
By: **Delegates Hixson, Healey, and ~~Bozman~~ Bozman, and Phillips**

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Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2002

CHAPTER _____

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)

1 BY repealing and reenacting, with amendments,
2 Article - Tax - General
3 Section 10-702(f)
4 Annotated Code of Maryland
5 (1997 Replacement Volume and 2001 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - Tax - Property
8 Section 9-230
9 Annotated Code of Maryland
10 (2001 Replacement Volume and 2001 Supplement)

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

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

14 5-1102.

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

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

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

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

29 (i) Results in the creation of:

30 1. At least 60 qualified positions;

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

- 1 (i) The full amount of the excess is used; or
- 2 (ii) The expiration of the [5th] 7TH taxable year from the credit
3 year.
- 4 (2) The credit under this section may not be carried back to a preceding
5 taxable year.
- 6 (e) (1) If, during any of the 3 years succeeding the credit year, the number of
7 qualified positions of the qualifying business entity falls more than 5% below the
8 average number of qualified positions during the credit year on which the credit was
9 computed, the credit shall be recaptured as follows:
- 10 (i) The credit shall be recomputed to reduce the credit by the
11 percentage reduction of the number of qualified employees;
- 12 (ii) The recomputed credit shall be subtracted from the amount of
13 credit previously allowed; and
- 14 (iii) The qualifying business entity shall pay the difference as taxes
15 payable to the State for the taxable year in which the number of qualified positions
16 falls more than 5% below the average number of qualified positions during the credit
17 year.
- 18 (2) If, during any of the 3 years succeeding the credit year, the average
19 number of qualified positions falls below the applicable threshold number of positions
20 under subsection (b)(2)(i) of this section, all credits earned shall be recaptured.
- 21 (3) (i) During the 3 taxable years succeeding the credit year, the
22 qualified business entity shall supply information required by the Department in
23 regulation to verify that the business entity is not subject to paragraph (1) or (2) of
24 this subsection.
- 25 (ii) The Department may require any information required under
26 this paragraph to be verified by an independent auditor selected by the business
27 entity.
- 28 (f) Any information provided to the Comptroller or the appropriate agency by
29 a qualified business entity in connection with eligibility for a credit allowed under
30 this section shall be shared by the Comptroller or the appropriate agency with the
31 Department of Business and Economic Development and shall be subject to the
32 confidentiality requirements established by statutes or regulations applicable to the
33 Comptroller or the appropriate agency.
- 34 (g) (1) Subject to the provisions of this subsection, the Secretary shall adopt
35 regulations to carry out the provisions of this subtitle.
- 36 (2) The Comptroller shall adopt regulations to provide for the
37 computation, carryover, and recapture of the credit under § 10-704.4 of the Tax -
38 General Article.

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

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

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

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

13 (2) THE NUMBER OF JOBS CREATED BY THE BUSINESS ENTITIES
 14 CERTIFIED AS ELIGIBLE FOR TAX CREDITS IN THE PRECEDING FISCAL YEAR,
 15 INCLUDING THE NUMBER OF JOBS CREATED WITHIN EACH ELIGIBLE BUSINESS
 16 SECTOR, THE NUMBER OF JOBS CREATED WITHIN PRIORITY FUNDING AREAS, AND
 17 THE NUMBER OF JOBS CREATED WITHIN REVITALIZATION AREAS; AND

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

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

21 54.

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

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

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

30 **Article - Education**

31 21-309.

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

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

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

3 1. created when an employment function is shifted from an
4 existing business facility of the business entity or its affiliates located in Maryland to
5 another business facility of the same business entity or its affiliates, if the position
6 does not represent a net new job in the State;

7 2. created through a change in ownership of a trade or
8 business;

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

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

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

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

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

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

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

36 (ii) If an enhanced property tax credit is granted under this section
37 and a business entity and its affiliates meet the requirements for the enhanced
38 property tax credit and obtain certification from the county or municipal corporation,
39 the business entity or any of its affiliates may claim a State tax credit against the

1 individual or corporate income tax, insurance premiums tax, or financial institution
2 franchise tax as provided under subsection (d)(4) of this section.

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

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

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

9 (4) To qualify for a tax credit under this section, the new or expanded
10 premises must be located in a priority funding area as designated in Title 5, Subtitle
11 7B of the State Finance and Procurement Article.

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

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

21 (i) that it intends to claim the property tax credit or enhanced
22 property tax credit;

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

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

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

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

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

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

5 2. in a county with a population under 30,000, employ at
6 least 10 individuals in new permanent full-time positions during a 24-month period,
7 during which period the business entity must also obtain and occupy the new or
8 expanded premises.

9 (2) If a business entity meets the requirements of paragraph (1) of this
10 subsection and subsection (b) of this section and of applicable local law adopted under
11 subsection (b)(1) of this section, the county or municipal corporation shall compute
12 the amount of the property tax credit granted under this subsection for new or
13 expanded premises and the personal property located on those premises that may be
14 claimed against the county or municipal corporation property taxes that would
15 otherwise be due to equal a percentage of the amount of property tax imposed on the
16 assessment of the new or expanded premises, as follows:

17 (i) 52% for the 1st and 2nd taxable years;

18 (ii) 39% in the 3rd and 4th taxable years;

19 (iii) 26% in the 5th and 6th taxable years; and

20 (iv) 0% for each taxable year thereafter.

21 (3) On receipt of notification under subsection (b)(7) of this section that a
22 business entity has been certified for a property tax credit under this subsection, the
23 Department shall compute and certify to the Comptroller or, in the case of the
24 insurance premiums tax, the Maryland Insurance Commissioner the amount of the
25 State tax credit authorized under this subsection that may be claimed against the
26 individual or corporate income tax, insurance premiums tax, or financial institution
27 franchise tax that would otherwise be due to equal a percentage of the amount of
28 property tax imposed on the assessment of the new or expanded premises, as follows:

29 (i) 28% in the 1st and 2nd taxable years;

30 (ii) 21% in the 3rd and 4th taxable years;

31 (iii) 14% in the 5th and 6th taxable years; and

32 (iv) 0% for each taxable year thereafter.

33 (d) (1) For a business entity to qualify for an enhanced property tax credit
34 under this subsection, the business entity, along with its affiliates, shall:

35 (i) 1. obtain at least 250,000 square feet of new or expanded
36 premises by purchasing newly constructed premises, constructing new premises,
37 causing new premises to be constructed, or leasing newly constructed premises;

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.

