

**Administrative Release No. 33**

**Subject: Tax Credits for Hiring Individuals with Disabilities**

**I. Background**

The 1997 legislature enacted Senate Bill 228 (Chapter 112, Acts of 1997) and House Bill 496 (Chapter 113, Acts of 1997), providing tax credit incentives for employers to hire certain disabled individuals. There are two types of credits. One credit is based on a 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 incurred to enable the employee to be employed and for transportation expenses that are incurred to enable the employee to travel to and from work. The two credits are added together and applied against the State income tax.

In 1998, the legislature enacted Senate Bill 537 (Chapter 614, Acts of 1998), which amended Senate Bill 228 and House Bill 496. This bill extended the time an employer could employ an individual with a disability and be eligible for the tax credits from December 31, 2001 to December 31, 2003.

In 2000, the legislature enacted House Bill 1015 (Chapter 448, Acts of 2000), which amended the acts with four provisions affecting the credit for employees hired on or after July 1, 2000:

- Provided that the Department of Labor, Licensing and Regulation, in consultation with the Division of Rehabilitation, can determine if an individual has met the criteria of a qualified employee with a disability. (See III.D.1.d.)
- Expanded the definition of “qualified employee with a disability” to include an individual who was discharged or released from active duty in the armed forces of the United States for a service-connected disability. (See III.D.2.)
- Increased the amount of the credit available from 20% to 30% of up to the

first \$6,000 of wages paid to the qualified employee during the first year of employment. (See IV.A.1.b.)

- Extended the period of time in which an employer can employ a qualified employee and be eligible for the credit.

In 2003, the legislature enacted House Bill 884 (Chapter 454, Acts of 2003) to again extend the time in which an employer can employ a qualified employee 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 provisions and dates of applicability. The termination provisions were extended from June 30, 2006 to June 30, 2007. The dates of applicability were extended to all taxable years beginning before January 1, 2010 and employees hired before July 1, 2007. The new termination provision did not affect the carryforward provisions.

In 2007, the legislature enacted Senate Bill 1033 (Chapter 370, Acts of 2007), to extend the termination provisions and dates of applicability. The termination provisions were extended from June 30, 2007 to June 30, 2008. The dates of applicability were extended to all taxable years beginning before January 1, 2011 and employees hired before July 1, 2008. The new termination provision did not affect the carryforward provisions.

In 2008, the legislature enacted House Bill 280 (Chapter 658, Acts of 2008), to extend the termination provisions and dates of applicability. The termination provisions were extended from June 30, 2008 to June 30, 2009. The dates of applicability were extended to all taxable years beginning before January 1, 2012 and employees hired before July 1, 2009. The new termination provision does not affect the carryforward provisions.

In 2009, the legislature enacted Senate Bill 604 (Chapter 290, Acts of 2009), to extend the

termination provisions and dates of applicability. The termination provisions were extended from June 30, 2009 until June 30, 2010. The dates of applicability were extended to all tax years beginning before January 1, 2013 and employees hired before July 1, 2010. Tax credits may be carried forward and applied to taxable years beginning on or after January 1, 2013.

In 2010, the legislature enacted Senate Bill 221 (Chapter 252, Acts of 2010), to extend the termination provisions and dates of applicability. The termination provisions were extended from June 30, 2010 until June 30, 2011. The dates of applicability were extended to all tax years beginning before January 1, 2014 and employees hired before July 1, 2011. Tax credits may be carried forward and applied to taxable years beginning on or after January 1, 2014.

In 2011, the legislature enacted Senate Bill 830 (Chapter 558, Acts of 2011) to extend the termination provisions and dates of applicability. The termination provisions were extended from June 30, 2011 until June 30, 2012. The dates of applicability were extended to all tax years beginning before January 1, 2015 and employees hired before July 1, 2012. Tax credits may be carried forward and applied to taxable years beginning on or after January 1, 2015.

## II. General

Except as provided in Section V, a business entity may claim a tax credit in the amounts determined under Section IV for the wages and qualified child care or transportation expenses that are paid in the taxable year for which the business entity claims the credit with respect to a qualified employee with a disability.

## III. Definitions

### A. "Business entity" means:

1. A person conducting or operating a trade or business in Maryland; or
2. An organization operating in Maryland that is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code.

**B.** "Division" means the Division of Rehabilitation Services of the Maryland State Department of Education.

**C.** "Qualified child care or transportation expenses" means:

1. State regulated child care expenses that are incurred by a business entity to enable a qualified employee with a disability to be gainfully employed; or

2. Transportation expenses that are incurred by a business entity to enable a qualified employee with a disability to travel to and from work.

### D. "Qualified employee with a disability"

1. "Qualified employee with a disability" means an individual who:

a. Meets the definition of an individual with a disability as defined by the Americans with Disabilities Act;

b. Has a disability that presently constitutes an impediment to obtaining or maintaining employment or to transitioning from school to work;

c. Is ready for employment; and

d. Has been determined by the Division or the Department of Labor, Licensing, and Regulation (DLLR), in consultation with the Division, as having met the criteria of a qualified employee with a disability established under this section. Contact the Department of Education, Division of Rehabilitation Services at 410-554-9440 for additional information.

2. "Qualified employee with a disability" includes an individual who has been determined by DLLR, in consultation with the United States Veterans Administration, as having been discharged or released from active duty in the armed forces of the United States for a service-connected disability.

**E.** "Wages" means wages, within the meaning of § 51(c)(1), (2), and (3) of the Internal Revenue Code without regard to § 51(c)(4) of the Internal Revenue Code that are paid by a business entity to an employee for services performed in a trade or business of the employer.

Generally, under the federal law "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash except the following:

- On the job training and work supplementation payments
- Reduction for work supplementation payments to employers

- Amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training
- Payments for services during labor disputes if the principal place of employment of an individual with the employer is at a plant or facility, and there is a strike or lockout involving employees at such plant or facility
- The amount of any payment for a class or classes of employees on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability or death
- For further details the federal law should be consulted.

#### **IV. Credit Allowed**

##### **A. Wages.**

For each taxable year, for the wages paid to each qualified employee with a disability, a credit is allowed in an amount equal to:

1. a. For employees hired before July 1, 2000, 20% of up to the first \$6,000 of the wages paid to the qualified employee with a disability during the first year of employment; or
  - b. For employees hired on or after July 1, 2000, 30% of up to the first \$6,000 of the wages paid to the qualified employee with a disability during the first year of employment; and
2. 20% of up to the first \$6,000 of the wages paid to the qualified employee with a disability during the second year of employment.

##### **B. Child Care and Transportation Expenses.**

For each taxable year, for child care provided or paid for by a business entity for the children of a qualified employee with a disability, or transportation expenses that are incurred by a business entity to enable a qualified employee with a disability to travel to and from work, a credit is allowed in an amount equal to:

1. Up to \$600 of the qualified child care or transportation expenses incurred for each qualified

employee with a disability during the first year of employment; and

2. Up to \$500 of the qualified child care or transportation expenses incurred for each qualified employee with a disability during the second year of employment.

#### **V. Restrictions**

**A.** The same tax credit cannot be applied more than once against different taxes by the same taxpayer.

**B.** A business entity may not claim the credit under this section for an 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 business entity simultaneously receives federal or state employment training benefits.

**C.** A business entity may not claim the credit under this section until it has notified the Division that a qualified employee with a disability has been hired.

**D.** The credit may be claimed only against state income tax. The credit may not be claimed against the local income tax.

#### **VI. Special Rules**

**A.** A business entity may claim a credit in the amount provided in Subsection C of this section for an employee whose employment lasts less than 1 year if the employee:

1. Voluntarily terminates employment with the employer;
2. Is unable to continue employment due to a further disability or death; or
3. Is terminated for cause.

**B.** A business entity may not claim the credit if the business entity is claiming a tax credit for the same employee under the Work, Not Welfare, Tax Incentive Act (Employment Opportunity tax credit) (see Administrative Release No. 27).

**C.** Employment for less than one year:

1. If a business entity is entitled to a tax credit for an employee who is employed for less than 1 year because the employee voluntarily terminates employment with the employer to take another job, the business entity may claim a tax credit of 30%

(20% for first year of employment if the employee is hired before July 1, 2000) of up to the first \$6,000 of the wages paid to the employee during the course of employment.

2. If a business entity is entitled to a tax credit for an employee who is employed for less than 1 year for a reason other than that described in paragraph 1 of this subsection, the amount of the credit shall be reduced by the proportion of a year that the employee did not work.

## **VII. 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 should file a corporate income tax return and attach 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 should report on the Schedule K-1 each individual's share of the credit. Members may take their pro rata share of the credit against the tax on their individual return. 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 should be taken on their individual income tax returns, Form 502. Individual members must attach to their return 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:

1. Income tax due on unrelated business taxable income; or
2. The payment to the Comptroller of taxes that the organization is required to withhold from the wages of employees. (See Administrative Release No. 34)

## **VIII. Carryover of Excess Credit**

If the credit allowed in any taxable year exceeds the total tax otherwise payable by the business entity for that taxable year, a business entity may apply the excess as a credit for succeeding taxable years until the earlier of:

1. The full amount of the excess is used; or
2. The expiration of the 5th taxable year after the taxable year in which the wages or qualified child care or transportation expenses for which the credit is claimed are paid.

## **IX. Addition to Income**

If a credit is claimed under the above sections, the business entity must add the amount of the credit to its income in determining Maryland taxable income. In the case of an individual, the amount must be added to federal adjusted gross income on the Maryland return. In the case of a corporation, the amount must be added to federal taxable income on the Maryland corporation return.

## **X. Effective date**

A credit is allowed against the Maryland income tax, insurance premiums tax, and public service company franchise tax for certain wages paid and qualified child care or transportation expenses incurred with respect to qualified employees with a disability hired on or after October 1, 1997 and before July 1, 2012.

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