

**Administrative Release No. 39**

**Subject: Long-Term Employment of Qualified Ex-Felons Tax Credit**

**I. General**

In 2006, the legislature enacted House Bill 1391 (Chapter 394, Acts of 2006), which created a pilot program to provide incentives to business entities to encourage the Long-Term Employment of Qualified Ex-Felons. The pilot program provides fidelity bonds and qualifies business entities for tax credits. The tax credit is based on the percentage of wages paid to certain individuals and is applied against the state income tax.

**II. Definitions**

**A.** “Board” means the Governor’s Workforce Investment Board established by the Governor under the Maryland Workforce Investment Act, Subtitle 5, Title 11, Labor and Employment Article, Annotated Code of Maryland.

**B.** “Business entity” means:

1. a person conducting or operating a trade or business in Maryland, and includes an individual proprietorship, a partnership, a corporation or S corporation, a limited liability company and a business trust; or

2. an organization operating in Maryland that is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code.

**C.** “One-stop center” means an entity designated within a workforce investment area that provides employment training and services under the Maryland Workforce Investment Act.

The Department of Labor, Licensing and Regulation (Department) utilizes the Maryland Job Service CareerNet One-Stop Centers located throughout the State.

**D.** “Pilot program” means the pilot program for Long-Term Employment of Qualified Ex-Felons under Subtitle 7, Title 11, Labor and Employment Article, Annotated Code of Maryland.

**E.** “Qualified ex-felon employee”

1. “Qualified ex-felon employee” means a qualified ex-felon, defined in § 51(d)(4) of the

Internal Revenue Code to mean any individual who is certified by the designated local agency:

a. as having been convicted of a felony under any statute of the United States or any state; and

b. as having a hiring date which is not more than one year after the last date on which such individual was so convicted or was released from prison.

2. “Qualified ex-felon employee” does not include an individual who is the spouse of, or has any of the relationships specified in § 152<sup>1</sup> of the Internal Revenue Code to, a person who controls, directly or indirectly, more than 50% of the ownership of the business entity.

Generally, these relationships include:

- a. child or grandchild;
- b. stepchild;
- c. brother, sister, stepbrother or stepsister;
- d. parent, stepparent or grandparent;
- e. niece or nephew;
- f. aunt or uncle; or
- g. in-laws

**F.** “Wages” means wages within the meaning of § 51(c)(1), (2), and (3) of the Internal Revenue Code (wages used in determining the Work Opportunity Credit), without regard to § 51(c)(4) of the Internal Revenue Code, that are paid by a business entity 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:

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<sup>1</sup> Labor and Employment §11-701(g)(2) references IRC §152(a)(1)-(8), but §152 was amended in 2004 and renumbered. The correct statutory cite should be Section 152.

- 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

For further details the federal law should be consulted.

**G.** “Workforce investment area” means a workforce investment area designated by the Governor.

### **III. Pilot Program**

The purpose of the pilot program is to implement a program in at least two areas of the State to provide fidelity bonds and to qualify business entities for tax credits to encourage the long-term employment of qualified ex-felons. Each year, the Department will purchase the necessary amount of fidelity bonds to provide bonds to business entities for a full year of employment for up to 150 qualified ex-felons.

The pilot program will be implemented in the One-stop centers. These One-Stop Centers will:

1. work with the appropriate community organizations and State and local government entities that provide services to qualified ex-felons to encourage the referral and participation of the qualified ex-felons in the pilot program;
2. provide outreach and education efforts to encourage business entities to hire qualified ex-felons;
3. provide a business entity that hires a qualified ex-felon with:
  - a. a fidelity bond that covers at least 12 months of employment; and
  - b. information on the tax credits available to the business entity; and

4. develop an evaluation process that includes a mechanism to evaluate whether the pilot program has secured stable employment for qualified ex-felons that have participated in the program.

### **IV. Computation of the credit:**

For employees hired on or after January 1, 2007 but before January 1, 2012, a business entity computes the credit based on wages paid to each qualified ex-felon employee. The credit is an amount equal to:

- A.** 30% of up to the first \$6,000 of wages paid to the employee during the first year of employment;
- B.** 20% of up to the first \$6,000 of wages paid to the employee during the second year of employment.

### **V. Restrictions**

**A.** A business entity may not claim a credit for a qualified ex-felon 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 other federal or state employment training benefits.

**B.** A business entity may not claim the credit unless the entity has notified the Department that the qualified ex-felon employee has been hired. The business entity may satisfy this requirement by completing the forms prescribed by the Department.

Additional information may be obtained by contacting the Work Opportunity Tax Credit Programs Office, Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 201, Baltimore, MD 21201, (410)767-2080.

**C.** A business entity may claim the credit under this section for an employee whose employment lasts less than one year if the employee:

1. voluntarily terminates employment with the employer;
2. is unable to continue employment due to death or disability; or
3. is terminated for cause.

**D.** Except as provided in Subsection F of this section, a business entity 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.** A business entity 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.

**F.** A business entity may not claim the credit under this section if the entity is claiming a tax credit for the same employee under the Work, Not Welfare (Employment Opportunity) or Qualifying Employees with Disabilities tax credit programs. (See Administrative Releases Nos. 27 and 33.)

#### **VI. Application of the credit**

A business entity who is claiming a credit may claim a credit only against the state income tax. The credit may not be claimed against the local income tax.

#### **VII. Manner of claiming the credit**

The credit may be claimed by completing Form 500CR, Business Tax Credits. The form must be attached to the Maryland individual income tax return Form 502 or Form 505 in the case of an individual proprietorship. For a C corporation, the corporation must file a corporate income tax return (Form 500) 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 (Form 510) 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 the 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 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.)

#### **VIII. Carryover of credit**

When an individual or corporation is entitled to a credit that exceeds the state tax liability, the credit may be carried over to the next taxable year until the earlier of the full amount of the excess is used or the expiration of the fifth taxable year after the taxable year in which the wages for which the credit is claimed were paid.

#### **IX. 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 on their Maryland return.

An organization exempt from tax under §501(c)(3) or (4) of the Internal Revenue Code that has unrelated business taxable income must add back that portion of the credit attributable to wages paid to a qualified ex-felon to unrelated business taxable income on its Maryland return.

#### **X. Effective date**

The pilot program for the Long-Term Employment of Qualified Ex-Felons took effect July 1, 2006, and applies to all taxable years beginning after December 31, 2006, but before January 1, 2012; provided, however, that the tax credit shall be allowed for employees hired on or after January 1, 2007 but before January 1, 2012. The excess credits may be carried forward, subject to the five-year carryover limitation, and applied as a credit for taxable years beginning on or after January 1, 2012.

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