

SENATE BILL 1142

Q3, C8

7lr2438
CF 7lr3725

By: **Senators King, Feldman, Kagan, Lee, Madaleno, and Zucker**

Introduced and read first time: February 23, 2017

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Corporate Headquarters Investment and Job Retention Tax**
3 **Credit**

4 FOR the purpose of establishing the Corporate Headquarters Investment and Job
5 Retention Tax Credit Program; authorizing certain qualified business entities
6 operating certain eligible projects to claim a certain credit against the State income
7 tax under certain circumstances; requiring the Department of Commerce to certify a
8 business entity as a qualified business entity within a certain period of time;
9 providing that a project is eligible for designation by the Department as an eligible
10 project under certain circumstances; requiring a business entity to submit, on or
11 before a certain date, a certain application to the Department; requiring the
12 Department to interpret certain provisions of law in a certain manner; providing that
13 a qualified business entity may not receive more than one designation for certain
14 eligible tax credit projects; requiring a qualified business entity to submit to the
15 Comptroller a certain certification in order to claim a credit; providing for the
16 amount of the credit; providing that the credit may not exceed a certain amount in a
17 taxable year; making the credit refundable; providing for the recapture of the credit
18 under certain circumstances; requiring a qualified business entity to report certain
19 information for a certain period of time to the Department; providing that claiming
20 a credit authorizes the Comptroller to share certain information with the
21 Department; providing that certain information is subject to certain confidentiality
22 requirements; requiring the Department to report certain information in a certain
23 manner; requiring the Department to adopt certain regulations; defining certain
24 terms; providing for the application of this Act; and generally relating to the
25 Corporate Headquarters Investment and Job Retention Tax Credit Program.

26 BY repealing and reenacting, without amendments,
27 Article – Economic Development
28 Section 1–101(a), (c), and (f)
29 Annotated Code of Maryland
30 (2008 Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Economic Development
Section 2.5–109(a)(4)
Annotated Code of Maryland
(2008 Volume and 2016 Supplement)

BY adding to
Article – Economic Development
Section 6–801 through 6–807 to be under the new subtitle “Subtitle 8. Corporate
Headquarters Investment and Job Retention Tax Credit Program”
Annotated Code of Maryland
(2008 Volume and 2016 Supplement)

BY adding to
Article – Tax – General
Section 10–741
Annotated Code of Maryland
(2016 Replacement Volume)

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 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;

(vii) the Cybersecurity Investment Incentive Tax Credit; [and]

(viii) the Aerospace, Electronics, or Defense Contract Tax Credit; AND

(IX) THE CORPORATE HEADQUARTERS INVESTMENT AND JOB RETENTION TAX CREDIT.

**SUBTITLE 8. CORPORATE HEADQUARTERS INVESTMENT AND JOB RETENTION
TAX CREDIT PROGRAM.**

6–801.

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

(B) (1) “ELIGIBLE PROJECT” MEANS A PROJECT THAT MEETS THE REQUIREMENTS OF § 6–802 OF THIS SUBTITLE AND IS DESIGNATED AS AN ELIGIBLE TAX CREDIT PROJECT BY THE DEPARTMENT UNDER § 6–802 OF THIS SUBTITLE.

(2) “ELIGIBLE PROJECT” INCLUDES:

(I) ANCILLARY FACILITIES; AND

(II) A HOTEL.

(C) “QUALIFIED BUSINESS ENTITY” MEANS A CORPORATION, INCLUDING AFFILIATES OR SUBSIDIARIES, CONDUCTING OR OPERATING A FOR–PROFIT TRADE OR BUSINESS IN THE STATE THAT IS CERTIFIED IN ACCORDANCE WITH § 6–802 OF THIS SUBTITLE AS QUALIFYING FOR THE INCOME TAX CREDIT UNDER THIS SUBTITLE.

(D) (1) “QUALIFIED EXPENDITURES” MEANS CAPITAL AND RELATED EXPENDITURES THAT HAVE BEEN EXPENDED OR WILL BE EXPENDED BY OR ON BEHALF OF A QUALIFIED BUSINESS ENTITY AND THAT THE DEPARTMENT DETERMINES MEET THE REQUIREMENTS FOR AN ELIGIBLE PROJECT IN ACCORDANCE WITH § 6–802 OF THIS SUBTITLE.

(2) “QUALIFIED EXPENDITURES” INCLUDES:

(I) THE VALUE OF LAND OR PERSONAL PROPERTY;

(II) HARD OR SOFT COSTS RELATED TO:

1. THE PURCHASE OF LAND OR PERSONAL PROPERTY;

OR

2. CONSTRUCTION; AND

(III) EXPENDITURES MADE BY A DEVELOPER FOR A FACILITY TO
BE LEASED OR OPERATED BY THE QUALIFIED BUSINESS ENTITY.

(E) (1) "QUALIFIED POSITION" MEANS A POSITION THAT:

(I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE,
REQUIRES AT LEAST 1,800 HOURS OF WORK IN A 12-MONTH PERIOD;

(II) IS BASED AT OR ASSIGNED TO THE QUALIFIED BUSINESS
ENTITY'S CORPORATE HEADQUARTERS, AN ANCILLARY FACILITY, OR A SATELLITE
OFFICE LOCATED IN THE STATE;

(III) IS PAID AN HOURLY WAGE THAT IS AT LEAST 150% OF THE
PREVAILING FEDERAL MINIMUM WAGE; AND

(IV) IS FILLED.

(2) "QUALIFIED POSITION" INCLUDES A POSITION WITHIN A
BUSINESS UNIT THAT:

(I) THE QUALIFIED BUSINESS ENTITY ACQUIRES IF THE
POSITION IS TRANSFERRED OR ASSIGNED TO AN OFFICE IN THE STATE; OR

(II) IS DIVESTED BY A QUALIFIED BUSINESS ENTITY IF THE
POSITION REMAINS BASED AT OR ASSIGNED TO AN OFFICE IN THE STATE.

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

6-802.

1 **(A) A QUALIFIED BUSINESS ENTITY WITH CORPORATE HEADQUARTERS IN**
2 **THE STATE IS ELIGIBLE FOR THE INCOME TAX CREDIT DESCRIBED IN § 6-803 OF**
3 **THIS SUBTITLE.**

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

8 **(C) (1) THE DEPARTMENT MAY CERTIFY A PROJECT AS AN ELIGIBLE**
9 **PROJECT IF THE BUSINESS ENTITY THAT WILL OPERATE OR OCCUPY THE PROJECT**
10 **SUBMITS INFORMATION EVIDENCING:**

11 **(I) AN INTENT TO MAINTAIN AT LEAST 3,500 QUALIFIED**
12 **POSITIONS BASED AT OR ASSIGNED TO THE PROJECT; AND**

13 **(II) THAT AT LEAST \$500,000,000 IN QUALIFYING**
14 **EXPENDITURES IS EXPECTED TO BE EXPENDED, AS DETERMINED BY THE**
15 **DEPARTMENT, DURING A 10-YEAR PERIOD.**

16 **(2) THE NUMBER OF QUALIFIED POSITIONS UNDER PARAGRAPH (1)**
17 **OF THIS SUBSECTION MAY INCLUDE UP TO 250 PART-TIME POSITIONS.**

18 **(D) (1) TO BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SUBTITLE, ON**
19 **OR BEFORE JANUARY 1, 2018, THE BUSINESS ENTITY THAT WILL OPERATE OR**
20 **OCCUPY THE ELIGIBLE PROJECT SHALL SUBMIT TO THE DEPARTMENT AN**
21 **APPLICATION, THE FORM AND CONTENT OF WHICH SHALL BE DETERMINED BY THE**
22 **DEPARTMENT.**

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

25 **(I) THE NUMBER OF QUALIFIED POSITIONS THAT ARE**
26 **EXPECTED TO BE BASED AT OR ASSIGNED TO THE PROJECT;**

27 **(II) A BUDGET FOR THE PROJECT THAT INCLUDES THE AMOUNT**
28 **OF QUALIFIED EXPENDITURES THAT THE APPLICANT EXPECTS WILL BE EXPENDED**
29 **IN CONNECTION WITH THE PROJECT; AND**

30 **(III) ANY OTHER INFORMATION THE DEPARTMENT REQUIRES.**

31 **(E) IF, BEFORE AN APPLICANT FILES AN APPLICATION UNDER THIS**
32 **SECTION, THE DEPARTMENT ENTERS INTO AN AGREEMENT OR UNDERSTANDING**

1 WITH THE APPLICANT UNDER ANY ECONOMIC DEVELOPMENT PROGRAM
2 AUTHORIZED UNDER THIS ARTICLE OR § 7-314 OF THE STATE FINANCE AND
3 PROCUREMENT ARTICLE, THE DEPARTMENT SHALL INTERPRET AND APPLY THE
4 PROVISIONS OF THIS SUBTITLE IN A MANNER CONSISTENT WITH THE AGREEMENT
5 OR UNDERSTANDING.

6 (F) A QUALIFIED BUSINESS ENTITY MAY NOT RECEIVE MORE THAN ONE
7 DESIGNATION FOR AN ELIGIBLE PROJECT.

8 **6-803.**

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

11 (2) A QUALIFIED BUSINESS ENTITY SHALL SUBMIT TO THE
12 COMPTROLLER, WITH THE TAX RETURN ON WHICH THE CREDIT IS CLAIMED,
13 CERTIFICATION FROM THE DEPARTMENT THAT THE BUSINESS ENTITY HAS MET THE
14 REQUIREMENTS OF THIS SUBTITLE AND IS ELIGIBLE FOR THE CREDIT.

15 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE CREDIT
16 ALLOWED UNDER THIS SECTION FOR AN ELIGIBLE PROJECT IS \$22,000,000 AND
17 SHALL BE TAKEN OVER A 4-YEAR PERIOD.

18 (2) FOR ANY TAXABLE YEAR, A QUALIFIED BUSINESS ENTITY MAY NOT
19 CLAIM AN INCOME TAX CREDIT UNDER THIS SECTION IN EXCESS OF \$5,500,000.

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

24 **6-804.**

25 (A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF
26 DURING THE 10 YEARS BEGINNING WITH THE FIRST YEAR A CREDIT IS CLAIMED
27 UNDER § 6-803 OF THIS SUBTITLE, THE NUMBER OF QUALIFIED POSITIONS BASED
28 AT OR ASSIGNED TO THE ELIGIBLE PROJECT FALLS BELOW A ROLLING AVERAGE OF
29 3,125, CALCULATED AS OF DECEMBER 31 EACH YEAR, AN AMOUNT OF THE CREDIT
30 THAT HAS BEEN CLAIMED SHALL BE RECAPTURED AS TAXES PAYABLE TO THE STATE
31 FOR THAT TAXABLE YEAR.

32 (2) (I) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
33 SUBSECTION, THE AMOUNT OF THE CREDIT TO BE RECAPTURED UNDER PARAGRAPH

(1) OF THIS SUBSECTION IS EQUAL TO \$6,769 MULTIPLIED BY THE NUMBER OF QUALIFIED POSITIONS BELOW 3,125 FOR THAT TAXABLE YEAR.

(II) THE PENALTY UNDER THIS PARAGRAPH MAY NOT BE IMPOSED ON THE SAME QUALIFIED POSITION FOR MORE THAN 1 TAXABLE YEAR.

(3) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF THE ROLLING AVERAGE OF QUALIFIED POSITIONS CALCULATED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS LESS THAN 2,475 FOR ANY TAXABLE YEAR, THE FULL AMOUNT OF THE CREDIT THAT HAS BEEN CLAIMED SHALL BE RECAPTURED.

(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF THE ROLLING AVERAGE OF QUALIFIED POSITIONS CALCULATED UNDER SUBSECTION (A) OF THIS SECTION IS AT LEAST 3,500:

(1) DURING THE 6 TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THE CREDIT IS CLAIMED UNDER THIS SECTION, \$5,500,000 OF THE TAX CREDITS CLAIMED MAY NOT BE RECAPTURED UNDER SUBSECTION (A) OF THIS SECTION IN A FUTURE YEAR;

(2) DURING THE 7 TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THE CREDIT IS CLAIMED UNDER THIS SECTION, \$11,000,000 OF THE TAX CREDITS CLAIMED MAY NOT BE RECAPTURED UNDER SUBSECTION (A) OF THIS SECTION IN A FUTURE YEAR;

(3) DURING THE 8 TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THE CREDIT IS CLAIMED UNDER THIS SECTION, \$16,500,000 OF THE TAX CREDITS CLAIMED MAY NOT BE RECAPTURED UNDER SUBSECTION (A) OF THIS SECTION IN A FUTURE YEAR; AND

(4) DURING THE 9 TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THE CREDIT IS CLAIMED UNDER THIS SECTION, \$22,000,000 OF THE TAX CREDITS CLAIMED MAY NOT BE RECAPTURED UNDER SUBSECTION (A) OF THIS SECTION IN A FUTURE YEAR.

(C) IF THE QUALIFIED BUSINESS ENTITY DOES NOT EXPEND AT LEAST \$500,000,000 IN QUALIFIED EXPENDITURES ON OR BEFORE THE END OF THE 10TH YEAR FOLLOWING THE FIRST YEAR A CREDIT IS CLAIMED UNDER THIS SECTION, THE FULL AMOUNT OF THE CREDIT THAT HAS BEEN CLAIMED SHALL BE RECAPTURED AS TAXES PAYABLE TO THE STATE FOR THAT TAXABLE YEAR.

(D) THE NUMBER OF QUALIFIED POSITIONS CALCULATED UNDER SUBSECTION (A) OF THIS SECTION MAY INCLUDE UP TO 250 PART-TIME POSITIONS.

6-805.

(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.

6-806.

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

6-807.

(A) THE SECRETARY SHALL ESTABLISH BY REGULATION ANY OTHER REQUIREMENTS NECESSARY AND APPROPRIATE TO CARRY OUT THIS SUBTITLE.

(B) THE REGULATIONS SHALL INCLUDE A PROVISION THAT RELIEVES A QUALIFIED BUSINESS ENTITY FROM THE REQUIREMENT TO MAINTAIN THE REQUIRED NUMBER OF QUALIFIED POSITIONS IF A FORCE MAJEURE EVENT OCCURS THAT MATERIALLY AND ADVERSELY AFFECTS THE BUSINESS THAT THE QUALIFIED BUSINESS ENTITY IS PRIMARILY ENGAGED IN.

Article – Tax – General

10-741.

A CORPORATION MAY CLAIM A CREDIT AGAINST THE INCOME TAX FOR AN ELIGIBLE PROJECT AS PROVIDED UNDER TITLE 6, SUBTITLE 8 OF THE ECONOMIC DEVELOPMENT ARTICLE.

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