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CHAPTER _____

1 AN ACT concerning

2 **Income Tax Credit for Green Buildings**

3 FOR the purpose of altering certain requirements for certain buildings to be eligible
4 for certain tax credits; ~~making certain tax credits for certain buildings and~~
5 ~~building components refundable under certain circumstances; allowing an~~
6 ~~individual or business entity to transfer certain tax credits to another individual or~~
7 ~~business entity under certain circumstances; authorizing an individual or~~
8 ~~business entity to whom a certain credit is transferred to claim a credit against~~
9 ~~the Maryland income tax under certain circumstances; altering the maximum~~
10 ~~annual and aggregate amount of initial credit certificates that the Maryland~~
11 ~~Energy Administration may issue; defining a certain term; providing for the~~
12 application of this Act; and generally relating to credits against the Maryland
13 income tax for certain buildings and building components that meet certain
14 energy efficiency and environmental standards.

15 BY repealing and reenacting, with amendments,
16 Article - Tax - General
17 Section ~~10-722(a), (b), and (k)(1)~~ 10-722(a)(8)
18 Annotated Code of Maryland
19 (2004 Replacement Volume)

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

1 **Article - Tax - General**

2 10-722.

3 (a) (1) ~~In this section the following words have the meanings indicated.~~4 (2) ~~"Administration" means the Maryland Energy Administration.~~5 (3) (i) ~~"Allowable costs" means amounts properly chargeable to capital~~
6 ~~account, other than for land, that are paid or incurred on or after July 1, 2001, for:~~7 1. ~~construction or rehabilitation;~~8 2. ~~commissioning costs;~~9 3. ~~interest paid or incurred during the construction or~~
10 ~~rehabilitation period;~~11 4. ~~architectural, engineering, and other professional fees~~
12 ~~allocable to construction or rehabilitation;~~13 5. ~~closing costs for construction, rehabilitation, or mortgage~~
14 ~~loans;~~15 6. ~~recording taxes and filing fees incurred with respect to~~
16 ~~construction or rehabilitation; and~~17 7. ~~finishes and furnishings consistent with the regulations~~
18 ~~adopted by the Administration under this section, lighting, plumbing, electrical~~
19 ~~wiring, and ventilation.~~20 (ii) ~~"Allowable costs" does not include:~~21 1. ~~the cost of telephone systems and computers, other than~~
22 ~~electrical wiring costs;~~23 2. ~~legal fees allocable to construction or rehabilitation;~~24 3. ~~site costs, including temporary electric wiring, scaffolding,~~
25 ~~demolition costs, and fencing and security facilities;~~26 4. ~~finishes or furnishings that are not consistent with the~~
27 ~~regulations adopted by the Administration under this section; or~~28 5. ~~the cost of purchasing or installing fuel cells, wind~~
29 ~~turbines, or photovoltaic modules.~~30 (4) ~~"Applicable energy efficiency standards" means ASHRAE/IESNA~~
31 ~~Standard 90.1 1999, Energy Standard for Buildings Except Low Rise Residential~~
32 ~~Buildings, published by the American Society of Heating, Refrigerating and~~
33 ~~Air Conditioning Engineers.~~

1 (5) "Base building" means all areas of a building not intended for
 2 occupancy by a tenant or owner, including the structural components of the building,
 3 exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking
 4 areas, mechanical rooms and mechanical systems, and owner controlled or operated
 5 service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms,
 6 stairways, and corridors.

7 (6) ~~"BUSINESS ENTITY" MEANS:~~

8 (4) ~~A PERSON CONDUCTING OR OPERATING A TRADE OR BUSINESS~~
 9 ~~IN THE STATE; OR~~

10 (4) ~~AN ORGANIZATION OPERATING IN THE STATE THAT IS EXEMPT~~
 11 ~~FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE.~~

12 ~~{(6)}~~ (7) "Commissioning" means:

13 (i) ~~the testing and fine tuning of heat, ventilating, and~~
 14 ~~air conditioning systems and other systems to assure proper functioning and~~
 15 ~~adherence to design criteria; and~~

16 (ii) ~~the preparation of system operation manuals and instruction of~~
 17 ~~maintenance personnel.~~

18 ~~{(7)}~~ (8) "Credit allowance year" means the later of:

19 (i) ~~the taxable year during which:~~

20 1. ~~the property, construction, completion, or rehabilitation on~~
 21 ~~which the credit allowed under this section is based is originally placed in service; or~~

22 2. ~~a fuel cell, wind turbine, or photovoltaic module~~
 23 ~~constitutes a qualifying alternate energy source and is fully operational; or~~

24 (ii) ~~the earliest taxable year for which the credit may be claimed~~
 25 ~~under the initial credit certificate issued under subsection (k) of this section.~~

26 ~~{(8)}~~ (9) (8) "Eligible building" means a building located in the State
 27 that:

28 (i) 1. is a building used primarily for nonresidential purposes if
 29 the building contains at least [20,000] 10,000 square feet of interior space;

30 2. is a residential multifamily building with at least 12
 31 dwelling units that contains at least [20,000] 10,000 square feet of interior space; or

32 3. is any combination of buildings described in item 1 or 2 of
 33 this item;

34 (ii) in the case of a newly constructed building for which a
 35 certificate of occupancy was not issued before July 1, 2001:

1 1. is located on a qualified brownfields site, as defined under
2 Article 83A, § 5-1401 of the Code; or

3 2. A. is located in a priority funding area under § 5-7B-02
4 of the State Finance and Procurement Article; and

5 B. is not located on wetlands, the alteration of which requires
6 a permit under § 404 of the federal Clean Water Act, 33 U.S.C. § 1344; and

7 (iii) in the case of a rehabilitation of a building:

8 1. is located in a priority funding area under § 5-7B-02 of
9 the State Finance and Procurement Article or on a qualified brownfields site as
10 defined under Article 83A, § 5-1401 of the Code; or

11 2. is not an increase of more than 25% in the square footage
12 of the building.

13 ~~[(9)] (10) "Fuel cell" means a device that produces electricity directly~~
14 ~~from hydrogen or hydrocarbon fuel through a noncombustive electrochemical process.~~

15 ~~[(10)] (11) "Green base building" means a base building that is part of an~~
16 ~~eligible building and meets the requirements set out in subsection (i) of this section.~~

17 ~~[(11)] (12) "Green whole building" means a building for which the base~~
18 ~~building is a green base building and all tenant space is green tenant space.~~

19 ~~[(12)] (13) "Green tenant space" means tenant space in a building if the~~
20 ~~building is an eligible building and the tenant space meets the requirements of~~
21 ~~subsection (j) of this section.~~

22 ~~[(13)] (14) "Incremental cost of building integrated photovoltaic modules"~~
23 ~~means:~~

24 ~~(i) the cost of building integrated photovoltaic modules and any~~
25 ~~associated inverter, additional wiring or other electrical equipment for the~~
26 ~~photovoltaic modules, or additional mounting or structural materials, less the cost of~~
27 ~~spandrel glass or other building material that would have been used if~~
28 ~~building integrated photovoltaic modules were not installed;~~

29 ~~(ii) incremental labor costs properly allocable to on-site~~
30 ~~preparation, assembly, and original installation of photovoltaic modules; and~~

31 ~~(iii) incremental costs of architectural and engineering services and~~
32 ~~designs and plans directly related to the construction or installation of photovoltaic~~
33 ~~modules.~~

34 ~~[(14)] (15) "Qualifying alternate energy sources" means~~
35 ~~building integrated and nonbuilding integrated photovoltaic modules, wind~~
36 ~~turbines, and fuel cells installed to serve the base building or tenant space that:~~

- 1 (i) have the capability to monitor their actual power output;
- 2 (ii) are fully commissioned upon installation, and annually
- 3 thereafter, to ensure that the systems meet their design specifications; and
- 4 (iii) in the case of wind turbines, meet any applicable noise
- 5 ordinances.

6 ~~[(15)]~~ (16) "Tenant improvements" means improvements that are

7 necessary or appropriate to support or conduct the business of a tenant or occupying

8 owner.

9 ~~[(16)]~~ (17) "Tenant space" means the portion of a building intended for

10 occupancy by a tenant or occupying owner.

11 (b) (1) An individual or [a corporation] BUSINESS ENTITY may claim a

12 credit against the State income tax as provided under this section for green buildings

13 and green building components.

14 (2) (f) If the credit allowed under this section IN ANY TAXABLE YEAR

15 exceeds the State income tax PAYABLE BY THE INDIVIDUAL OR BUSINESS ENTITY

16 FOR THAT TAXABLE YEAR, [any unused credit may be carried forward and applied for

17 succeeding taxable years until the earlier of:

- 18 (i) the full amount of the credit is used; or
- 19 (ii) the expiration of the 10th year after the taxable year for which
- 20 the credit was allowed] THE INDIVIDUAL OR BUSINESS ENTITY MAY CLAIM A
- 21 REFUND IN THE AMOUNT OF THE EXCESS.

22 (H) A REFUND PAYABLE UNDER SUBPARAGRAPH (I) OF THIS

23 PARAGRAPH:

24 1. OPERATES TO REDUCE THE INCOME TAX REVENUE FROM

25 CORPORATIONS IF THE PERSON ENTITLED TO THE REFUND IS A CORPORATION

26 SUBJECT TO THE INCOME TAX UNDER TITLE 10 OF THE TAX GENERAL ARTICLE; AND

27 2. OPERATES TO REDUCE THE INCOME TAX REVENUE FROM

28 INDIVIDUALS IF THE PERSON ENTITLED TO THE REFUND IS:

29 A. AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER

30 TITLE 10 OF THE TAX GENERAL ARTICLE; OR

31 B. AN ORGANIZATION EXEMPT FROM TAXATION UNDER §

32 501(C)(3) OF THE INTERNAL REVENUE CODE.

33 (3) For each of the credits under subsections (c) through (h) of this

34 section, the credit may not be allowed for any taxable year unless:

- 35 (i) the taxpayer has obtained and filed an initial credit certificate
- 36 and an eligibility certificate issued under subsection (k) of this section;

1 (ii) a certificate of occupancy for the building has been issued; and

2 (iii) the property with respect to which the credit is claimed is in
3 service during the taxable year.

4 (4) The total amount allowed in the aggregate for all credits under this
5 section may not exceed the maximum set forth in the initial credit certificate obtained
6 under subsection (k) of this section.

7 (5) In determining the amount of the credits under this section, a cost
8 paid or incurred may not be the basis for more than one credit.

9 (6) (I) SUBJECT TO THE LIMITATIONS OF THIS PARAGRAPH, AN
10 INDIVIDUAL OR BUSINESS ENTITY ENTITLED TO CLAIM A TAX CREDIT AS PROVIDED
11 UNDER THIS SECTION FOR GREEN BUILDINGS AND GREEN BUILDING COMPONENTS
12 MAY TRANSFER THE ENTIRE AMOUNT OF THE CREDIT ALLOWED UNDER THIS
13 SECTION TO AN INDIVIDUAL OR BUSINESS ENTITY.

14 (II) A CREDIT MAY NOT BE TRANSFERRED UNDER THIS PARAGRAPH
15 UNLESS THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING A CREDIT
16 ALLOWABLE UNDER THIS SECTION:

17 1. HAS NOT CLAIMED THE CREDIT OR ANY PORTION OF THE
18 CREDIT;

19 2. TRANSFERS THE ENTIRE AMOUNT OF THE CREDIT; AND

20 3. NOTIFIES THE ADMINISTRATION WITHIN 30 DAYS AFTER
21 THE EFFECTIVE DATE OF THE TRANSFER ON A FORM APPROVED BY THE
22 COMPTROLLER IN REGULATION.

23 (III) AN INDIVIDUAL OR BUSINESS ENTITY TO WHOM ANY CREDIT IS
24 TRANSFERRED BY AN INDIVIDUAL OR BUSINESS ENTITY UNDER THIS PARAGRAPH:

25 1. MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX
26 THAT DOES NOT EXCEED THE AMOUNT OF THE CREDIT TRANSFERRED UNDER THIS
27 PARAGRAPH, BY FILING WITH ITS TAX RETURN A COPY OF THE FORM EVIDENCING
28 THE TRANSFER OF THE TAX CREDIT; AND

29 2. IS SUBJECT TO THE SAME REQUIREMENTS AND
30 LIMITATIONS IN CLAIMING THE CREDIT UNDER THIS SECTION THAT WOULD HAVE
31 BEEN APPLICABLE TO THE INDIVIDUAL OR BUSINESS ENTITY TRANSFERRING THE
32 CREDIT.

33 (k) (1) (i) On application by a taxpayer, the Administration shall issue an
34 initial credit certificate if the taxpayer has made a showing that the taxpayer is likely
35 within a reasonable time to place in service property for which a credit under this
36 section would be allowed.

37 (ii) The initial credit certificate issued under this paragraph:

1 1. shall state the earliest taxable year for which the credit
2 may be claimed and an expiration date; and

3 2. shall apply only to property placed in service on or before
4 the expiration date.

5 (iii) To avoid unwarranted hardship, the Administration at its
6 discretion may extend the expiration date stated under an initial credit certificate.

7 (iv) The initial credit certificate shall state the maximum amount of
8 credit allowable in the aggregate for all credits allowed under this section.

9 (v) The Administration may not issue initial credit certificates, in
10 the aggregate, for more than ~~[\$25,000,000]~~ \$35,000,000 worth of credits.

11 (vi) Except as provided in subparagraph (vii) of this paragraph,
12 initial credit certificates shall be limited in their applicability, as follows:

13 Credits in the aggregate may	With respect to taxable
14 not be allowed for more than:	years beginning:
15 \$1 million	2003
16 \$2 million	2004
17 \$3 million	2005
18 \$4 million	2006
19 \$5 million	2007
20 [\$4] \$5 million	2008
21 [\$3] \$5 million	2009
22 [\$2] \$5 million	2010
23 [\$1] \$5 million	2011

24 (vii) As of the end of a calendar year, if certificates for credit
25 amounts totaling less than the amount permitted with respect to taxable years
26 beginning in that calendar year have been issued, the maximum amount that may be
27 allowed for taxable years beginning in the subsequent calendar year shall be
28 increased by the amount of the preceding year's shortfall.

29 (viii) The Administration may not issue an initial credit certificate
30 after December 31, 2011.

31 (ix) On January 1, 2004, and each year thereafter, the
32 Administration shall provide to the Comptroller a list of all taxpayers in the prior
33 taxable year that have been issued an initial credit certificate and shall specify for
34 each taxpayer the earliest taxable year for which the credit may be claimed and the
35 maximum amount of the credit allowable in the aggregate for all credits allowed
36 under this section.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
38 effect July 1, 2005, and shall be applicable to all taxable years beginning after
39 December 31, 2004.

