

MEMORANDUM

April 15, 2016

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 14-16, Taxation – New Jobs Tax Credit and Enhanced New Jobs Tax Credit – Amount of Tax Credit - Term of Credit

Expedited Bill 14-16, Taxation – New Jobs Tax Credit and Enhanced New Jobs Tax Credit – Amount of Credit - Term of Credit, sponsored by Lead Sponsor Council President at the request of the County Executive, is scheduled to be introduced on April 19. A public hearing is tentatively scheduled for May 10 at 1:30 p.m.

Bill 14-16 would change to term during which the Enhanced New Jobs Tax Credit may be claimed from 12 taxable years to 24 taxable years.

Background

Under State law, the County may provide by law for a property tax credit for certain businesses that create at least 25 new, permanent, full-time jobs. The County may also provide for an “enhanced” property tax credit for certain businesses that expend at least \$150 million to obtain at least 700,000 square feet of new or expanded business premises (through purchase, construction, or lease), and employ at least 1,100 individuals full-time, including at least 500 in new, permanent full-time jobs. Individuals in all of these positions must receive an employer-provided subsidized health care benefit package, be paid at least 150% of the federal minimum wage,¹ and work in the new or expanded premises, or in newly renovated premises neighboring the new or expanded premises.

The County has implemented this authority, and provided for a “New Jobs Tax Credit and Enhanced New Jobs Tax Credit” (see ©6-10). These credits are applied against the business’ County property tax, in amounts and for terms set forth in the law. In general terms, the amount of the New Jobs Tax Credit decreases over the first six taxable years that it is allowed, and is not allowed after the sixth taxable year. The Enhanced New Jobs Tax Credit is 58.5% of the property tax imposed on the *increase in assessment* of the new or expanded premises and any substantially renovated real property adjoining or neighboring the new or expanded premises. Under current law, the Enhanced credit may be claimed in each of the first 12 taxable years after the Director certifies eligibility. The fiscal impact of these two credits since 1999 is shown in the Tax Expenditure Report prepared by the Department of Finance (see ©11-12).

¹ 150% of the federal minimum wage of \$7.25 per hour is \$10.88. Under County law, effective July 1, 2017, the County minimum wage will be \$11.50 per hour.

In 2012, the General Assembly amended the State enabling law (see ©13-16), changing the 12-year period in which the Enhanced credit is allowed to 24 years. This Bill will amend the County law to be consistent with that change to State law.

This packet contains:

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Expedited Bill No. 14-16
Concerning: Taxation – New Jobs Tax
Credit and Enhanced New Jobs Tax
Credit – Amount of Tax Credit – Term
of Credit
Revised: April 13, 2016 Draft No. 1
Introduced: April 19, 2016
Expires: October 19, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) change the term of the Enhanced New Jobs Tax Credit; and
- (2) generally amend the law governing the Enhanced New Jobs Tax Credit

By amending

Montgomery County Code
Chapter 52, Taxation
Article X, New Jobs Tax Credit and Enhanced New Jobs Tax Credit
Section 52-72

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 52-72(b) is amended as follows:

52-72. Amount of tax credit; pass-through to lessees.

(a) The new jobs tax credit that a taxpayer may claim against County property taxes under this Article is the following percentage of the property tax imposed on the assessment of the new or expanded premises:

- (1) 52% during the first and second taxable years in which a credit is allowed;
- (2) 39% during the third and fourth taxable years in which a credit is allowed; and
- (3) 26% during the fifth and sixth taxable years in which a credit is allowed.

After the sixth taxable year, the Finance Director must not allow a new jobs tax credit under this Article.

(b) The enhanced new jobs tax credit that a taxpayer may claim against County property taxes under this Article is 58.5% of the property tax imposed on the increase in assessment of:

- (1) the new or expanded premises; and
- (2) any substantially renovated real property adjoining or neighboring the new or expanded premises. A renovation is

substantial for purposes of this subsection if the renovation results in a complete rehabilitation of at least 50% of each building on the property.

The taxpayer may claim this credit in each of the first [12] 24 taxable years after the Director certifies that the taxpayer is eligible for the credit.

(c) A lessor of real property must reduce the amount of taxes for which an eligible business entity is contractually liable under a lease or rental agreement by the amount of any tax credit allowed under this Article.

Section 2. Expedited Effective Date

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda L. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 14-16

Taxation - New Jobs Tax Credit and Enhanced New Jobs Tax Credit – Amount of Tax Credit - Term of Credit

DESCRIPTION:	This Bill would amend County law by changing the term of the Enhanced New Jobs Tax Credit from 12 to 24 years, as is currently allowed under State law.
PROBLEM:	In 2012, the State changed the term during which the Enhanced New Jobs Tax Credit may be claimed by an eligible taxpayer.
GOALS AND OBJECTIVES:	Align the County law with the State law.
COORDINATION:	Department of Finance
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	Subject to the general oversight of the County Executive and the County Council.
EXPERIENCE ELSEWHERE:	Unknown
SOURCE OF INFORMATION:	Michael J. Coveyou, Chief, Division of Treasury, Department of Finance
APPLICATION WITHIN MUNICIPALITIES:	None
PENALTIES:	None



OFFICES OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Isiah Leggett
County Executive

MEMORANDUM

April 5, 2016

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: New Jobs Tax Credit Legislative Amendment

I am recommending an amendment to Chapter 52-72 of the County Code to change the term of the Enhanced New Jobs Tax Credit from twelve to twenty-four years, as is currently allowed under State law. I believe this change is consistent with our shared priority of attracting and retaining key industries within the County to promote sustainable economic growth and new job creation.

I urge the Council to support this legislation. My staff are available to respond to any questions you may have on this amendment or provide additional clarification.

Attachments

cc: Timothy L. Firestine, Chief Administrative Officer
Joseph F. Beach, Director, Department of Finance
Jennifer A. Hughes, Director, Office of Management and Budget
Patrick Lacefield, Director, Public Information Office
Sally Sternbach, Acting Director, Department of Economic Development
Joy Nurmi, Special Assistant to the County Executive
Bonnie Kirkland, Assistant Chief Administrative Officer
Lily Qi, Assistant Chief Administrative Officer
Michael Coveyou, Chief, Division of Treasury, Department of Finance



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Article X. New Jobs Tax Credit and Enhanced New Jobs Tax Credit.

Sec. 52-69. Tax credits.

The Director of Finance must allow a new jobs tax credit or an enhanced new jobs tax credit against the County property tax imposed on real property owned or leased by a business entity or its affiliate and on personal property owned by that business entity or its affiliate if the business entity qualifies for either credit under this Article. (1998 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 16, § 1.)

Sec. 52-70. Definitions.

In this Article, the following words have the meanings indicated:

- (a) Affiliate, Business Entity, New or Expanded Premises, New Permanent Full-Time Position, and Notification Date have the meanings defined in Section 9-230, Tax-Property Article, Maryland Code, or any successor provision.
- (b) Finance Director means the Director of the Department of Finance or the Director's designee.
- (c) New Jobs Tax Credit means the credit granted under this Article to a qualified business entity against the County property tax imposed on the new or expanded premises and the personal property located on those premises.
- (d) Enhanced New Jobs Tax Credit means the credit granted under this Article to a qualified business entity against the County property tax imposed on the new or expanded premises that qualify under state law for an enhanced new jobs credit and the personal property located on those premises. (1998 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 16, § 1.)

Sec. 52-71. Eligibility for tax credit.

- (a) To qualify for a new jobs tax credit under this Article, a business entity must, on

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or after July 1, 1998:

(1) construct, or expand by at least 5,000 square feet, premises in the County on which it conducts business by buying, building, or leasing new premises; and

(2) employ at least 25 persons in new permanent full-time positions located in the new or expanded premises in the County during a 24-month period when it occupies the new or expanded premises.

(b) To qualify and be certified for an enhanced new jobs tax credit under this Article, a business entity must, on or after December 31, 1998:

(1) notify the Finance Director as required under state law; and

(2) meet all requirements under state law to qualify for an enhanced new jobs tax credit.

(c) A business entity does not qualify for a new jobs tax credit or enhanced tax credit if:

(1) the business entity has moved the operations which are located on new or expanded premises from another county (including Baltimore City) in Maryland;

(2) the business entity or another taxpayer has been given a tax credit or exemption for the new or expanded premises during the same taxable year under any other state or County law;

(3) the new permanent full-time positions are solely or primarily involved in retail sales of goods or services, except when a small number of positions involved in retail sales are incidental to the primary purpose of a building;

(4) the business entity is a type of business entity that the County Council by resolution before the Notification Date has made ineligible for a new jobs tax credit or enhanced new jobs tax credit, or the new permanent full-time positions are a type of position that the Council by resolution before the Notification Date has made ineligible for a new jobs tax credit or enhanced new jobs tax credit, or the new or expanded premises are located in a geographic area that the Council by resolution before the Notification Date has made ineligible for a new jobs tax credit or enhanced new jobs tax credit; or

(5) the location of the new or expanded premises is inconsistent with any applicable land use master plan.

(d) To qualify for a credit against property tax imposed on personal property, a business entity must certify that the personal property is located on premises that qualify for a new jobs tax credit or enhanced new jobs tax credit under this Article. (1998 L.M.C., ch. 9, § 1;

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1999 L.M.C., ch. 16, § 1.)

Sec. 52-72. Amount of tax credit; pass-through to lessees.

(a) The new jobs tax credit that a taxpayer may claim against County property taxes under this Article is the following percentage of the property tax imposed on the assessment of the new or expanded premises:

- (1) 52% during the first and second taxable years in which a credit is allowed;
- (2) 39% during the third and fourth taxable years in which a credit is allowed;
- and
- (3) 26% during the fifth and sixth taxable years in which a credit is allowed.

After the sixth taxable year, the Finance Director must not allow a new jobs tax credit under this Article.

(b) The enhanced new jobs tax credit that a taxpayer may claim against County property taxes under this Article is 58.5% of the property tax imposed on the increase in assessment of:

- (1) the new or expanded premises; and
- (2) any substantially renovated real property adjoining or neighboring the new or expanded premises. A renovation is substantial for purposes of this subsection if the renovation results in a complete rehabilitation of at least 50% of each building on the property.

The taxpayer may claim this credit in each of the first 12 taxable years after the Director certifies that the taxpayer is eligible for the credit.

(c) A lessor of real property must reduce the amount of taxes for which an eligible business entity is contractually liable under a lease or rental agreement by the amount of any tax credit allowed under this Article. (1998 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 16, § 1.)

Sec. 52-73. Recapture of tax credit.

(a) A business entity which does not satisfy all applicable requirements under this Article to qualify for a tax credit during the three taxable years after any year when a credit was allowed must repay the tax credit to the County after receiving notice from the Finance Director

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that the credit must be repaid.

(b) Interest must accrue on any repayable tax credit at the rate established for overdue property taxes, beginning 30 days after the notice from the Finance Director.

(c) Any unrepaid tax credit is a lien on real and personal property owned by the business entity in the same manner as unpaid real property taxes under state and County law. (1998 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 16, § 1.)

Sec. 52-74. Administration of tax credit.

(a) A business entity must apply for either tax credit on a form furnished by the Finance Director, and must state which tax credit it intends to request and when and how it expects to qualify for the credit.

(b) When a business entity believes it has met all requirements for the tax credit, it may apply for certification on a form furnished by the Director, and must provide sufficient information to show that all requirements under this Article and applicable state law have been met.

(c) The Finance Director must:

(1) determine the eligibility of the business entity for the tax credit;

(2) notify the State Department of Assessments and Taxation that a business entity has been approved for the tax credit; and

(3) require submission of reports by the business entity during the three taxable years after any year when the tax credit was earned to verify that the business entity continues to satisfy all applicable requirements under this Article.

(d) A person who submits a false or fraudulent application, or withholds information, to obtain a tax credit under this Article has committed a Class A violation. In addition, the person must repay the County for all amounts credited and all accrued interest and penalties that would apply to those amounts as overdue taxes. A person who violates this subsection is liable for all court costs and expenses of the County in any civil action brought by the County against the violator. The County may collect any repayable tax credit, and otherwise enforce this Article, by any appropriate legal action.

(e) The County Executive may adopt regulations under method (2) to administer this Article. (1998 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 16, § 1; 2001 L.M.C., ch. 28, §§ 12, 15 and 16.)

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Editor's note-The effective date of the amendments made to this section by 2001 L.M.C., ch. 28, § 12, is the same effective date as 1999 L.M.C., ch. 16, § 1.

New Jobs Tax Credit

Description

This program consists of the New Jobs Tax Credit and the Enhanced New Jobs Tax Credit, and benefits businesses that are planning to increase both their space and staff. A business seeking either credit must notify the County of its intent to claim the credit *before* the expansion. This credit is applied against the General County and Special Service Area real property taxes.

New Jobs Tax Credit

This is a six-year credit available to businesses that increase their space by at least 5,000 square feet and their employee count by at least 25 new jobs. Businesses that are already resident in the County or that are moving from outside of Maryland are eligible to apply. The credit is not available to businesses that move to Montgomery County from another Maryland county or Baltimore City, and it is not available to retailers. The 25 new jobs must be permanent full-time positions and must last for at least 24 months. The new space must be occupied during the period the business retains the 25 new employees. The credit is based on the increase in both real and personal property tax assessments resulting from the business's expansion. The credit decreases over six years, as follows:

- Years 1 and 2: Credit = 52% of tax attributable to the assessment increase
- Years 3 and 4: Credit = 39%
- Years 5 and 6: Credit = 26%

New Jobs Tax Credit recipients receive an additional State of Maryland tax credit which uses the same calculation method. However, the State credit is given against one of the following taxes and requires that recipients file Form 500CR with their State of Maryland Income Tax return:

- Corporate or personal income taxes
- Financial institutions franchise tax
- Insurance premiums tax

Enhanced New Jobs Tax Credit

This 12-year credit benefits large expansion projects and is available when businesses either:

1. Increase their space by at least 250,000 square feet, and *either* (A) create 1,250 new permanent, full-time positions *or* (B) create 500 new permanent, full-time positions in addition to retaining at least 2,500 existing permanent, full-time positions, OR
2. Expend at least \$150 million to obtain at least 700,000 square feet of new space and employ at least 1,100 individuals, with at least 500 being in new, permanent, full-time positions.

To qualify for the Enhanced New Jobs Tax Credit, a business must pay all these employees at least 150% of the federal minimum wage and it must be engaged in one of the following industries:

- Manufacturing, mining, transportation, communications, agriculture, forestry or fishing
- Research, development, testing or biotechnology
- Computer programming, data processing, or other computer-related services
- Central financial, real estate, or insurance services
- Operation of central administrative offices or a company headquarters
- Public utility, warehousing, or business services

A business has six years from the notification date to create and fill the required number of new jobs and acquire and inhabit the new space. When this is accomplished and the business files a completed application, the business will begin receiving the credit. The Enhanced Tax Credit, like the regular New Jobs Tax Credit, is given against the local real and personal property tax and is based on the amount of additional taxes due as a result of the expansion. Unlike the regular New Jobs Tax Credit, however, the Enhanced Tax Credit is calculated at the same rate for all 12 years. The rate is 58.5% of the additional local tax liability.

The State also will give a credit based on this additional local tax liability. The State credit is 31.5% for each of the 12 years and is given against the same State taxes as the regular New Jobs Tax Credit (corporate or personal income taxes, the financial institutions franchise tax, or the insurance premiums tax). Both the regular and enhanced State tax credits allow a business to "roll" the credit for up to five years. This means that if the State tax credit is higher than the amount of taxes due in any given year, the business can claim the difference for up to five years. Both tax credits also contain a "recapture" provision that requires a business to repay the credits if they fail to maintain the job and space requirements for three years. This provision is applicable to each individual year, so that if a business maintains the requirements for 14 years, it will have to repay only the last year of the credit.

Authority

Montgomery County Code, Chapter 52, Article X

Effective Date

July 1, 1998

Contact

Montgomery County Treasury in Rockville, MD at (240) 777-8931

Fiscal Impact:

<u>Levy Year</u>	<u>Amount (\$)</u>	<u>Recipients</u>
2014	1,284,939	2
2013	1,379,483	2
2012	1,391,761	2
2011	1,344,424	2
2010	1,342,339	2
2009	1,449,507	5
2008	1,444,926	8
2007	2,479,151	10
2006	2,501,136	14
2005	2,743,060	14
2004	2,911,520	14
2003	2,465,987	12
2002	863,011	6
2001	109,749	2
2000	35,220	1
1999	30,137	1

2012 Maryland Laws Ch. 128 (H.B. 592)

MARYLAND 2012 SESSION LAWS

REGULAR SESSION

Additions are indicated by **Text**; deletions by

~~Text~~ .

Vetoed are indicated by ~~Text~~ ;

stricken material by **Text** .

Chapter 128

H.B. No. 592

TAX CREDIT FOR BUSINESSES THAT CREATE NEW JOBS--ENHANCED CREDIT--EXTENSION

AN ACT concerning

Tax Credit for Businesses That Create New Jobs--Enhanced Credit--Extension

FOR the purpose of extending the duration of certain property tax and State tax credits granted to certain business entities that construct or expand certain business premises under certain circumstances; declaring the intent of the General Assembly; providing for the application of this Act; and generally relating to property and State tax credits granted to certain business entities.

BY repealing and reenacting, with amendments,
Article--Tax--Property
Section 9-230(d)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

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

Article--Tax--Property

<< MD TAX PROPERTY § 9-230 >>

9-230.

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

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

2. continue to employ at least 2,500 individuals in existing permanent full-time positions paying at least 150% of the federal minimum wage and located at premises in the State where the business entity, along with its affiliates, is primarily engaged in one or more of the industries listed in paragraph (2) of this subsection; and

3. employ at least 500 individuals in new permanent full-time positions paying at least 150% of the federal minimum wage and located in the new or expanded premises, and, if applicable, in newly renovated premises adjoining or otherwise neighboring the new or expanded premises;

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

2. employ at least 1,250 individuals in new permanent full-time positions paying at least 150% of the federal minimum wage and located in the new or expanded premises and, if applicable, in newly renovated premises adjoining or otherwise neighboring the new or expanded premises; or

(iii) in Montgomery County only:

1. expend at least \$150 million to obtain at least 700,000 square feet of new or expanded premises by purchasing newly constructed premises, constructing new premises, causing new premises to be constructed, or leasing newly constructed premises; and

2. employ a total of at least 1,100 individuals in full-time positions consisting of both full-time positions of indefinite duration and contract positions of definite duration lasting at least 12 months with an unlimited renewal option, and including at least 500 individuals in new permanent full-time positions, with all positions:

A. receiving an employer provided subsidized health care benefits package;

B. paying at least 150% of the federal minimum wage; and

C. located in the new or expanded premises and, if applicable, in newly renovated premises adjoining or otherwise neighboring the new or expanded premises.

(2) For a business entity to qualify for an enhanced property tax credit under this subsection, the business entity, along with its affiliates, shall be primarily engaged in one or more of the following at the qualifying premises:

(i) manufacturing or mining;

(ii) transportation or communications;

(iii) agriculture, forestry, or fishing;

(iv) research, development, or testing;

(v) biotechnology;

(vi) computer programming, data processing, or other computer-related services;

(vii) central services as defined in § 6-101 of the Economic Development Article;

(viii) the operation of central administrative offices or a company headquarters as defined in § 6-101 of the Economic Development Article;

(ix) a public utility;

(x) warehousing; or

(xi) business services.

(3) To qualify for the enhanced property tax credit under this subsection, a business entity shall:

- (i) within a 6-year period beginning on the notification date, employ individuals in the number of new permanent full-time positions required under paragraph (1) of this subsection;
 - (ii) during the 6-year hiring period, obtain and occupy the new or expanded premises and, if applicable, the newly renovated premises adjoining or otherwise neighboring the new or expanded premises; and
 - (iii) during the 6-year hiring period, comply with all other requirements for the credits described in this subsection and in any applicable local law.
- (4)(i) If a business entity meets the requirements of this subsection and subsection (b) of this section and of applicable local law adopted under subsection (b)(1) of this section, for each of the first ~~12~~ **24** taxable years after it qualifies for the credit, a property tax credit may be claimed against the county or municipal corporation property taxes that would otherwise be due.
- (ii) The county or municipal corporation shall compute the amount of the property tax credit granted to equal 58.5% of the amount of property tax imposed on the increase in assessment of:
 - 1. the new or expanded premises;
 - 2. newly renovated real property improvements adjoining or otherwise neighboring the new or expanded premises, if the renovations are substantial, as defined in legislation enacted by the county or municipal corporation to grant the credits under this subsection; and
 - 3. the personal property located on the premises described in items 1 and 2 of this subparagraph.
 - (iii) The increase in assessment shall be measured from the notification date to the applicable annual assessment date after the county or municipal corporation has certified that the business entity has qualified for the credit.
- (5) On receipt of notification under subsection (b)(7) of this section that a business entity has been certified for an enhanced property tax credit under this subsection, the Department shall compute and certify to the Comptroller or, in the case of the insurance premiums tax, the Maryland Insurance Commissioner the amount of the State tax credit authorized under this subsection that may be claimed by the business entity or any of its affiliates against the individual or corporate income tax, insurance premiums tax, or financial institution franchise tax that would otherwise be due to equal 31.5% of the amount of property tax imposed on the increase in assessment of the real and personal property described in paragraph (4)(ii) of this subsection for each of the first ~~12~~ **24** taxable years for which the credit is allowed.
- (6) If a business entity or any of its affiliates claim the enhanced tax credits under this subsection for a certain premises, they may not claim the tax credits under subsection (c) of this section.

<< Note: MD TAX PROPERTY § 9-230 >>

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the extension of the duration of the tax credits provided under this Act shall apply to any business entity or affiliate of a business entity that qualified for the tax credits before the effective date of this Act.

<< Note: MD TAX PROPERTY § 9-230 >>

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012, and shall be applicable to all taxable years beginning after December 31, 2012.

Approved April 10, 2012.

Effective date: July 1, 2012.

End of Document

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