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By: **Delegates Hixson, Healey, and Bozman**  
Introduced and read first time: February 8, 2002  
Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Tax Credit Administration Act of 2002**

3 FOR the purpose of repealing a requirement that the Job Creation Tax Credit must be  
4 taken ratably for certain tax years; altering the time period within which certain  
5 taxpayers may carry forward excess credits for succeeding taxable years for  
6 certain tax credits; altering certain reporting requirements for certain tax  
7 credits; and generally relating to the administration of certain tax credits.

8 BY repealing and reenacting, with amendments,  
9 Article 83A - Department of Business and Economic Development  
10 Section 5-1102  
11 Annotated Code of Maryland  
12 (1998 Replacement Volume and 2001 Supplement)  
13 (As enacted by Chapter 756 of the Acts of the General Assembly of 1997)

14 BY repealing and reenacting, with amendments,  
15 Article 88A - Department of Human Resources  
16 Section 54(f)  
17 Annotated Code of Maryland  
18 (1998 Replacement Volume and 2001 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - Education  
21 Section 21-309(f)  
22 Annotated Code of Maryland  
23 (2001 Replacement Volume)

24 BY repealing and reenacting, with amendments,  
25 Article - Tax - General  
26 Section 10-702(f)  
27 Annotated Code of Maryland  
28 (1997 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - Tax - Property  
3 Section 9-230  
4 Annotated Code of Maryland  
5 (2001 Replacement Volume and 2001 Supplement)

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

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

9 5-1102.

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

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

17 (ii) A business entity may not be certified as qualifying for the tax  
18 credit under this subtitle unless the business entity notifies the Department of its  
19 intent to seek certification before hiring any qualified employees to fill the qualified  
20 positions necessary to satisfy the requirements of paragraph (2)(i) of this subsection  
21 for establishing or expanding the business facility on which the credit is based.

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

24 (i) Results in the creation of:

25 1. At least 60 qualified positions;

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

30 3. At least 25 qualified positions if the business facility  
31 established or expanded by the business entity is located in a State priority funding  
32 area; and

33 (ii) Is primarily engaged in one or more of the following:

34 1. Manufacturing or mining;

35 2. Transportation or communications;

- 1 3. Agriculture, forestry, or fishing;
- 2 4. Research, development, or testing;
- 3 5. Biotechnology;
- 4 6. Computer programming, data processing, or other  
5 computer related services;
- 6 7. Central financial, real estate, or insurance services;
- 7 8. The operation of central administrative offices or a  
8 company headquarters;
- 9 9. A public utility;
- 10 10. Warehousing;
- 11 11. Business services, if the business facility established or  
12 expanded by the business entity is located in a State priority funding area; or
- 13 12. Operation of entertainment, recreation, cultural, or  
14 tourism-related activities in a multiuse facility located within a revitalization area if  
15 the facility generates a minimum of 1,000 new full-time equivalent filled positions in  
16 a 24-month period and is not primarily used by a professional sports franchise or for  
17 gaming.

18 (3) In determining whether a business facility is engaged in a qualifying  
19 activity described in paragraph (2)(ii) of this subsection, the Department shall  
20 consider the definitions set forth in the Standard Industrial Classification Manual.

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

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

25 1. \$1,000 multiplied times the number of qualified  
26 employees employed by the qualified entity during the credit year; and

27 2. 2.5% of the wages paid by the qualified business entity  
28 during the credit year to the qualified employees.

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

31 1. \$1,500 multiplied times the number of qualified  
32 employees employed by the qualified entity during the credit year; and

33 2. 5% of the wages paid by the qualified business entity  
34 during the credit year to the qualified employees.

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

4 [(4)] (3) The credit earned by a qualified business entity under this  
5 subtitle may not exceed \$1,000,000 for any credit year.

6 [(5)] (4) The same credit cannot be applied more than once against  
7 different taxes by the same taxpayer.

8 [(6)] (5) (i) To be certified as a qualified business entity, a business  
9 entity shall submit the following to the Department in accordance with regulations  
10 adopted by the Department:

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

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

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

16 4. Any other information that the Department requires by  
17 regulation.

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

21 [(7)] (6) A qualified business entity must obtain, and submit to the  
22 appropriate State agency with the tax return on which the credit is claimed,  
23 certification from the Department that the entity has met the requirements of this  
24 section and is eligible for the credit.

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

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

30 (ii) The expiration of the [5th] 7TH taxable year from the credit  
31 year.

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

34 (e) (1) If, during any of the 3 years succeeding the credit year, the number of  
35 qualified positions of the qualifying business entity falls more than 5% below the

1 average number of qualified positions during the credit year on which the credit was  
2 computed, the credit shall be recaptured as follows:

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

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

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

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

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

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

21 (f) Any information provided to the Comptroller or the appropriate agency by  
22 a qualified business entity in connection with eligibility for a credit allowed under  
23 this section shall be shared by the Comptroller or the appropriate agency with the  
24 Department of Business and Economic Development and shall be subject to the  
25 confidentiality requirements established by statutes or regulations applicable to the  
26 Comptroller or the appropriate agency.

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

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

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

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

1 (h) [(1)] The Department AND THE COMPTROLLER OF THE TREASURY  
2 shall report to the Governor and, subject to § 2-1246 of the State Government Article,  
3 to the General Assembly by December 31 of each year on [the business entities  
4 certified as eligible for tax credits in the preceding fiscal year.];

5 (1) THE BUSINESS ENTITIES CERTIFIED AS ELIGIBLE FOR TAX  
6 CREDITS IN THE PRECEDING FISCAL YEAR;

7 (2) THE NUMBER OF JOBS CREATED BY THE BUSINESS ENTITIES  
8 CERTIFIED AS ELIGIBLE FOR TAX CREDITS IN THE PRECEDING FISCAL YEAR,  
9 INCLUDING THE NUMBER OF JOBS CREATED WITHIN EACH ELIGIBLE BUSINESS  
10 SECTOR, THE NUMBER OF JOBS CREATED WITHIN PRIORITY FUNDING AREAS, AND  
11 THE NUMBER OF JOBS CREATED WITHIN REVITALIZATION AREAS; AND

12 (3) THE NUMBER AND AMOUNTS OF CREDITS CLAIMED DURING  
13 THE PRECEDING FISCAL YEAR BY ELIGIBLE BUSINESS ENTITIES.

14 **Article 88A - Department of Human Resources**

15 54.

16 (f) If the credit allowed under this section in any taxable year exceeds the  
17 total tax otherwise payable by the business entity for that taxable year, a business  
18 entity may apply the excess as a credit for succeeding taxable years until the earlier  
19 of:

20 (1) The full amount of the excess is used; or

21 (2) The expiration of the [fifth] 7TH taxable year after the taxable year  
22 in which the wages or qualified child care expenses for which the credit is claimed are  
23 paid.

24 **Article - Education**

25 21-309.

26 (f) If the credit allowed under this section in any taxable year exceeds the  
27 total tax otherwise payable by the business entity for that taxable year, a business  
28 entity may apply the excess as a credit for succeeding taxable years until the earlier  
29 of:

30 (1) The full amount of the excess is used; or

31 (2) The expiration of the [5th] 7TH taxable year after the taxable year in  
32 which the wages or qualified child care or transportation expenses for which the  
33 credit is claimed are paid.

**Article - Tax - General**

10-702.

(f) If the credit allowed under this section in any taxable year exceeds the State income tax for that taxable year, a business entity may apply the excess as a credit against the State income tax for succeeding taxable years until the earlier of:

(1) the full amount of the excess is used; or

(2) the expiration of the [5th] 7TH taxable year from the date on which the business entity hired the qualified employee to whom the credit first applies.

**Article - Tax - Property**

9-230.

(a) (1) In this section the following words have the meanings indicated.

(2) "Affiliate" means a person:

(i) that directly or indirectly owns at least 80% of a business entity;

or

(ii) 80% of which is owned, directly or indirectly, by a business entity.

(3) "Business entity" means a person conducting a trade or business in the State, that is subject to the State individual or corporate income tax, insurance premiums tax, financial institution franchise tax, or public service company franchise tax.

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

(5) (i) "New permanent full-time position" means a position that is:

1. a full-time position of indefinite duration;

2. located in Maryland;

3. newly created, as a result of the establishment or expansion of a business facility in the State; and

4. filled.

(ii) "New permanent full-time position" does not include a position that is:

1. created when an employment function is shifted from an existing business facility of the business entity or its affiliates located in Maryland to

1 another business facility of the same business entity or its affiliates, if the position  
2 does not represent a net new job in the State;

3 2. created through a change in ownership of a trade or  
4 business;

5 3. created through a consolidation, merger, or restructuring  
6 of a business entity or its affiliates, if the position does not represent a net new job in  
7 the State;

8 4. created when an employment function is contractually  
9 shifted from an existing business entity or its affiliates, located in the State to  
10 another business entity or its affiliates, if the position does not represent a net new  
11 job in the State; or

12 5. filled for a period of less than 12 months.

13 (6) "New or expanded premises" means real property, including a  
14 building or part of a building that has not been previously occupied, where a business  
15 entity or its affiliates locate to conduct business.

16 (7) "Notification date" means the date on which the business entity  
17 provides written notice to the county or municipal corporation as required under  
18 subsection (b)(6) of this section.

19 (b) (1) The Mayor and City Council of Baltimore City or the governing body  
20 of a county or of a municipal corporation may enact legislation necessary to grant  
21 either property tax credits, enhanced property tax credits, or both types of property  
22 tax credits against the county or municipal corporation property tax imposed on real  
23 property owned or leased by business entities that meet the requirements specified  
24 for the applicable tax credit under this section and on personal property owned by  
25 business entities that meet the requirements specified under this section.

26 (2) (i) If a property tax credit is granted under paragraph (1) of this  
27 subsection, a business entity that meets the requirements for the property tax credit  
28 under this section and obtains certification from the county or municipal corporation  
29 may claim a State tax credit against the individual or corporate income tax, insurance  
30 premiums tax, or financial institution franchise tax as provided under subsection  
31 (c)(3) of this section.

32 (ii) If an enhanced property tax credit is granted under this section  
33 and a business entity and its affiliates meet the requirements for the enhanced  
34 property tax credit and obtain certification from the county or municipal corporation,  
35 the business entity or any of its affiliates may claim a State tax credit against the  
36 individual or corporate income tax, insurance premiums tax, or financial institution  
37 franchise tax as provided under subsection (d)(4) of this section.

38 (3) A tax credit may not be granted under this section if:



1 (i) the business entity or any of its affiliates have moved their  
2 operations from one county in the State to the new or expanded premises in another;  
3 or

4 (ii) the new or expanded premises has otherwise been granted a tax  
5 credit or exemption under this article for the taxable year.

6 (4) To qualify for a tax credit under this section, the new or expanded  
7 premises must be located in a priority funding area as designated in Title 5, Subtitle  
8 7B of the State Finance and Procurement Article.

9 (5) To qualify for a property tax credit under this section against  
10 property tax imposed on personal property a business entity shall certify that the  
11 personal property is located on the premises that qualify for a property tax credit or  
12 enhanced property tax credit under this section.

13 (6) To qualify for a tax credit under this section, before it obtains the new  
14 or expanded premises or hires employees to fill the new permanent full-time  
15 positions at the new or expanded premises, a business entity shall provide written  
16 notification to the county or municipal corporation in which the new or expanded  
17 premises are located:

18 (i) that it intends to claim the property tax credit or enhanced  
19 property tax credit;

20 (ii) if it intends to claim the enhanced property tax credit, how it  
21 expects to meet the requirements to qualify for the enhanced property tax credit; and

22 (iii) when it expects to obtain the new or expanded premises and  
23 hire the required number of employees in the new permanent full-time positions.

24 (7) If a business entity meets the requirements for a tax credit under this  
25 section, the county or municipal corporation shall certify to the Department and the  
26 Department of Business and Economic Development that the business entity has met  
27 the requirements for the tax credit for the taxable year that follows the date on which  
28 it met the requirements.

29 (c) (1) To qualify for a property tax credit under this subsection, a business  
30 entity shall:

31 (i) obtain at least 5,000 square feet of new or expanded premises  
32 by purchasing newly constructed premises, constructing new premises, causing new  
33 premises to be constructed, or leasing newly constructed premises; and

34 (ii) 1. except as provided in item 2 of this subparagraph, employ  
35 at least 25 individuals in new permanent full-time positions during a 24-month  
36 period, during which period the business entity must also obtain and occupy the new  
37 or expanded premises; or





1 (i) within a 6-year period beginning on the notification date,  
2 employ individuals in the number of new permanent full-time positions required  
3 under paragraph (1) of this subsection;

4 (ii) during the 6-year hiring period, obtain and occupy the new or  
5 expanded premises and, if applicable, the newly renovated premises adjoining or  
6 otherwise neighboring the new or expanded premises; and

7 (iii) during the 6-year hiring period, comply with all other  
8 requirements for the credits described in this subsection and in any applicable local  
9 law.

10 (4) (i) If a business entity meets the requirements of this subsection  
11 and subsection (b) of this section and of applicable local law adopted under subsection  
12 (b)(1) of this section, for each of the first 12 taxable years after it qualifies for the  
13 credit, a property tax credit may be claimed against the county or municipal  
14 corporation property taxes that would otherwise be due.

15 (ii) The county or municipal corporation shall compute the amount  
16 of the property tax credit granted to equal 58.5% of the amount of property tax  
17 imposed on the increase in assessment of:

18 1. the new or expanded premises;

19 2. newly renovated real property improvements adjoining or  
20 otherwise neighboring the new or expanded premises, if the renovations are  
21 substantial, as defined in legislation enacted by the county or municipal corporation  
22 to grant the credits under this subsection; and

23 3. the personal property located on the premises described in  
24 items 1 and 2 of this subparagraph.

25 (iii) The increase in assessment shall be measured from the  
26 notification date to the applicable annual assessment date after the county or  
27 municipal corporation has certified that the business entity has qualified for the  
28 credit.

29 (5) On receipt of notification under subsection (b)(7) of this section that a  
30 business entity has been certified for an enhanced property tax credit under this  
31 subsection, the Department shall compute and certify to the Comptroller or, in the  
32 case of the insurance premiums tax, the Maryland Insurance Commissioner the  
33 amount of the State tax credit authorized under this subsection that may be claimed  
34 by the business entity or any of its affiliates against the individual or corporate  
35 income tax, insurance premiums tax, or financial institution franchise tax that would  
36 otherwise be due to equal 31.5% of the amount of property tax imposed on the  
37 increase in assessment of the real and personal property described in paragraph  
38 (4)(ii) of this subsection for each of the first 12 taxable years for which the credit is  
39 allowed.

1           (6)     If a business entity or any of its affiliates claim the enhanced tax  
2 credits under this subsection for a certain premises, they may not claim the tax  
3 credits under subsection (c) of this section.

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

6           (f)     If the State tax credit allowed under this section in any taxable year  
7 exceeds the total tax otherwise payable by the business entity for that taxable year, a  
8 business entity or its affiliates may apply the excess as a credit for succeeding taxable  
9 years until the earlier of:

10           (1)     the full amount of the excess is used; or

11           (2)     the expiration of the [5th] 7TH taxable year after the taxable year in  
12 which the State tax credit is claimed.

13           (g)     The Maryland Insurance Commissioner shall adopt regulations to provide  
14 for the computation, carryover, and recapture of the State tax credit under § 6-116 of  
15 the Insurance Article.

16           (h)     The Department shall adopt regulations to provide for the computation,  
17 carryover, and recapture of the State tax credit under § 8-217 of the Tax - General  
18 Article.

19           (i)     The Comptroller shall adopt regulations to provide for the computation,  
20 carryover, and recapture of the State tax credit under § 10-704.8 of the Tax - General  
21 Article.

22           (j)     The lessor of real property eligible for property tax credits under this  
23 section shall reduce by the amount of the property tax credits computed under this  
24 section the amount of taxes for which the eligible business entity is contractually  
25 liable under the lease agreement.

26           (k)     The governing body of the county or municipal corporation shall provide,  
27 by law, for:

28           (1)     the specific requirements for eligibility for a tax credit authorized  
29 under this section;

30           (2)     any additional limitations on eligibility for the credit;

31           (3)     the information to be supplied by the business entity to a county or  
32 municipal corporation and the Comptroller to verify that the business entity is not  
33 subject to subsection (l) of this section; and

34           (4)     any other provision appropriate to implement the credit.

1 (l) All credits claimed under this section for a taxable year shall be recaptured  
2 if, during the 3 taxable years succeeding the taxable year in which a credit was  
3 claimed:

4 (1) the employment level or square footage of a business entity at the  
5 premises falls below the applicable thresholds required to qualify for the property tax  
6 credit under subsection (c) of this section; or

7 (2) For the enhanced property tax credit, the employment level or square  
8 footage of a business entity, together with its affiliates, at the premises falls below the  
9 applicable thresholds required to qualify for the enhanced property tax credit under  
10 subsection (d) of this section.

11 (m) On October 1 of each year, each county and municipal corporation that has  
12 granted tax credits under this section shall report to the Department, the Department  
13 of Business and Economic Development, and the Comptroller:

14 (1) the amount of each credit granted for that year, INCLUDING THE  
15 AMOUNT OF EACH ENHANCED CREDIT GRANTED; [and]

16 (2) THE NUMBER OF JOBS CREATED BY EACH BUSINESS ENTITY  
17 RECEIVING TAX CREDITS FOR THAT YEAR;

18 (3) THE NUMBER OF JOBS CREATED WITHIN EACH ELIGIBLE BUSINESS  
19 SECTOR FOR THAT YEAR; AND

20 [(2)] (4) whether the business entity is in compliance with the  
21 requirements for the tax credit.

22 (n) (1) After a business entity has complied with all the requirements  
23 provided in this section and in any applicable local law for a particular tax credit, the  
24 business entity shall be entitled to claim the credits for the term provided in this  
25 section.

26 (2) No abrogation of this law or law hereinafter enacted that eliminates  
27 or reduces the tax credits available under this section shall apply to any business  
28 entity or affiliate of a business entity that qualified for the tax credits before the  
29 effective date of such law or abrogation.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 July 1, 2002 and shall apply to all taxable years beginning after December 31, 2001.