

Chapter 320

(Senate Bill 1112)

AN ACT concerning

Income Tax – Aerospace, Electronics, or Defense Contract Tax Credit Program

FOR the purpose of allowing a certain qualified business entity operating a certain aerospace, electronics, or defense contract tax credit project to claim a credit against the State income tax; requiring the Department of Economic Competitiveness and Commerce to certify a business entity as a qualified business entity within a certain period of time; providing that a project is eligible for designation by the Department as an aerospace, electronics, or defense contract tax credit project under certain circumstances; requiring a business entity to submit a certain application to the Department; providing that a qualified business entity may receive a certain number of designations for certain credit projects in a fiscal year; prohibiting the Department from approving designations that would result in certain total aggregate tax credits exceeding a certain amount in a fiscal year; requiring a qualified business entity to submit to the Comptroller a certain certification in order to claim a credit; providing for the calculation of the credit; providing that the credit earned by a qualified business entity for a project may not exceed a certain amount for a certain credit year; making the credit refundable; providing for the recapture of the credit under certain circumstances; requiring a qualified business entity to report certain information for a certain period of time to the Department; authorizing the Department to require the verification by a certain certified public accountant of certain information; providing that claiming a credit authorizes the Comptroller to share certain information with the Department; providing that certain information is subject to certain confidentiality requirements; requiring the Department to report certain information in a certain manner; requiring the Department to adopt certain regulations; defining certain terms; providing for the application of this Act; providing for the termination of this Act; and generally relating to the Aerospace, Electronics, or Defense Contract Tax Credit Program.

BY repealing and reenacting, without amendments,

Article – Economic Development
Section 1–101(a), (c), and (f)
Annotated Code of Maryland
(2008 Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,

Article – Economic Development
Section 2.5–109(a)(4)
Annotated Code of Maryland
(2008 Volume and 2015 Supplement)
(As enacted by Chapter 58 of the Acts of the General Assembly of 2015)

BY adding to

Article – Economic Development

Section 6–701 through 6–707 to be under the new subtitle “Subtitle 7. Aerospace, Electronics, or Defense Contract Tax Credit Program”

Annotated Code of Maryland

(2008 Volume and 2015 Supplement)

BY adding to

Article – Tax – General

Section 10–737

Annotated Code of Maryland

(2010 Replacement Volume and 2015 Supplement)

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

Article – Economic Development

1–101.

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

(c) “Department” means the Department of Economic Competitiveness and Commerce.

(f) “Secretary” means the Secretary of Commerce.

2.5–109.

(a) In this section, “economic development program” means:

(4) each of the tax credit programs administered by the Department,
including:

(i) the Film Production Activity Tax Credit;

(ii) the Job Creation Tax Credit;

(iii) the One Maryland Economic Development Tax Credit;

(iv) the Biotechnology Investment Incentive Tax Credit;

(v) the Research and Development Tax Credit;

(vi) the Security Clearance Administrative Expenses and Construction and Equipment Costs Tax Credit; [and]

(vii) the Cybersecurity Investment Incentive Tax Credit; AND

(VIII) THE AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT.

SUBTITLE 7. AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROGRAM.

6-701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT” MEANS A PROJECT THAT MEETS THE REQUIREMENTS OF § 6-702 OF THIS SUBTITLE AND IS DESIGNATED AS AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT BY THE DEPARTMENT UNDER § 6-702 OF THIS SUBTITLE.

(C) “CREDIT YEAR” MEANS THE TAXABLE YEAR IN WHICH A QUALIFIED BUSINESS ENTITY CLAIMS THE INCOME TAX CREDIT ALLOWED IN ACCORDANCE WITH § 6-702 OF THIS SUBTITLE.

(D) (1) “QUALIFIED BUSINESS ENTITY” MEANS A PERSON CONDUCTING OR OPERATING A FOR-PROFIT TRADE OR BUSINESS IN THE STATE THAT IS CERTIFIED IN ACCORDANCE WITH § 6-702 OF THIS SUBTITLE AS QUALIFYING FOR THE INCOME TAX CREDIT UNDER THIS SUBTITLE.

(2) “QUALIFIED BUSINESS ENTITY” DOES NOT INCLUDE A GOVERNMENTAL ENTITY.

(E) “QUALIFIED EXPENDITURES” MEANS CAPITAL EXPENDITURES THAT HAVE BEEN EXPENDED OR WILL BE EXPENDED BY A QUALIFIED BUSINESS ENTITY AND THAT THE DEPARTMENT DETERMINES MEET THE REQUIREMENTS FOR AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT IN ACCORDANCE WITH § 6-702 OF THIS SUBTITLE.

(F) (1) “QUALIFIED POSITION” MEANS A POSITION THAT:

(I) IS FULL TIME AND OF INDEFINITE DURATION;

(II) HAS AN ANNUAL SALARY OF AT LEAST \$85,000, INCLUDING ASSOCIATED BENEFITS;

(III) IS LOCATED IN THE STATE;

(IV) IS NEWLY CREATED OR RETAINED AS A RESULT OF THE AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT OF THE QUALIFIED BUSINESS ENTITY; AND

(V) IS FILLED.

(2) "QUALIFIED POSITION" DOES NOT INCLUDE A POSITION THAT IS FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.

6-702.

(A) A QUALIFIED BUSINESS ENTITY OPERATING AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT IS ELIGIBLE FOR THE INCOME TAX CREDIT DESCRIBED IN § 6-703 OF THIS SUBTITLE.

(B) THE DEPARTMENT SHALL CERTIFY A BUSINESS ENTITY AS A QUALIFIED BUSINESS ENTITY WITHIN 60 DAYS OF RECEIVING AN APPLICATION THAT EVIDENCES THAT THE APPLICANT HAS SATISFIED THE REQUIREMENTS OF THIS SECTION.

(C) (1) THE DEPARTMENT MAY CERTIFY A PROJECT AS AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT IF THE BUSINESS ENTITY THAT WILL OPERATE THE PROJECT:

(I) CREATES OR RETAINS AT LEAST 10,000 QUALIFIED POSITIONS; AND

(II) SUBMITS A BUDGET EVIDENCING THAT THE BUSINESS ENTITY WILL EXPEND AT LEAST \$25,000,000 IN QUALIFYING EXPENDITURES, AS DETERMINED BY THE DEPARTMENT, DURING THE CREDIT YEAR.

(2) THE QUALIFIED POSITIONS AND QUALIFIED EXPENDITURES REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST RESULT FROM AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT PROJECT LOCATED IN THE STATE.

(D) (1) TO BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SUBTITLE, THE BUSINESS ENTITY THAT OPERATES THE AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION, THE FORM AND CONTENT OF WHICH SHALL BE DETERMINED BY THE DEPARTMENT.

(2) THE APPLICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL CONTAIN:

(I) A NEW CONTRACT EXECUTED BY THE BUSINESS ENTITY FOR THE PROVISION OF GOODS OR SERVICES IN CONNECTION WITH AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT;

(II) THE NUMBER OF FULL-TIME POSITIONS WITH AN ANNUAL SALARY OF AT LEAST \$85,000, INCLUDING BENEFITS, TO BE RETAINED OR HIRED AS PART OF THE AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT; AND

(III) A BUDGET FOR THE PROJECT THAT INCLUDES THE AMOUNT OF QUALIFIED EXPENDITURES THAT THE APPLICANT PLEDGES TO EXPEND IN CONNECTION WITH THE AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT.

(E) THE DEPARTMENT MAY REQUIRE THAT ANY INFORMATION PROVIDED UNDER SUBSECTION (D) OF THIS SECTION BE VERIFIED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT THAT THE BUSINESS ENTITY AND THE DEPARTMENT SELECT.

(F) A QUALIFIED BUSINESS ENTITY MAY RECEIVE UP TO THREE DESIGNATIONS FOR AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECTS IN A FISCAL YEAR.

(G) THE DEPARTMENT MAY NOT APPROVE DESIGNATIONS FOR AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECTS THAT WOULD RESULT IN TOTAL AGGREGATE TAX CREDITS EXCEEDING \$7,500,000 IN A TAXABLE YEAR.

6-703.

(A) (1) A QUALIFIED BUSINESS ENTITY MAY CLAIM AN INCOME TAX CREDIT IN THE AMOUNT DETERMINED UNDER THIS SECTION.

(2) A QUALIFIED BUSINESS ENTITY SHALL SUBMIT TO THE COMPTROLLER, WITH THE TAX RETURN ON WHICH THE CREDIT IS CLAIMED,

CERTIFICATION FROM THE DEPARTMENT THAT THE BUSINESS ENTITY HAS MET THE REQUIREMENTS OF THIS SUBTITLE AND IS ELIGIBLE FOR THE CREDIT.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE CREDIT EARNED UNDER THIS SECTION FOR AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT IS \$250 MULTIPLIED BY THE NUMBER OF QUALIFIED EMPLOYEES EMPLOYED BY THE QUALIFIED BUSINESS ENTITY DURING THE CREDIT YEAR.

(2) THE CREDIT EARNED BY A QUALIFIED BUSINESS ENTITY FOR AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT TAX CREDIT PROJECT UNDER THIS SUBTITLE MAY NOT EXCEED \$2,500,000 FOR ANY CREDIT YEAR.

(C) (1) THE CREDIT EARNED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE TAKEN OVER A 1-YEAR PERIOD.

(2) IF THE CREDIT ALLOWED UNDER THIS SUBTITLE IN ANY TAXABLE YEAR EXCEEDS THE TOTAL INCOME TAX OTHERWISE PAYABLE BY THE QUALIFIED BUSINESS ENTITY FOR THAT TAXABLE YEAR, THE QUALIFIED BUSINESS ENTITY MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.

6-704.

(A) IF, DURING EITHER OF THE 2 YEARS AFTER THE CREDIT YEAR, THE NUMBER OF QUALIFIED POSITIONS OF THE QUALIFIED BUSINESS ENTITY FALLS BELOW A ROLLING AVERAGE OVER THE PAST 2 YEARS OF 10,000, THE CREDIT SHALL BE RECAPTURED AS FOLLOWS:

(1) THE CREDIT SHALL BE RECOMPUTED AND REDUCED ON A PROPORTIONATE BASIS, BASED ON THE REDUCTION OF THE ROLLING AVERAGE NUMBER OF QUALIFIED EMPLOYEES OVER THE PAST 2 YEARS;

(2) THE RECOMPUTED CREDIT SHALL BE SUBTRACTED FROM THE AMOUNT OF CREDIT PREVIOUSLY ALLOWED; AND

(3) THE QUALIFIED BUSINESS ENTITY SHALL PAY THE DIFFERENCE CALCULATED IN ITEM (2) OF THIS SUBSECTION AS TAXES PAYABLE TO THE STATE FOR THAT TAXABLE YEAR.

(B) IF, DURING ANY OF THE 2 YEARS AFTER THE CREDIT YEAR, THE ROLLING AVERAGE NUMBER OF QUALIFIED POSITIONS FALLS BELOW 9,000 FOR THE PAST 2 YEARS, ALL CREDITS EARNED SHALL BE RECAPTURED.

(C) (1) FOR THE 3 TAXABLE YEARS AFTER THE CREDIT YEAR, A QUALIFIED BUSINESS ENTITY SHALL PROVIDE ANY INFORMATION REQUIRED BY THE DEPARTMENT TO VERIFY THAT THE QUALIFIED BUSINESS ENTITY IS NOT SUBJECT TO THE PROVISIONS OF SUBSECTION (A) OR SUBSECTION (B) OF THIS SECTION.

(2) THE DEPARTMENT MAY REQUIRE THAT ANY INFORMATION PROVIDED UNDER THIS SUBSECTION BE VERIFIED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT THAT THE QUALIFIED BUSINESS ENTITY AND THE DEPARTMENT SELECT.

6-705.

(A) BY CLAIMING THE TAX CREDITS UNDER THIS SUBTITLE, THE QUALIFIED BUSINESS ENTITY AUTHORIZES THE COMPTROLLER TO SHARE WITH THE DEPARTMENT ANY INFORMATION RECEIVED FROM A QUALIFIED BUSINESS ENTITY ABOUT ELIGIBILITY FOR A CREDIT ALLOWED UNDER THIS SUBTITLE.

(B) INFORMATION THAT IS RECEIVED UNDER SUBSECTION (A) OF THIS SECTION IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS THAT APPLY TO THE COMPTROLLER.

6-706.

IN ACCORDANCE WITH § 2.5-109 OF THIS ARTICLE, THE DEPARTMENT SHALL SUBMIT A REPORT ON THE BUSINESS ENTITIES CERTIFIED AS ELIGIBLE FOR AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT PROJECT TAX CREDITS IN THE PRECEDING FISCAL YEAR.

6-707.

THE SECRETARY MAY ESTABLISH BY REGULATION ANY OTHER REQUIREMENTS NECESSARY AND APPROPRIATE TO CARRY OUT THIS SUBTITLE.

Article – Tax – General

10-737.

AN INDIVIDUAL OR A CORPORATION MAY CLAIM A CREDIT AGAINST THE INCOME TAX FOR AN AEROSPACE, ELECTRONICS, OR DEFENSE CONTRACT PROJECT AS PROVIDED UNDER TITLE 6, SUBTITLE 7 OF THE ECONOMIC DEVELOPMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016, and shall be applicable to all taxable years beginning after December 31, 2015. It shall remain effective for a period of 5 years and, at the end of June 30, 2021, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 10, 2016.