

HOUSE BILL 4
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1999 Regular Session
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(PRE-FILED)

By: **Delegates Taylor, Busch, Arnick, Dewberry, Doory, Guns, Harrison,
Hixson, Howard, Hurson, Kopp, Menes, Montague, Owings, Rawlings,
Rosenberg, Vallario, and Wood**

Requested: November 20, 1998

Introduced and read first time: January 13, 1999

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **One Maryland Economic Development Program for Distressed Counties -**
3 **Income Tax Credits**

4 FOR the purpose of allowing certain credits against the State income tax for certain
5 costs of certain economic development projects undertaken by certain business
6 entities in certain qualified economically distressed counties and certain
7 start-up costs of certain business entities locating in certain qualified
8 economically distressed counties; defining certain terms; requiring the
9 Secretary of Business and Economic Development to adopt certain regulations;
10 providing for the application of this Act; and generally relating to certain tax
11 credits to encourage capital investment and job creation in certain qualified
12 economically distressed counties.

13 BY adding to
14 Article - Tax - General
15 Section 10-712
16 Annotated Code of Maryland
17 (1997 Replacement Volume and 1998 Supplement)

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

20 **Article - Tax - General**

21 10-712.

22 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
23 INDICATED.

24 (2) "CENTRAL FINANCIAL, REAL ESTATE, OR INSURANCE SERVICES"
25 MEANS THE PERFORMANCE OF CENTRAL MANAGEMENT OR ADMINISTRATIVE
26 FUNCTIONS FOR A BUSINESS ENTITY ENGAGED IN FINANCIAL, REAL ESTATE, OR

1 INSURANCE SERVICES, SUCH AS GENERAL MANAGEMENT, ACCOUNTING, COMPUTER
2 TABULATING, DATA PROCESSING, PURCHASING, TRANSPORTATION OR SHIPPING,
3 ADVERTISING, LEGAL, FINANCIAL, AND RESEARCH AND DEVELOPMENT.

4 (3) (I) "COMPANY HEADQUARTERS" MEANS A FACILITY WHERE THE
5 MAJORITY OF A BUSINESS ENTITY'S FINANCIAL, PERSONNEL, LEGAL, AND PLANNING
6 FUNCTIONS ARE HANDLED EITHER ON A REGIONAL OR NATIONAL BASIS.

7 (II) "COMPANY HEADQUARTERS" DOES NOT INCLUDE THE
8 HEADQUARTERS OF A PROFESSIONAL SPORTS ORGANIZATION.

9 (4) "ELIGIBLE ECONOMIC DEVELOPMENT PROJECT" MEANS AN
10 ECONOMIC DEVELOPMENT PROJECT ESTABLISHING OR EXPANDING A BUSINESS
11 FACILITY WITHIN A QUALIFIED DISTRESSED COUNTY THAT IS APPROVED BY THE
12 SECRETARY TO RECEIVE THE TAX CREDITS UNDER THIS SECTION.

13 (5) "FULL-TIME POSITION" MEANS A POSITION REQUIRING AT LEAST 840
14 HOURS OF AN EMPLOYEE'S TIME DURING AT LEAST 24 WEEKS IN A 6-MONTH PERIOD.

15 (6) (I) "PROJECT COSTS" MEANS THE COSTS AND EXPENSES
16 INCURRED BY A BUSINESS ENTITY IN CONNECTION WITH THE ACQUISITION,
17 CONSTRUCTION, REHABILITATION, INSTALLATION, AND EQUIPPING OF AN ELIGIBLE
18 ECONOMIC DEVELOPMENT PROJECT.

19 (II) "PROJECT COSTS" INCLUDES:

20 1. THE COSTS OF ACQUIRING, CONSTRUCTING,
21 REHABILITATING, INSTALLING, AND EQUIPPING THE PROJECT, INCLUDING
22 OBLIGATIONS INCURRED FOR LABOR AND TO CONTRACTORS, SUBCONTRACTORS,
23 BUILDERS, AND MATERIALMEN;

24 2. THE COSTS OF ACQUIRING LAND OR RIGHTS IN LAND AND
25 COSTS INCIDENTAL TO ACQUIRING LAND OR RIGHTS IN LAND;

26 3. THE COSTS OF CONTRACT BONDS AND INSURANCE THAT
27 ARE REQUIRED OR NECESSARY DURING THE ACQUISITION, CONSTRUCTION, OR
28 INSTALLATION OF THE PROJECT;

29 4. THE COSTS OF ARCHITECTURAL AND ENGINEERING
30 SERVICES, INCLUDING TEST BORINGS, SURVEYS, ESTIMATES, PLANS AND
31 SPECIFICATIONS, PRELIMINARY INVESTIGATIONS, ENVIRONMENTAL MITIGATION,
32 AND SUPERVISION OF CONSTRUCTION;

33 5. THE COSTS FOR THE PERFORMANCE OF ALL THE DUTIES
34 REQUIRED BY OR CONSEQUENT TO THE ACQUISITION, CONSTRUCTION, AND
35 INSTALLATION OF THE PROJECT;

36 6. THE COSTS REQUIRED FOR THE INSTALLATION OF
37 UTILITIES SUCH AS WATER, SEWER, SEWER TREATMENT, GAS, ELECTRICITY,
38 COMMUNICATIONS, RAILROADS, AND SIMILAR FACILITIES;

1 12. BUSINESS SERVICES; AND

2 (IV) IS CERTIFIED BY THE SECRETARY UNDER SUBSECTION (E) OF
3 THIS SECTION AS QUALIFYING FOR THE TAX CREDITS UNDER THIS SECTION.

4 (8) "QUALIFIED DISTRESSED COUNTY" MEANS A COUNTY, INCLUDING
5 BALTIMORE CITY, FOR WHICH THE AVERAGE RATE OF UNEMPLOYMENT FOR THE
6 MOST RECENT 18-MONTH PERIOD FOR WHICH DATA ARE AVAILABLE IS GREATER
7 THAN 150% OF THE AVERAGE RATE OF UNEMPLOYMENT FOR THE ENTIRE STATE
8 DURING THAT SAME PERIOD.

9 (9) "QUALIFIED EMPLOYEE" MEANS AN EMPLOYEE FILLING A
10 QUALIFIED POSITION.

11 (10) (I) "QUALIFIED POSITION" MEANS A POSITION THAT:

12 1. IS A FULL-TIME POSITION AND IS OF INDEFINITE
13 DURATION;

14 2. PAYS AT LEAST 150% OF THE FEDERAL MINIMUM WAGE;

15 3. IS LOCATED IN A QUALIFIED DISTRESSED COUNTY IN
16 MARYLAND;

17 4. IS NEWLY CREATED, AS A RESULT OF THE
18 ESTABLISHMENT OR EXPANSION OF A BUSINESS FACILITY IN A SINGLE LOCATION IN
19 THE QUALIFIED DISTRESSED COUNTY; AND

20 5. IS FILLED.

21 (II) "QUALIFIED POSITION" DOES NOT INCLUDE A POSITION THAT
22 IS:

23 1. CREATED WHEN AN EMPLOYMENT FUNCTION IS SHIFTED
24 FROM AN EXISTING BUSINESS FACILITY OF THE BUSINESS ENTITY LOCATED IN
25 MARYLAND TO ANOTHER BUSINESS FACILITY OF THE SAME BUSINESS ENTITY IF
26 THE POSITION DOES NOT REPRESENT A NET NEW JOB IN THE STATE;

27 2. CREATED THROUGH A CHANGE IN OWNERSHIP OF A
28 TRADE OR BUSINESS;

29 3. CREATED THROUGH A CONSOLIDATION, MERGER, OR
30 RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION DOES NOT REPRESENT A
31 NET NEW JOB IN THE STATE;

32 4. CREATED WHEN AN EMPLOYMENT FUNCTION IS
33 CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY LOCATED IN THE
34 STATE TO ANOTHER BUSINESS ENTITY IF THE POSITION DOES NOT REPRESENT A
35 NET NEW JOB IN THE STATE; OR

36 5. FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.

1 (11) "SECRETARY" MEANS THE SECRETARY OF BUSINESS AND ECONOMIC
2 DEVELOPMENT.

3 (12) "START-UP COSTS" MEANS:

4 (I) A COMPANY'S COST TO FURNISH AND EQUIP A NEW LOCATION
5 FOR ORDINARY BUSINESS FUNCTIONS, INCLUDING COMPUTERS, NONRECURRING
6 COSTS OF FIXED TELECOMMUNICATIONS EQUIPMENT, FURNISHINGS, AND OFFICE
7 EQUIPMENT; AND

8 (II) A COMPANY'S EXPENDITURES FOR MOVING COSTS,
9 SEPARATION COSTS, AND ANY OTHER EXPENDITURE INCURRED BY A COMPANY
10 DIRECTLY RELATED TO A MOVE FROM AN EXISTING LOCATION OUTSIDE OF
11 MARYLAND TO A LOCATION IN A QUALIFIED DISTRESSED COUNTY IN MARYLAND.

12 (B) (1) A QUALIFIED BUSINESS ENTITY MAY CLAIM A CREDIT UNDER THIS
13 SUBSECTION AGAINST THE STATE INCOME TAX FOR THE COSTS OF AN ELIGIBLE
14 ECONOMIC DEVELOPMENT PROJECT IN A QUALIFIED DISTRESSED COUNTY IF THE
15 QUALIFIED BUSINESS ENTITY'S TOTAL PROJECT COSTS FOR THE ELIGIBLE
16 ECONOMIC DEVELOPMENT PROJECT IS AT LEAST \$500,000.

17 (2) THE CREDIT ALLOWED UNDER THIS SUBSECTION EQUALS THE
18 LESSER OF:

19 (I) 100% OF THE PROJECT COSTS FOR THE ELIGIBLE ECONOMIC
20 DEVELOPMENT PROJECT, LESS THE AMOUNT OF THE CREDIT ALLOWED WITH
21 RESPECT TO THE PROJECT FOR PRIOR TAXABLE YEARS; OR

22 (II) THE STATE INCOME TAX FOR THE TAXABLE YEAR ON THE
23 BUSINESS ENTITY'S INCOME GENERATED BY OR ARISING OUT OF THE PROJECT, AS
24 DETERMINED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

25 (3) (I) THE STATE INCOME TAX FOR THE TAXABLE YEAR ON THE
26 BUSINESS ENTITY'S INCOME GENERATED BY OR ARISING OUT OF AN ELIGIBLE
27 ECONOMIC DEVELOPMENT PROJECT SHALL EQUAL THE DIFFERENCE BETWEEN:

28 1. THE STATE INCOME TAX WITHOUT REGARD TO THIS
29 SECTION; AND

30 2. THE STATE INCOME TAX ON THE BUSINESS ENTITY'S
31 MARYLAND TAXABLE INCOME REDUCED BY THE AMOUNT OF ITS NET INCOME
32 ATTRIBUTABLE TO THE ELIGIBLE ECONOMIC DEVELOPMENT PROJECT.

33 (II) 1. IF AN ELIGIBLE ECONOMIC DEVELOPMENT PROJECT IS A
34 TOTALLY SEPARATE FACILITY, NET INCOME ATTRIBUTABLE TO THE PROJECT SHALL
35 BE DETERMINED UNDER THE SEPARATE ACCOUNTING METHOD REFLECTING ONLY
36 THE GROSS INCOME, DEDUCTIONS, EXPENSES, GAINS, AND LOSSES THAT ARE
37 DIRECTLY ATTRIBUTABLE TO THE FACILITY AND OVERHEAD EXPENSES
38 APPORTIONED TO THE FACILITY.

1 2. IF THE ELIGIBLE ECONOMIC DEVELOPMENT PROJECT IS
2 AN EXPANSION TO A PREVIOUSLY EXISTING FACILITY:

3 A. NET INCOME ATTRIBUTABLE TO THE ENTIRE FACILITY
4 SHALL BE DETERMINED UNDER THE SEPARATE ACCOUNTING METHOD REFLECTING
5 ONLY THE GROSS INCOME, DEDUCTIONS, EXPENSES, GAINS, AND LOSSES THAT ARE
6 DIRECTLY ATTRIBUTABLE TO THE FACILITY AND OVERHEAD EXPENSES
7 APPORTIONED TO THE FACILITY; AND

8 B. THE NET INCOME ATTRIBUTABLE TO THE ELIGIBLE
9 ECONOMIC DEVELOPMENT PROJECT SHALL BE DETERMINED BY APPORTIONING THE
10 SEPARATE ACCOUNTING NET INCOME OF THE ENTIRE FACILITY TO THE ELIGIBLE
11 ECONOMIC DEVELOPMENT PROJECT BY A FORMULA APPROVED BY THE
12 COMPTROLLER.

13 3. IF A BUSINESS ENTITY CAN SHOW TO THE SATISFACTION
14 OF THE COMPTROLLER THAT THE NATURE OF THE OPERATIONS AND ACTIVITIES OF
15 THE BUSINESS ENTITY ARE SUCH THAT IT IS NOT PRACTICAL TO USE THE SEPARATE
16 ACCOUNTING METHOD TO DETERMINE THE NET INCOME FROM THE FACILITY AT
17 WHICH THE ELIGIBLE ECONOMIC DEVELOPMENT PROJECT IS LOCATED, THE
18 BUSINESS ENTITY SHALL DETERMINE NET INCOME FROM THE ELIGIBLE ECONOMIC
19 DEVELOPMENT PROJECT USING AN ALTERNATIVE METHOD APPROVED BY THE
20 COMPTROLLER.

21 (4) (I) IF THE PROJECT COSTS FOR THE ELIGIBLE ECONOMIC
22 DEVELOPMENT PROJECT LESS THE AMOUNT OF THE CREDIT ALLOWED WITH
23 RESPECT TO THE PROJECT FOR PRIOR TAXABLE YEARS EXCEEDS THE STATE INCOME
24 TAX ON THE BUSINESS ENTITY'S INCOME GENERATED BY OR ARISING OUT OF THE
25 PROJECT FOR THAT TAXABLE YEAR, A QUALIFIED BUSINESS ENTITY ELIGIBLE FOR
26 THE CREDIT UNDER THIS SUBSECTION MAY CLAIM ANY EXCESS AS A CREDIT FOR
27 THE PAYMENT OF WITHHOLDING TAXES THAT THE QUALIFIED BUSINESS ENTITY IS
28 REQUIRED TO PAY TO THE COMPTROLLER UNDER § 10-906(A) OF THIS TITLE, IN THE
29 MANNER PROVIDED UNDER SUBSECTION (C) OF THIS SECTION.

30 (II) ANY CREDIT UNUSED UNDER EITHER THIS SUBSECTION OR
31 SUBSECTION (C) OF THIS SECTION MAY BE APPLIED AS A CREDIT FOR UP TO 14
32 TAXABLE YEARS AFTER THE FIRST TAXABLE YEAR IN WHICH THE CREDIT IS
33 CLAIMED WITH RESPECT TO THE ELIGIBLE ECONOMIC DEVELOPMENT PROJECT OR
34 UNTIL FULLY USED.

35 (C) (1) A QUALIFIED BUSINESS ENTITY THAT LOCATES IN A QUALIFIED
36 DISTRESSED COUNTY MAY CLAIM A CREDIT IN THE AMOUNT PROVIDED IN
37 PARAGRAPH (2) OF THIS SUBSECTION AS A CREDIT FOR THE PAYMENT TO THE
38 COMPTROLLER OF TAXES THAT THE QUALIFIED BUSINESS ENTITY:

39 (I) IS REQUIRED TO WITHHOLD FROM THE WAGES OF EMPLOYEES
40 UNDER § 10-908 OF THIS TITLE; AND

41 (II) IS REQUIRED TO PAY TO THE COMPTROLLER UNDER § 10-906(A)
42 OF THIS TITLE.

1 (2) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR EACH
2 TAXABLE YEAR EQUALS THE LESSER OF:

3 (I) 100% OF THE BUSINESS ENTITY'S START-UP COSTS ASSOCIATED
4 WITH ESTABLISHING OR EXPANDING A BUSINESS FACILITY IN A QUALIFIED
5 DISTRESSED COUNTY, LESS THE AMOUNT OF THE CREDIT ALLOWED WITH RESPECT
6 TO THE PROJECT FOR PRIOR TAXABLE YEARS; OR

7 (II) THE PRODUCT OF MULTIPLYING \$10,000 TIMES THE NUMBER
8 OF QUALIFIED EMPLOYEES EMPLOYED AT THE NEW OR EXPANDED BUSINESS
9 FACILITY.

10 (3) THE CREDIT ALLOWED UNDER THIS SUBSECTION MAY BE ALLOWED
11 FOR A MAXIMUM OF 10 YEARS.

12 (D) THE SECRETARY SHALL ADOPT REGULATIONS TO SPECIFY CRITERIA AND
13 PROCEDURES FOR APPLICATION AND APPROVAL OF PROJECTS FOR THE TAX CREDIT
14 UNDER THIS SECTION.

15 (E) (1) TO BE CERTIFIED AS A QUALIFIED BUSINESS ENTITY, A BUSINESS
16 ENTITY SHALL SUBMIT THE FOLLOWING TO THE SECRETARY IN ACCORDANCE WITH
17 REGULATIONS ADOPTED BY THE SECRETARY:

18 (I) THE EFFECTIVE DATE OF THE START-UP OR EXPANSION;

19 (II) THE NUMBER OF FULL-TIME EMPLOYEES PRIOR TO THE
20 START-UP OR EXPANSION AND THE PAYROLL OF THE EXISTING EMPLOYEES;

21 (III) THE NUMBER OF QUALIFIED POSITIONS CREATED, QUALIFIED
22 EMPLOYEES HIRED, AND THE PAYROLL OF THOSE EMPLOYEES; AND

23 (IV) ANY OTHER INFORMATION THAT THE SECRETARY REQUIRES
24 BY REGULATION.

25 (2) THE SECRETARY MAY REQUIRE ANY INFORMATION REQUIRED
26 UNDER THIS SUBSECTION TO BE VERIFIED BY AN INDEPENDENT AUDITOR
27 SELECTED BY THE BUSINESS ENTITY.

28 (F) A QUALIFIED BUSINESS ENTITY MUST OBTAIN AND SUBMIT TO THE
29 COMPTROLLER WITH THE TAX RETURN ON WHICH THE CREDIT IS CLAIMED,
30 CERTIFICATION FROM THE SECRETARY THAT THE ENTITY HAS MET THE
31 REQUIREMENTS OF THIS SECTION AND IS ELIGIBLE FOR THE CREDIT.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 July 1, 1999, and shall be applicable to all taxable years beginning after December 31,
34 1999.