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1997 Regular Session
7lr0583

CF 7lr1928

By: The President (Administration)

Introduced and read first time: January 17, 1997

Assigned to: Budget and Taxation

A BILL ENTITLED

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; providing for the
6 application of this Act; and generally relating to the Job Creation Tax Credit.

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

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

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

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

22 5-1101.

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

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

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

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

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

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

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

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

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

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

24 (2) For a person engaged in a business activity described in §
25 5-1102(b)(2)(ii)11 of this subtitle, "qualified business entity":

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

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

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

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

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

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

35 (iii) Is located in Maryland;

3

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

3 (v) Is filled.

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

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

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

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

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

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

15 (3) For a business entity engaged in a business activity described in §
16 5-1102(b)(2)(ii)11 of this subtitle, "qualified position" does not include any position other
17 than a position engaged in:

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

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

23 (i) "Revitalization area" means:

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

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

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

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

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

33 (1) AN INCORPORATED MUNICIPALITY;

34 (2) A DESIGNATED NEIGHBORHOOD, AS DEFINED IN ARTICLE 83B, §
35 4-202 OF THE CODE;

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

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

5 (5) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE
6 HIGHWAY 495 AND THE DISTRICT OF COLUMBIA;

7 (6) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE
8 HIGHWAY 695 AND BALTIMORE CITY;

9 (7) AREAS ZONED AS INDUSTRIAL OR THE EQUIVALENT IN THE LOCAL
10 COMPREHENSIVE PLAN WHICH ARE SERVED BY PUBLIC OR COMMUNITY WATER
11 AND SEWER SERVICE; AND

12 (8) AN AREA IN THE STATE WHICH:

13 (I) 1. IS SERVED BY PUBLIC OR COMMUNITY WATER AND
14 SEWER SERVICE; OR

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

18 (II) WITH RESPECT TO ANY PART OF THE AREA DELINEATED BY
19 LOCAL GOVERNMENT FOR RESIDENTIAL USE OR DEVELOPMENT:

20 1. HAS AN AVERAGE DENSITY OF 3.5 UNITS OR MORE PER
21 ACRE; OR

22 2. HAS IN PRACTICE AN AVERAGE DENSITY OF 3.5 UNITS OR
23 MORE PER ACRE.

24 5-1102.

25 (a) It is the intent of the General Assembly that the job creation tax credits
26 authorized under this subtitle are for the purpose of increasing the number of new jobs in
27 the State by encouraging the expansion of existing private sector enterprises and the
28 establishment or attraction of new private sector enterprises.

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

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

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

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1 (i) Results in the creation of:

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

3 2. At least 30 qualified positions if the aggregate payroll for the
4 qualified positions is greater than a threshold amount equal to the product of multiplying
5 60 times the State's average annual salary, as determined by the Department; [and] OR

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

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

10 1. Manufacturing or mining;

11 2. Transportation or communications;

12 3. Agriculture, forestry, or fishing;

13 4. Research, development, or testing;

14 5. Biotechnology;

15 6. Computer programming, data processing, or other computer
16 related services;

17 7. Central financial, real estate, or insurance services;

18 8. The operation of central administrative offices or a company
19 headquarters;

20 9. A public utility;

21 10. Warehousing; [or]

22 11. BUSINESS SERVICES; OR

23 [11.] 12. Operation of entertainment, recreation, cultural, or
24 tourism-related activities in a multiuse facility located within a revitalization area if the
25 facility generates a minimum of 1,000 new full-time equivalent filled positions in a
26 24-month period and is not primarily used by a professional sports franchise or for
27 gaming.

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

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

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

3 1. \$1,000 multiplied times the number of qualified employees
4 employed by the qualified entity during the credit year; and

5 2. 2.5% of the wages paid by the qualified business entity
6 during the credit year to the qualified employees.

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

9 1. \$1,500 multiplied times the number of qualified employees
10 employed by the qualified entity during the credit year; and

11 2. 5% of the wages paid by the qualified business entity during
12 the credit year to the qualified employees.

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

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

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

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

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

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

31 1. The effective date of the start-up or expansion;

32 2. The number of full-time employees prior to the start-up or
33 expansion and the payroll of the existing employees;

34 3. The number of qualified positions created, qualified
35 employees hired, and the payroll of those employees; and

36 4. Any other information that the Department requires by
37 regulation.

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

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

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

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

12 (ii) The expiration of the 5th taxable year from the credit year.

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

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

19 (i) The credit shall be recomputed to reduce the credit by the
20 percentage reduction of the number of qualified employees;

21 (ii) The recomputed credit shall be subtracted from the amount of
22 credit previously allowed; and

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

26 (2) If, during any of the 3 years succeeding the credit year, the average
27 number of qualified positions falls below the applicable threshold number of positions
28 under subsection (b)(2)(i)1 or 2 of this section, all credits earned shall be recaptured.

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

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

34 (f) Any information provided to the Comptroller or the appropriate agency by a
35 qualified business entity in connection with eligibility for a credit allowed under this
36 section shall be shared by the Comptroller or the appropriate agency with the
37 Department of Business and Economic Development and shall be subject to the
38 confidentiality requirements established by statutes or regulations applicable to the
39 Comptroller or the appropriate agency.

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

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

5 (3) The Department of Assessments and Taxation shall adopt regulations to
6 provide for the computation, carryover, and recapture of the credit under §§ 8-214 and
7 8-411 of the Tax - General Article.

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

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

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