (i) Is engaged in an activity specified in § 5-1102(b)(2)(ii) of this
 25 subtitle;

26 (ii) During any 24-month period creates:

27 1. At least 60 qualified positions; [or]

28 2. At least 30 qualified positions if the aggregate payroll for the
 29 qualified positions is greater than a threshold amount equal to the product of multiplying
 30 60 times the State's average annual salary, as determined by the Department; [and] OR

31 3. AT LEAST 25 QUALIFIED POSITIONS IF THE BUSINESS
 32 FACILITY ESTABLISHED OR EXPANDED BY THE BUSINESS ENTITY IS LOCATED IN A
 33 STATE PRIORITY FUNDING AREA; AND

34 (iii) Is certified by the Secretary under § 5-1102(b) of this subtitle as
 35 qualifying for the tax credit under this subtitle.

36 (2) For a person engaged in a business activity described in §
 37 5-1102(b)(2)(ii)11 of this subtitle, "qualified business entity":

3

1 (i) Includes the persons owning or operating the multiuse facility in
 2 which the entertainment, recreation, cultural, or tourism-related activities are operated;
 3 and

4 (ii) Does not include any separate entity that leases retail space at the
 5 facility.

6 (g) "Qualified employee" means an employee filling a qualified position.

7 (h) (1) "Qualified position" means a position that:

8 (i) Is a full-time position and is of indefinite duration;

9 (ii) Pays at least 150% of the federal minimum wage;

10 (iii) Is located in Maryland;

11 (iv) Is newly created, as a result of the establishment or expansion of a
 12 business facility in a single location in the State; and

13 (v) Is filled.

14 (2) "Qualified position" does not include a position that is:

15 (i) Created when an employment function is shifted from an existing
 16 business facility of the business entity located in Maryland to another business facility of
 17 the same business entity if the position does not represent a net new job in the State;

18 (ii) Created through a change in ownership of a trade or business;

19 (iii) Created through a consolidation, merger, or restructuring of a
 20 business entity if the position does not represent a net new job in the State;

21 (iv) Created when an employment function is contractually shifted
 22 from an existing business entity located in the State to another business entity if the
 23 position does not represent a net new job in the State; or

24 (v) Filled for a period of less than 12 months.

25 (3) For a business entity engaged in a business activity described in §
 26 5-1102(b)(2)(ii)11 of this subtitle, "qualified position" does not include any position other
 27 than a position engaged in:

28 (i) The operation of entertainment, recreation, cultural, or
 29 tourism-related activities for the multiuse facility in which the entertainment, recreation,
 30 cultural, or tourism-related activities are operated; or

31 (ii) Management, marketing, building maintenance, hotel services, and
 32 security for the facility.

33 (i) "Revitalization area" means:

34 (1) An area designated as an enterprise zone by the Secretary under § 5-402
 35 of this title or by the United States government;

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1 (2) An area designated as an empowerment zone by the United States
2 government pursuant to 26 U.S.C. § 1391 et seq.; or

3 (3) An area designated as an eligible neighborhood for economic
4 revitalization assistance under Article 83B, § 4-203 of the Code.

5 (j) "Secretary" means the Secretary of Business and Economic Development or
6 the Secretary's designee.

7 (K) "STATE PRIORITY FUNDING AREA" INCLUDES THE FOLLOWING AREAS:

8 (1) AN INCORPORATED MUNICIPALITY;

9 (2) A DESIGNATED NEIGHBORHOOD, AS DEFINED IN ARTICLE 83B, §
10 4-202 OF THE CODE;

11 (3) AN ENTERPRISE ZONE AS DESIGNATED UNDER § 5-402 OF THIS TITLE
12 OR BY THE UNITED STATES GOVERNMENT;

13 ~~(4) A CERTIFIED HERITAGE AREA AS DESIGNATED UNDER § 13-1111 OF~~
14 ~~THE FINANCIAL INSTITUTIONS ARTICLE;~~

15 ~~(5)~~ (4) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE
16 HIGHWAY 495 AND THE DISTRICT OF COLUMBIA; AND

17 ~~(6)~~ (5) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE
18 HIGHWAY 695 AND BALTIMORE CITY;

19 ~~(7) AREAS ZONED AS INDUSTRIAL OR THE EQUIVALENT IN THE LOCAL~~
20 ~~COMPREHENSIVE PLAN WHICH ARE SERVED BY PUBLIC OR COMMUNITY WATER~~
21 ~~AND SEWER SERVICE; AND~~

22 ~~(8) AN AREA IN THE STATE WHICH:~~

23 ~~(i) 1. IS SERVED BY PUBLIC OR COMMUNITY WATER AND~~
24 ~~SEWER SERVICE; OR~~

25 ~~2. IS PLANNED TO BE SERVED BY PUBLIC OR COMMUNITY~~
26 ~~WATER AND SEWER SERVICE WITHIN 6 YEARS UNDER THE CAPITAL IMPROVEMENT~~
27 ~~PLAN OF THE LOCAL JURISDICTION IN WHICH THE AREA IS LOCATED; AND~~

28 ~~(ii) WITH RESPECT TO ANY PART OF THE AREA DELINEATED BY~~
29 ~~LOCAL GOVERNMENT FOR RESIDENTIAL USE OR DEVELOPMENT:~~

30 ~~1. HAS AN AVERAGE DENSITY OF 3.5 UNITS OR MORE PER~~
31 ~~ACRE; OR~~

32 ~~2. HAS IN PRACTICE AN AVERAGE DENSITY OF 3.5 UNITS OR~~
33 ~~MORE PER ACRE.~~

34 5-1102.

35 (a) It is the intent of the General Assembly that the job creation tax credits
36 authorized under this subtitle are for the purpose of increasing the number of new jobs in

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1 the State by encouraging the expansion of existing private sector enterprises and the
2 establishment or attraction of new private sector enterprises.

3 (b) (1) (i) The Secretary shall certify a person as a qualified business entity
4 eligible for the tax credit under this subtitle if the person satisfies the criteria set forth in
5 this section.

6 (ii) A business entity may not be certified as qualifying for the tax
7 credit under this subtitle unless the business entity notifies the Department of its intent to
8 seek certification before **HIRING ANY QUALIFIED EMPLOYEES TO FILL THE**
9 **QUALIFIED POSITIONS NECESSARY TO SATISFY THE REQUIREMENTS OF**
10 **PARAGRAPH (2)(I) OF THIS SUBSECTION FOR** establishing or expanding the business
11 facility on which the credit is based.

12 (2) To qualify for the tax credit provided under this subtitle, a business
13 entity must establish or expand a business facility in the State that:

14 (i) Results in the creation of:

- 15 1. At least 60 qualified positions; [or]
- 16 2. At least 30 qualified positions if the aggregate payroll for the
17 qualified positions is greater than a threshold amount equal to the product of multiplying
18 60 times the State's average annual salary, as determined by the Department; [and] OR
- 19 3. **AT LEAST 25 QUALIFIED POSITIONS IF THE BUSINESS**
20 **FACILITY ESTABLISHED OR EXPANDED BY THE BUSINESS ENTITY IS LOCATED IN A**
21 **STATE PRIORITY FUNDING AREA; AND**

22 (ii) Is **PRIMARILY** engaged in **ONE OR MORE OF THE FOLLOWING:**

- 23 1. Manufacturing or mining;
- 24 2. Transportation or communications;
- 25 3. Agriculture, forestry, or fishing;
- 26 4. Research, development, or testing;
- 27 5. Biotechnology;
- 28 6. Computer programming, data processing, or other computer
29 related services;
- 30 7. Central financial, real estate, or insurance services;
- 31 8. The operation of central administrative offices or a company
32 headquarters;
- 33 9. A public utility;
- 34 10. Warehousing; [or]

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1 11. BUSINESS SERVICES, IF THE BUSINESS FACILITY
 2 ESTABLISHED OR EXPANDED BY THE BUSINESS ENTITY IS LOCATED IN A STATE
 3 PRIORITY FUNDING AREA; OR

4 [11.] 12. Operation of entertainment, recreation, cultural, or
 5 tourism-related activities in a multiuse facility located within a revitalization area if the
 6 facility generates a minimum of 1,000 new full-time equivalent filled positions in a
 7 24-month period and is not primarily used by a professional sports franchise or for
 8 gaming.

9 (3) [The terms used in paragraph (2)(ii) of this subsection to refer to
 10 various types of businesses shall have the same meanings as those terms which are
 11 commonly defined in the standard industrial classification manual.] IN DETERMINING
 12 WHETHER A BUSINESS FACILITY IS ENGAGED IN A QUALIFYING ACTIVITY
 13 DESCRIBED IN PARAGRAPH (2)(II) OF THIS SUBSECTION, THE DEPARTMENT SHALL
 14 CONSIDER THE DEFINITIONS SET FORTH IN THE STANDARD INDUSTRIAL
 15 CLASSIFICATION MANUAL.

16 (c) (1) A qualified business entity may claim a tax credit in the amount
 17 determined under this section.

18 (2) (i) Except as otherwise provided in this section, the credit earned
 19 under this section equals the lesser of:

20 1. \$1,000 multiplied times the number of qualified employees
 21 employed by the qualified entity during the credit year; and

22 2. 2.5% of the wages paid by the qualified business entity
 23 during the credit year to the qualified employees.

24 (ii) For qualified employees working in a facility located in a
 25 revitalization area, the credit earned under this section equals the lesser of:

26 1. \$1,500 multiplied times the number of qualified employees
 27 employed by the qualified entity during the credit year; and

28 2. 5% of the wages paid by the qualified business entity during
 29 the credit year to the qualified employees.

30 ~~(iii) 1. For each full-time or part-time employee employed by a~~
 31 ~~qualified business entity during the credit year, if the employee is a disabled individual~~
 32 ~~within the meaning of § 21-401 of the Education Article, the credit earned under this~~
 33 ~~section equals the lesser of \$1,500 or 5% of the wages paid to the employee, whether or~~
 34 ~~not the individual is a qualified employee.~~

35 ~~2. Each employee for whom the credit under this subparagraph~~
 36 ~~is claimed shall be certified as a disabled individual by the Department in cooperation~~
 37 ~~with the appropriate State agencies.~~

38 (3) The credit earned under paragraph (2) of this subsection shall be
 39 allowed ratably, with one-half of the credit amount allowed annually for 2 years
 40 beginning with the credit year.

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1 (4) The credit earned by a qualified business entity under this subtitle may
2 not exceed \$1,000,000 for any credit year.

3 (5) The same credit cannot be applied more than once against different
4 taxes by the same taxpayer.

5 (6) (i) To be certified as a qualified business entity, a business entity shall
6 submit the following to the Department in accordance with regulations adopted by the
7 Department:

- 8 1. The effective date of the start-up or expansion;
- 9 2. The number of full-time employees prior to the start-up or
10 expansion and the payroll of the existing employees;
- 11 3. The number of qualified positions created, qualified
12 employees hired, and the payroll of those employees; and
- 13 4. Any other information that the Department requires by
14 regulation.

15 (ii) The Department may require any information required under this
16 paragraph to be verified by an independent auditor selected by the business entity.

17 (7) A qualified business entity must obtain, and submit to the appropriate
18 State agency with the tax return on which the credit is claimed, certification from the
19 Department that the entity has met the requirements of this section and is eligible for the
20 credit.

21 (d) (1) If the credit allowed under this section in any taxable year exceeds the
22 total tax otherwise due from the qualified business entity for that taxable year, the
23 qualified business entity may apply the excess as a credit for succeeding taxable years
24 until the earlier of:

- 25 (i) The full amount of the excess is used; or
- 26 (ii) The expiration of the 5th taxable year from the credit year.

27 (2) The credit under this section may not be carried back to a preceding
28 taxable year.

29 (e) (1) If, during any of the 3 years succeeding the credit year, the number of
30 qualified positions of the qualifying business entity falls more than 5% below the average
31 number of qualified positions during the credit year on which the credit was computed,
32 the credit shall be recaptured as follows:

- 33 (i) The credit shall be recomputed to reduce the credit by the
34 percentage reduction of the number of qualified employees;
- 35 (ii) The recomputed credit shall be subtracted from the amount of
36 credit previously allowed; and

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1 (iii) The qualifying business entity shall pay the difference as taxes
 2 payable to the State for the taxable year in which the number of qualified positions falls
 3 more than 5% below the average number of qualified positions during the credit year.

4 (2) If, during any of the 3 years succeeding the credit year, the average
 5 number of qualified positions falls below the applicable threshold number of positions
 6 under subsection ~~(b)(2)(i)1 or 2~~ (B)(2)(I) of this section, all credits earned shall be
 7 recaptured.

8 (3) (i) During the 3 taxable years succeeding the credit year, the qualified
 9 business entity shall supply information required by the Department in regulation to
 10 verify that the business entity is not subject to paragraph (1) or (2) of this subsection.

11 (ii) The Department may require any information required under this
 12 paragraph to be verified by an independent auditor selected by the business entity.

13 (f) Any information provided to the Comptroller or the appropriate agency by a
 14 qualified business entity in connection with eligibility for a credit allowed under this
 15 section shall be shared by the Comptroller or the appropriate agency with the
 16 Department of Business and Economic Development and shall be subject to the
 17 confidentiality requirements established by statutes or regulations applicable to the
 18 Comptroller or the appropriate agency.

19 (g) (1) Subject to the provisions of this subsection, the Secretary shall adopt
 20 regulations to carry out the provisions of this subtitle.

21 (2) The Comptroller shall adopt regulations to provide for the computation,
 22 carryover, and recapture of the credit under § 10-704.4 of the Tax - General Article.

23 (3) The Department of Assessments and Taxation shall adopt regulations to
 24 provide for the computation, carryover, and recapture of the credit under §§ 8-214 and
 25 8-411 of the Tax - General Article.

26 (4) The Maryland Insurance Commissioner shall adopt regulations to
 27 provide for the computation, carryover, and recapture of the credit under § 6-114 of the
 28 Insurance Article.

29 (h) The Department shall report to the Governor and, subject to § 2-1312 of the
 30 State Government Article, to the General Assembly by November 1 of each year on the
 31 business entities certified as eligible for tax credits in the preceding fiscal year.

32 5-1103.

33 (a) Subject to the provisions of this section, the provisions of this subtitle and the
 34 tax credit authorized under this subtitle shall terminate as of January 1, 2002.

35 (b) (1) The tax credits authorized under this subtitle:

36 (i) May be claimed only for qualified positions at a newly established
 37 or expanded facility that commences operations before January 1, 2001; and

38 (ii) May not be earned for any credit year beginning on or after
 39 January 1, 2002.

1 (2) Subject to the limitations under this subtitle, for taxable years beginning
2 on or after January 1, 2002, tax credits earned in credit years beginning before January 1,
3 2002, may be allowed ratably over a 2-year period, may be carried forward, and are
4 subject to recapture as provided in § 5-1102 of this subtitle.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 1997, and shall apply to all taxable years beginning after December 31, 1996
7 and for all employees hired after December 31, 1996.