

SENATE BILL 364

C8, Q3
SB 560/16 – B&T

7lr1715
CF 7lr2291

By: **Senators Ferguson, Astle, Guzzone, Kasemeyer, Klausmeier, Manno, Middleton, Ramirez, Rosapepe, Smith, Young, and Zucker**

Introduced and read first time: January 25, 2017

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **One Maryland Economic Development Tax Credits – Business Incubators,**
3 **Enterprise Zones, and Regional Institution Strategic Enterprise Zones**

4 FOR the purpose of altering certain eligibility criteria for certain credits under the One
5 Maryland Economic Development Tax Credit to include certain persons who
6 establish or expand a business facility located in certain areas that, for business
7 incubators, creates a certain aggregate number of qualified positions at the facility
8 under certain circumstances; requiring, in order to be certified as a certain qualified
9 business entity for certain credits, a certain business incubator to submit certain
10 information to the Secretary of Commerce; altering the manner in which the amount
11 of a certain start-up tax credit is calculated for each taxable year; authorizing, under
12 certain circumstances, certain business incubators to claim certain credits on a
13 prorated basis if the aggregate number of qualifying positions filled by the businesses
14 at the business incubator's facility meets certain requirements; authorizing certain
15 business incubators to claim a refund of certain project tax credits or start-up tax
16 credits in certain taxable years; providing that the total amount claimed as a refund
17 under certain circumstances may not exceed a certain amount; providing for the
18 application of this Act; and generally relating to the One Maryland Economic
19 Development Tax Credit and certain business incubators.

20 BY repealing and reenacting, without amendments,
21 Article – Economic Development
22 Section 6-401(a), (f), and (g) and 6-403(g)
23 Annotated Code of Maryland
24 (2008 Volume and 2016 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Economic Development
27 Section 6-401(b), 6-402, 6-403(a), (e), and (f), 6-404, and 6-405
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2008 Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – Property
Section 9–247(a)
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

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

Article – Economic Development

6–401.

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

(b) “Eligible economic development project” means an economic development project that:

(1) establishes or expands a business facility within a qualified distressed county, **AN ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE**; and

(2) is approved for a project tax credit or a start–up tax credit in accordance with this subtitle.

(f) “Qualified business entity” means a person that:

(1) (i) conducts or operates a trade or business in the State; or

(ii) operates in the State and is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; and

(2) is certified in accordance with § 6–402 of this subtitle as qualifying for a project tax credit or a start–up tax credit under this subtitle.

(g) (1) “Qualified position” means a position that:

(i) is a full–time position and is of indefinite duration;

(ii) pays at least 150% of the federal minimum wage;

(iii) is in a qualified distressed county;

(iv) is newly created because a business facility begins or expands in one location in a qualified distressed county; and

1 (v) is filled.

2 (2) “Qualified position” does not include a position that is:

3 (i) created when an employment function is shifted from an existing
4 business facility of a business entity in the State to another business facility of the same
5 business entity if the position is not a net new job in the State;

6 (ii) created through a change in ownership of a trade or business;

7 (iii) created through a consolidation, merger, or restructuring of a
8 business entity if the position is not a net new job in the State;

9 (iv) created when an employment function is contractually shifted
10 from an existing business entity in the State to another business entity if the position is
11 not a net new job in the State; or

12 (v) filled for a period of less than 12 months.

13 6–402.

14 (a) (1) To qualify for a project tax credit or a start–up tax credit, a person shall
15 be certified by the Secretary as meeting the requirements of this subtitle and as being
16 eligible for the tax credit.

17 (2) The Secretary may not certify a person as a qualified business entity
18 unless the person notifies the Department of its intent to seek certification before hiring
19 any qualified employees to fill the qualified positions necessary to satisfy the employment
20 threshold under subsection (b)(2) of this section.

21 (b) To be eligible for a project tax credit or a start–up tax credit, a person shall:

22 (1) **(I)** establish or expand a business facility that:

23 **[(i)] 1.** is located in a qualified distressed county; and

24 **[(ii) 1.] 2. A.** is located in a priority funding area under §
25 5–7B–02 of the State Finance and Procurement Article; or

26 **[2.] B.** is eligible for funding outside of a priority funding
27 area under § 5–7B–05 or § 5–7B–06 of the State Finance and Procurement Article; **OR**

28 **(II) ESTABLISH OR EXPAND A BUSINESS INCUBATOR AS**
29 **DEFINED IN § 9–247 OF THE TAX – PROPERTY ARTICLE LOCATED IN:**

1 [(xiii)](XIV) other business services.

2 (c) To be certified as a qualified business entity for a project tax credit or a
3 start-up tax credit, a person shall submit to the Secretary an application that specifies:

4 (1) the effective date of the start-up or expansion;

5 (2) the number of full-time employees before the start-up or expansion and
6 the payroll of the existing employees;

7 (3) (I) the number of qualified positions created and qualified
8 employees hired and the payroll of the new qualified employees; **OR**

9 (II) **FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE**
10 **TAX – PROPERTY ARTICLE, THE NUMBER OF QUALIFIED POSITIONS CREATED AND**
11 **QUALIFIED EMPLOYEES HIRED AT THE FACILITY BY AGGREGATING THE QUALIFIED**
12 **POSITIONS CREATED AND QUALIFIED EMPLOYEES HIRED BY THE BUSINESSES AT**
13 **THE FACILITY AND THE PAYROLL OF THE NEW QUALIFIED EMPLOYEES; and**

14 (4) any other information that the Secretary requires by regulation.

15 (d) The Secretary may require any information required under this section to be
16 verified by an independent auditor that the qualified business entity selects.

17 6-403.

18 (a) (1) A qualified business entity may claim a project tax credit for the cost of
19 an eligible economic development project in a qualified distressed county, **AN ENTERPRISE**
20 **ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE** if the total
21 eligible project cost for the eligible economic development project is at least \$500,000.

22 (2) A qualified business entity is not entitled to a project tax credit for a
23 cost incurred before notifying the Department of its intent to seek certification as qualifying
24 for the project tax credit.

25 (e) (1) Subject to paragraph (2) of this subsection, if the eligible project cost for
26 the eligible economic development project exceeds the State tax on the qualified business
27 entity's income generated by or arising out of the project for the taxable year in which the
28 project is placed in service, the qualified business entity may apply any excess as a project
29 tax credit for succeeding taxable years against the State tax on the qualified business
30 entity's income generated by or arising out of the project until the earlier of:

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

1 (ii) the expiration of the 14th taxable year following the taxable year
2 in which the project is placed in service.

3 (2) (i) A qualified business entity may claim a prorated share of the
4 credit under this subsection if:

5 1. during any taxable year after the qualified business entity
6 is certified for the tax credit[.]:

7 **A.** the number of qualified positions filled by the qualified
8 business entity falls below 25, but does not fall below 10; **OR**

9 **B. FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247**
10 **OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF QUALIFIED**
11 **POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR’S FACILITY**
12 **FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and**

13 2. the qualified business entity [has] **OR BUSINESSES IN A**
14 **BUSINESS INCUBATOR HAVE** maintained at least 25 qualified positions for at least 5
15 years.

16 (ii) The prorated share of the credit is calculated based on the
17 number of qualified positions filled for the taxable year divided by 25.

18 (f) (1) Subject to the limitation in paragraph (4) of this subsection and subject
19 to § 6-405 of this subtitle, this subsection applies:

20 **(I) FOR A NONPROFIT ORGANIZATION THAT IS A BUSINESS**
21 **INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, TO ANY**
22 **TAXABLE YEAR FOLLOWING THE YEAR IN WHICH THE PROJECT IS PLACED IN**
23 **SERVICE; OR**

24 **(II) FOR ANY OTHER QUALIFIED BUSINESS ENTITY,** to any taxable
25 year after the 4th but before the 15th taxable year following the taxable year in which the
26 project is placed in service.

27 (2) A qualified business entity other than a person subject to taxation
28 under Title 6 of the Insurance Article may:

29 (i) apply any excess of eligible project costs for the eligible economic
30 development project over the cumulative amount used as a project tax credit for the taxable
31 year and all prior taxable years as a tax credit against the State tax for the taxable year on
32 the qualified business entity’s income other than income generated by or arising out of the
33 project; and

1 (ii) claim a refund in the amount, if any, by which the unused excess
2 exceeds the State tax for the taxable year on the qualified business entity's income other
3 than income generated by or arising out of the project.

4 (3) A qualified business entity that is subject to taxation under Title 6 of
5 the Insurance Article may:

6 (i) apply any excess of eligible project costs for the eligible economic
7 development project over the cumulative amount used as a project tax credit for the taxable
8 year and all prior taxable years as a tax credit against the premium tax imposed for the
9 taxable year; and

10 (ii) claim a refund in the amount, if any, by which the unused excess
11 exceeds the premium tax for the taxable year.

12 (4) For any taxable year, the total amount used as a project tax credit and
13 claimed as a refund under this subsection may not exceed:

14 (I) the amount of tax that the qualified business entity is required
15 to withhold for the taxable year from the wages of qualified employees under § 10-908 of
16 the Tax – General Article; **OR**

17 (II) **FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE**
18 **TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO:**

19 **1. THE AMOUNT OF TAX THAT THE BUSINESSES AT THE**
20 **BUSINESS INCUBATOR'S FACILITY ARE REQUIRED TO WITHHOLD FOR THE TAXABLE**
21 **YEAR FROM THE WAGES OF QUALIFIED EMPLOYEES UNDER § 10-908 OF THE**
22 **TAX – GENERAL ARTICLE; AND**

23 **2. 7.5% OF THE AMOUNT PAID BY BUSINESSES AT THE**
24 **BUSINESS INCUBATOR'S FACILITY TO INDEPENDENT CONTRACTORS WHO ARE:**

25 **A. ENGAGED IN THE PRIMARY ACTIVITIES OF THE**
26 **BUSINESS LOCATED IN THE BUSINESS INCUBATOR;**

27 **B. LOCATED AT THE BUSINESS INCUBATOR; AND**

28 **C. SUBJECT TO THE STATE INCOME TAX.**

29 (5) (i) A qualified business entity may claim a prorated share of the
30 credit under this subsection if:

31 1. during any taxable year after the qualified business entity
32 is certified for the tax credit[.]:

1 A. the number of qualified positions filled by the qualified
2 business entity falls below 25, but does not fall below 10; **OR**

3 **B. FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247**
4 **OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF QUALIFIED**
5 **POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR’S FACILITY**
6 **FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and**

7 2. the qualified business entity [has] **OR BUSINESSES IN A**
8 **BUSINESS INCUBATOR HAVE** maintained at least 25 qualified positions for at least 5
9 years.

10 (ii) The prorated share of the credit is calculated based on the
11 number of qualified positions filled for the taxable year divided by 25.

12 (g) A qualified business entity shall attach the certification required under §
13 6-402 of this subtitle to the tax return on which the project tax credit is claimed.

14 6-404.

15 (a) (1) A qualified business entity that locates in a qualified distressed county,
16 **AN ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE**
17 **ZONE** may claim a start-up tax credit in the amount provided in subsection (b) of this
18 section.

19 (2) A qualified business entity is not entitled to a start-up tax credit for a
20 cost incurred before notifying the Department of its intent to seek certification as qualifying
21 for the start-up tax credit.

22 (b) The start-up tax credit allowed under this section for each taxable year equals
23 the least of:

24 (1) the qualified business entity’s total eligible start-up cost associated
25 with establishing or expanding a business facility in the qualified distressed county, **AN**
26 **ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE,**
27 less the amount of the credit previously taken for the project;

28 (2) the product of multiplying \$10,000 times the number of qualified
29 employees employed at the new or expanded business facility, **INCLUDING THE**
30 **AGGREGATE NUMBER OF QUALIFIED EMPLOYEES EMPLOYED BY THE BUSINESSES AT**
31 **THE FACILITY OF A BUSINESS INCUBATOR, AS DEFINED IN § 9-247 OF THE**
32 **TAX – PROPERTY ARTICLE; or**

33 (3) \$500,000.

1 (c) (1) Subject to paragraph (2) of this subsection, if the start-up tax credit
2 allowed under subsection (b) of this section for the taxable year in which a qualified
3 business entity locates in a qualified distressed county, **AN ENTERPRISE ZONE, OR A**
4 **REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE** exceeds the total tax
5 otherwise due from the qualified business entity for that taxable year, the qualified
6 business entity may apply the excess as a credit for succeeding taxable years until the
7 earlier of:

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

9 (ii) the expiration of the 14th taxable year following the taxable year
10 in which the qualified business entity locates in a qualified distressed county.

11 (2) (i) A qualified business entity may claim a prorated share of the
12 credit under this subsection if:

13 1. during any taxable year after the qualified business entity
14 is certified for the tax credit[.]:

15 **A.** the number of qualified positions filled by the qualified
16 business entity falls below 25, but does not fall below 10; **OR**

17 **B. FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247**
18 **OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF QUALIFIED**
19 **POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR’S FACILITY**
20 **FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and**

21 2. the qualified business entity has maintained at least 25
22 qualified positions for at least 5 years.

23 (ii) The prorated share of the credit is calculated based on the
24 number of qualified positions filled for the taxable year divided by 25.

25 (d) (1) Subject to the limitation in paragraph (3) of this subsection and subject
26 to § 6-405 of this subtitle, this subsection applies:

27 **(I) FOR A NONPROFIT ORGANIZATION THAT IS A BUSINESS**
28 **INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, TO ANY**
29 **TAXABLE YEAR FOLLOWING THE YEAR IN WHICH THE QUALIFIED BUSINESS ENTITY**
30 **LOCATES IN A QUALIFIED DISTRESSED COUNTY, AN ENTERPRISE ZONE, OR A**
31 **REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE; OR**

32 **(II) FOR ANY OTHER QUALIFIED BUSINESS ENTITY, to any taxable**
33 **year after the 4th but before the 15th taxable year following the taxable year in which the**

1 qualified business entity locates in a qualified distressed county, **AN ENTERPRISE ZONE,**
 2 **OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE.**

3 (2) A qualified business entity may claim a refund in the amount, if any,
 4 by which the qualified business entity's eligible start-up cost exceeds the cumulative
 5 amount used as a start-up tax credit for the taxable year and all prior taxable years.

6 (3) For any taxable year, the total amount claimed as a refund under this
 7 subsection may not exceed:

8 (I) the amount of tax that the qualified business entity is required
 9 to withhold for the taxable year from the wages of qualified employees under § 10-908 of
 10 the Tax – General Article; **OR**

11 (II) **FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE**
 12 **TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO:**

13 1. **THE AMOUNT OF TAX THAT THE BUSINESSES AT THE**
 14 **BUSINESS INCUBATOR'S FACILITY ARE REQUIRED TO WITHHOLD FOR THE TAXABLE**
 15 **YEAR FROM THE WAGES OF QUALIFIED EMPLOYEES UNDER § 10-908 OF THE**
 16 **TAX – GENERAL ARTICLE; AND**

17 2. **7.5% OF THE AMOUNT PAID BY BUSINESSES AT THE**
 18 **BUSINESS INCUBATOR'S FACILITY TO INDEPENDENT CONTRACTORS WHO ARE:**

19 **A. ENGAGED IN THE PRIMARY ACTIVITIES OF THE**
 20 **BUSINESS LOCATED IN THE BUSINESS INCUBATOR;**

21 **B. LOCATED AT THE BUSINESS INCUBATOR; AND**

22 **C. SUBJECT TO THE STATE INCOME TAX.**

23 (4) (i) A qualified business entity may claim a prorated share of the
 24 credit under this subsection if:

25 1. during any taxable year after the qualified business entity
 26 is certified for the tax credit[.];

27 **A. the number of qualified positions filled by the qualified**
 28 **business entity falls below 25, but does not fall below 10; OR**

29 **B. FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247**
 30 **OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF QUALIFIED**

1 POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR'S FACILITY
 2 FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and

3 2. the qualified business entity has maintained at least 25
 4 qualified positions for at least 5 years.

5 (ii) The prorated share of the credit is calculated based on the
 6 number of qualified positions filled for the taxable year divided by 25.

7 (e) A qualified business entity shall attach the certification required under §
 8 6-402(a) of this subtitle to the tax return on which the start-up tax credit is claimed.

9 6-405.

10 (A) [If] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF the
 11 pay for the majority of the qualified positions created from the establishment or expansion
 12 of a business facility is at least 250% of the federal minimum wage, §§ 6-403(f) and
 13 6-404(d) of this subtitle apply beginning with the taxable year after the 2nd taxable year
 14 that follows the taxable year when the qualified business entity locates in a qualified
 15 distressed county, AN ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC
 16 ENTERPRISE ZONE.

17 (B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO A NONPROFIT
 18 ORGANIZATION THAT IS A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE
 19 TAX - PROPERTY ARTICLE.

20 **Article - Tax - Property**

21 9-247.

22 (a) In this section, "business incubator" means a program in which units of space
 23 are leased by multiple early-stage businesses that share physical common space,
 24 administrative services and equipment, business management training, mentoring, and
 25 technical support.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
 27 1, 2017, and shall be applicable to all taxable years beginning after December 31, 2016.