Maryland Income Tax
ADMINISTRATIVE RELEASE

Administrative Release No. 27

Subject: Work, Not Welfare, Tax Incentive Act of 1995 with 1996, 1998, 2000, 2003, 2006, 2007, and 2008 Amendments (Employment Opportunity Credit)

I. General

The Maryland Code refers to this credit as the "Work, Not Welfare," tax credit. There is a federal credit also entitled "Work, Not Welfare." 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.

The 1995 legislature enacted Senate Bill 402 (Chapter 492, Acts of 1995), which provided tax credit incentives for employers to hire certain individuals who are receiving benefits from the state under the Aid to Families with Dependent Children Program (AFDC). There are two types of credits. One credit is based on the percentage of wages paid to certain individuals and the other credit is based on a fixed amount of expenses incurred by an employer for child-care expense to enable the employee to be employed. The two credits are added together and applied against the state income tax.

In 1996, the legislature enacted Senate Bill 248 (Chapter 379, Acts of 1996), which amended Senate Bill 402 (Chapter 492, Acts of 1996). The Act introduced three provisions affecting the income tax credit:

- Required an employee to be a Maryland resident for at least 6 months prior to beginning work in order to satisfy the requirement for qualified employment.
- Reduced the period of time for qualified employment from six months to three months.
- Modified the amount of the credit for employees who voluntarily terminated their employment to take another job.

In 1998, the legislature enacted Senate Bill 292 (Chapter 598, Acts of 1998), which amended the Act. For employees hired after June 1, 1998:

- Added transportation expenses;
- Reduced the number of years for which the credit could be taken; and
- Provided a special credit for certain employment opportunity employees.

In 2000, the legislature enacted House Bill 1015 (Chapter 448, Acts of 2000) to add a new requirement that an employee hired after July 1, 2000 must be a recipient of temporary cash assistance for any 3 months during the 18-month period before the individual's employment in order to satisfy the criteria as a "qualified employment opportunity employee."

In 2003, the legislature enacted House Bill 884 (Chapter 454, Acts of 2003) to extend the time an employer can employ an individual and be eligible for the tax credit from July 1, 2003 to July 1, 2006.

In 2006, the legislature enacted House Bill 1391 (Chapter 394, Acts of 2006) to extend the termination provision from June 30, 2006 to June 30, 2007, and dates of applicability from all tax years beginning before January 1, 2009 to all tax years beginning before January 1, 2010, and from employees hired before July 1, 2006 to employees hired before July 1, 2007.

In 2007, the legislature enacted Senate Bill 1033 (Chapter 370, Acts of 2007) to extend the termination provision from June 30, 2007 to June 30, 2008, and to extend the dates of applicability from all tax years beginning before January 1, 2010 to all tax years beginning before January 1, 2011, and from employees hired before July 1, 2007 to employees hired before July 1, 2008.

In 2008, the legislature enacted Senate Bill 314 (Chapter 391, Acts of 2008) to extend the termination provision from June 30, 2008 to June

30, 2009, and dates of applicability from all tax years beginning before January 1, 2011 to all tax years beginning before January 1, 2012, and for employees hired before July 1, 2008 to employees hired before July 1, 2009.

No legislation was enacted during the 2009, 2010, or 2011 session of the Maryland General Assembly to extend this credit and as result, the termination date for this credit was June 30, 2009. The credit is only applicable to taxable years beginning after December 31, 1994 but before January 1, 2012. However, credits can still be earned for employees hired before July 1, 2009, for expenses incurred during the last applicable tax year (2011). Excess credits can be carried over for up to 5 years beginning on or after January 1, 2012.

II. Definitions

A. "Business entity/employer" includes a person conducting or operating a trade or business in Maryland. The term employer encompasses an individual proprietorship, partnership, corporation or S corporation, a limited liability company, or an organization operating in Maryland that is exempt from taxation under Section 501(c)(3) or (4) of the IRC.

B. "Qualified child care expenses" means state regulated child care expenses that are incurred by an employer to enable the employee to be gainfully employed. The child care must be provided by a state-regulated provider.

C. "Qualified employment opportunity employee" means an individual who:

1. was a resident of Maryland for the last six months prior to employment with the business entity; and

2. was a recipient of temporary cash assistance from the Aid to Families with Dependent Children Program or the Family Investment Program ("assistance") for any period of 3 months during the 18-month period before being hired by the employer.

D. "Qualified employment opportunity employee" does not include an individual who is the spouse of or can be claimed as a dependent[1] by a person who controls directly or indirectly more than 50% of the ownership of the business.

E. "Transportation expenses" are expenses that are incurred by an employer to enable a qualified employment opportunity employee to travel to and from work.

F. "Wages" means wages as defined in § 51(C)(1), (2), and (3) of the Internal Revenue Code (wages used in determining the Targeted Federal Jobs Credit) which generally includes payments for services performed in a trade or business of the employer.

III. Certification

The Department of Labor, Licensing and Regulation will certify an individual as a qualified employment opportunity employee. Certification may be accomplished in one of two ways. First, the job seeker can obtain a voucher by visiting one of the following three local offices: (i) the local Private Industry Council/Service Delivery Area; (ii) the local Job Service Office; or (iii) the local department of Social Services. These offices will provide job seekers with vouchers attesting that they are qualified, eligible workers. Eligible workers may then submit their vouchers to employers with an application for employment. Second, employers may obtain voucher forms from the department and provide them to prospective employees. Prospective employees should complete the vouchers and return them to the employers, who will then submit them to the department for verification that the individual is a qualified employment opportunity employee.

IV. Computation of the Credit

A. For employees hired before June 1, 1998

1. Wages. An employer computes the credit based on wages paid to each qualified employment opportunity employee. The credit is an amount equal to:

a. 30% of up to the first $6,000 of the wages paid to the employee during the first year of employment;

b. 20% of up to the first $6,000 of the wages

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1 "Dependent" is defined in § 152 of the Internal Revenue Code. Tax-General § 10-704.3 references § 152(a)(1)-(8) of the Internal Revenue Code. Section 152 was amended in 2004 and has been changed and renumbered to add additional paragraphs that explicitly describe who is a "Dependent." The correct reference is § 152 of the Internal Revenue Code.

paid to the employee during the second year of employment; and

c. 10% of up to the first $6,000 of the wages paid to the employee during the third year of employment.

2. Child care expenses. For each taxable year, for child care provided or paid by an employer for the children of a qualified employment opportunity employee, a credit is allowed in an amount equal to:

a. Up to $600 of the qualified child care expenses incurred for each employee during the first year of employment;

b. Up to $500 of the qualified child care expenses incurred for each employee during the second year of employment; and

c. Up to $400 of the qualified child care expenses incurred for each employee during the third year of employment.

B. For employees hired on or after June 1, 1998 and on or before June 30, 2009

1. Wages. An employer computes the credit based on wages paid to each qualified employment opportunity employee. Except as provided in Subparagraph c of this paragraph, the credit is an amount equal to:

a. 30% of up to the first $6,000 of the wages paid to the employee during the first year of employment;

b. 20% of up to the first $6,000 of the wages paid to the employee during the second year of employment; or

c. 40% of up to the first $10,000 of wages paid to an employment opportunity employee who:

(1) has been a recipient of assistance for at least 18 of the last 48 months (whether consecutive or not); and

(2) has been employed for a full year by the employer claiming the credit.

2. Child care and transportation expenses. For each taxable year, for child care provided or paid by an employer for the children of a qualified employment opportunity employee, and transportation expenses, a credit is allowed in an amount equal to:

a. Up to $600 of the qualified child and transportation expenses incurred for each employee during the first year of employment; and

b. Up to $500 of the qualified child care and transportation expenses incurred for each employee during the second year of employment**.**

V. Restrictions

A. An employer may not claim a credit for a certified employee:

1. who is hired to replace a laid-off employee or to replace an employee who is on strike; or

2. for whom the employer simultaneously receives other federal or state employment training benefits.

B. An employer may not claim the credit unless the employer has notified the Department of Labor, Licensing and Regulation (DLLR) that the qualified employment opportunity employee has been hired. The employer may satisfy this requirement by writing a letter to: Targeted Jobs Tax Credit Office, Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 201, Baltimore, MD 21201, (410) 767-2080.

C. An employer may claim the credit under this section for an employee whose employment lasts less than one year if the employee:

1. voluntarily terminates the employment with the employer;

2. is unable to continue employment due to death or a disability; or

3. is terminated for cause.

D. Except as provided in Subsection E of this section, an employer may claim a credit reduced by the proportion of a year that an employee did not work if the employment is less than a year because of the circumstances described in Subsection C of this section.

E. An employer may claim a credit for an employee who is employed for less than a year if the employee voluntarily terminates employment to take another job. The amount of the credit is 30% of up to the first $6,000 of wages paid to the employee during the period of employment.

VI. Taxable Year for Claim

For each taxable year, an employer may claim a tax credit for the wages paid and qualified child care or transportation expenses incurred for each qualified employment opportunity employee.

A. Example 1. An employer hires a qualified employment opportunity employee on November 1, 1995. The employee completes one year of employment on October 31, 1996. The employer is now eligible for the credit for the wages paid to that employee subject to the limits referred to in Section IV. In 1995, the employer paid the individual $1,000. In 1996, the employer paid the individual $10,000. The total amount of the credit that may be claimed for this individual is $1,800 (30% x $6,000) for the year during which the employee was hired. The employer may claim $1,000 on the 1995 return and $800 on the 1996 return for the first year of employment for this individual. Alternatively, the employer may elect to claim the entire $1,800 in 1996 and none in 1995. The amount of the credit for this individual may not, in any case, exceed $1,800 for the first year of employment.

B. Example 2. The employer hires a qualified employment opportunity employee on October 1, 1995, and the employee quits on November 30, 1995. During this period, the employer pays the individual $4,000 in wages. The employer may claim a credit for the wages paid this individual in the taxable year 1995 of $200. This amount is computed by applying 30% to the $4,000 paid the individual and multiplying that by the fraction of the number of months employed over 12 months. In this case the fraction would be 1/6.

C. Example 3. An employer may also prorate the credit by calculating it on the actual months worked and limiting qualified wages to a maximum of $500 per month. Applying this concept, if an employer hired a qualified employee in October of 1995 and the employee worked for a period of 8 months at a wage of $1,000 per month, the maximum amount of credit the employer can take is 30% of $1,500 in 1995 ($500 times the 3 months worked in 1995). In 1996, the employer can take a maximum of 30% of $2,500 for 1996 ($500 times the 5 months worked in 1996). This example assumes that the employer is on a calendar-year basis and the employment terminated in accordance with Section V. Subsection C. If the amount of the individual's wages were less than $500 per month, the actual amount of wages would have to be used.

D. Example 4. The employer hires a qualified employment opportunity employee on October 1, 1996, and the employee voluntarily terminates employment on March 1, 1997, in order to take another job. During the period of employment, the employer pays the individual $7,000 in wages. The employer may claim a credit of $1,800 (30% of $6,000). If the same employee had been paid $4,000, the amount of the credit would be $1,200 (30% of $4,000).

VII. Application of the Credit

A. An employer who is claiming a credit based on wages or child care and transportation expenses may claim a credit only against the state income tax portion. The credit may not be claimed against the local income tax portion.

B. A credit may not be claimed against the state income tax portion if the employer has applied the credit to any other tax provided for under this Act. If, for example, an employer is subject to the public service company franchise tax and the income tax, the credit may be applied against only one tax for which the individual or entity is liable.

VIII. Manner of Claiming the Credit

The credit may be taken by completing Form 500CR, Business Tax Credits. The form must be attached to the Maryland individual income tax return Form 502 in the case of an individual proprietorship. For a C corporation, the corporation must file a corporate income tax return and attach the Form 500CR to the return.

Pass-through entities will be able to pass the credit through to their members. The pass-through entity must attach to the pass-through entity tax return the business tax credit Form 500CR and must report on the Schedule K-1 each individual's share of the credit. Members may take their pro rata share of the credit against their tax on their individual returns. In the case of a nonresident member, the credit would be taken against the tax reported on the nonresident return, Form 505. For resident members, the credit must be taken on their individual income tax returns, Form 502. Individual members must attach to their returns a copy of the Schedule K-1 showing the amount of credit from the pass-through entity.

An organization that is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code may apply the credit as a credit against:

A. income tax due on unrelated business taxable income; or

B. the payment to the Comptroller of taxes that the organization is required to withhold from the wages of employees. (See Administrative Release No. 34)

IX. Carryover of Credit

If the credit allowed in any taxable year exceeds the total tax otherwise payable by the employer for that taxable year, an employer may apply the excess as a credit for succeeding taxable years until the earlier of the full amount of the excess is used or to the expiration of the fifth taxable year after the taxable year in which the wages or qualified child care or transportation expenses for which the credit is claimed were paid.

X. Addition Modification

Employers claiming the credit on the individual or corporate income tax return must add back the amount of the credit claimed to their federal adjusted gross income or federal taxable income**.**

XI. Effective Date

The Work, Not Welfare, Tax Incentive Act is effective July 1, 1995, and applies to all taxable years beginning after December 31, 1994, but before January 1, 2012; provided, however, that the tax credit shall be allowed only for employees hired on or after June 1, 1995, but before July 1, 2009. The excess credits may be carried forward subject to the five-year carryover limitation, and may be applied as a credit to tax years beginning on or after January 1, 2012.

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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