Maryland Income Tax
ADMINISTRATIVE RELEASE

Administrative Release No. 34

Subject: Credit Against Withholding Taxes For Tax-Exempt Organizations

I. General

House Bill 1155 (Chapter 730) enacted into law in 1998 provides for tax-exempt organizations to receive Employment Opportunity[1] and Qualifying Employees with Disabilities tax credits. The law was to be abrogated on June 30, 2008, but the abrogation date was extended until June 30, 2009 by the enactment of Chapters 391 and 658 (S.B. 314 and H.B. 280), Maryland Acts of 2008. The Employment Opportunity tax credit was not extended again and thus abrogated effective June 30, 2009. The abrogation of the Qualifying Employees with Disabilities tax credit was first extended until June 30, 2010 by the enactment of Chapter 290 (S.B. 604), Maryland Acts of 2009, and has now been extended until June 30, 2011 by the enactment of Chapter 252 (S.B. 221) Maryland Acts of 2010.

Senate Bill 244 (Chapter 357) enacted into law in 2000 provides for tax-exempt organizations to receive a tax credit for the cost of providing certain commuter benefits to employees who reside or work in Maryland. The amount of tax credit allowed was increased in Chapter 507 (H.B. 339), Maryland Acts of 2002.

House Bill 652 (Chapter 553) enacted into law in 2002 provides for tax-exempt organizations to receive Long-Term Employment of Qualified Ex-Felons tax credits. This law was abrogated December 31, 2004, but was reenacted as Chapter 394 (H.B. 1391), Maryland Acts of 2006, and which will be abrogated on December 31, 2011.

[1] The Act refers to this credit as the "Work, Not Welfare" tax credit. There is a federal credit entitled the "Work, Not Welfare" tax credit. The Maryland Department of Human Resources refers to the Maryland credit as the "Employment Opportunity" tax credit to differentiate between the Maryland and federal tax credit programs. For clarity and consistency, the Comptroller's Office will refer to the Maryland tax credit as the "Employment Opportunity" tax credit.

II. Definitions

A. "Tax-exempt organization" means an organization that is exempt from taxation under §501(c)(3) or (4) of the Internal Revenue Code.

B. "Tax credit for Employment Opportunity" means the credit referred to in Administrative Release No. 27.

C. "Tax credit for Qualifying Employees with Disabilities" means the credit referred to in Administrative Release No. 33.

D. "Tax credit for Cost of Providing Commuter Benefits to Employees" means the credit referred to in Administrative Release No. 36.

E. "Tax credit for Long-Term Employment of Qualified Ex-Felons" means the credit referred to in Administrative Release No. 39.

III. Credit

A tax-exempt organization may apply the tax credit for Employment Opportunity, tax credit for Qualifying Employees with Disabilities, tax credit for Cost of Providing Commuter Benefits to Employees, and tax credit for Long-Term Employment of Qualified Ex-Felons against:

(1) the State income tax due on unrelated business taxable income as defined under the Internal Revenue Code;[2] and

(2) the income tax required to be withheld from the wages of employees and remitted to the Comptroller of Maryland.

[2] To the extent the wages paid to qualifying employees or the costs of providing commuter benefits to employees are deductible as an ordinary and necessary business expense in the calculation of federal taxable income, the allowable credit(s) must be added to federal taxable income to compute the organization's Maryland taxable income. No addition modification is required if the organization does not have unrelated business taxable income.

IV. Limitations

A. Employment Opportunity and Qualifying Employees with Disabilities

For the Employment Opportunity tax credit, only credits with respect to employees hired before July 1, 2009 may be applied against the payment to the Comptroller of taxes that an organization has withheld from the wages of employees. For the Qualified Employees with Disability tax credit, only credits with respect to employees hired before July 1, 2011 may be applied against the payment to the Comptroller of taxes that an organization has withheld from the wages of employees.

The Employment Opportunity tax credit is applicable to taxable years beginning after December 31, 1994 but before January 1, 2012. The Qualifying Employees with Disability tax credit is applicable to taxable years after December 31, 1996 but before January 1, 2014.

A tax-exempt organization may not claim the Qualified Employees with Disability tax credit if the organization is claiming an Employment Opportunity tax credit for the same employee. See Administrative Release Nos. 27 and 33 for further details

B. Long-Term Employment of Qualified Ex-Felons

Under the current law, only credits with respect to employees hired on or after January 1, 2007, but before January 1, 2012, may be allowed.

A tax-exempt organization may not claim tax credit for Long-Term Employment of Qualified Ex-Felons if the organization is claiming a tax credit for the same employee under the Employment Opportunity tax credits or the Qualifying Employees with Disabilities tax credit.

C. Cost of Providing Commuter Benefits to Employees

Only credits with respect to the cost of providing commuter benefits incurred during taxable years beginning after December 31, 2000 may be claimed.

V. Manner of taking the credit

A tax-exempt organization may estimate the amount of the tax credit for qualifying employees for the taxable year. The total amount of the estimated tax credit should be divided evenly over the number of periods for filing employer withholding returns (Form MW506, Employer's Return of Income Tax Withheld). For example, if quarterly returns are required, then the total estimated tax credit should be divided by 4 and each quarterly payment to the Comptroller would be reduced by the amount of the credit. The amount of withholding reported on the Form MW506 should match the withholding payments being remitted to the Comptroller. Alternatively, if applicable, the tax-exempt organization could claim the credit against the tax on unrelated business taxable income on its annual Maryland income tax return.

VI. Carryover of excess credit

A. Employment Opportunity, Qualifying Employees with Disabilities, and Long-Term Employment of Qualified Ex-Felons

If the credit allowed in any taxable year exceeds the sum of State income tax otherwise payable by the tax-exempt organization for that taxable year and the taxes that the organization has withheld from the wages of employees, then the excess may be applied to succeeding taxable years, but no longer than five years.

B. Cost of Providing Commuter Benefits to Employees

The credit allowed in any taxable year is limited to the sum of the State income tax otherwise payable by the tax-exempt organization for that taxable year and the taxes that the organization has withheld from the wages of employees. Any excess credits may <u>NOT</u> be carried over and applied to succeeding taxable years.

VII. Reporting requirements

A. Employees

The tax-exempt organization must provide each employee with a statement (federal Form W-2) showing the total amount of taxes withheld from the employee's wages for the taxable year.

B. Reconciliation

The tax-exempt organization must file with the Comptroller a year-end reconciliation of withholding returns (Form MW508, Annual Employer Withholding Reconciliation Report) showing: the total Maryland withholding tax reported (Box 2.), the total state/local tax as shown on all Forms W-2 or 1099 (Box 3.) and the credits claimed on Form 500CR (Box 3a.). In addition, the tax-exempt organization must also attach a statement to this Report reconciling any differences between the estimated credits used in computing scheduled withholding payments and the actual credit amount claimed on Form 500CR. The tax-exempt organization must compute the allowable credit amount on the Form 500CR, Business Tax Credits, and attach the Form 500CR, along with any required credit certifications, to the Form MW508.

Revised: September 2010

COMPTROLLER of MARYLAND
Serving the People

Revenue Administration Division
Revenue Administration Center
Annapolis, Maryland 21411-0001

Telephone: **410-260-7980**
or **1-800-MD TAXES**

taxhelp@comp.state.md.us

www.marylandtaxes.com

For the deaf or hard of hearing:
call via Maryland Relay at 711 in Maryland
or 1-800-735-2258

If you need reasonable accommodation for a disability, please contact us before you visit.

If you need the information in this publication in an alternate format, contact the Comptroller's Office.