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Issue/Topic
Credits and Incentives

Maryland Enacts Tax Credit and Incentive Legislation to Encourage Manufacturers to Create Jobs

On April 11, 2017, Maryland enacted the More Jobs for Marylanders Act of 2017 to promote job creation and economic growth in the state.[1] The More Jobs for Marylanders Program, which will be administered by the Maryland Department of Commerce, provides incentives for both new and existing Maryland manufacturing businesses. For new manufacturing businesses located in designated counties, the program provides: (i) an income tax credit based on the number of new jobs created; (ii) a state property tax credit; (iii) a sales and use tax refund for qualified purchases; and (iv) an exemption from corporate filing fees. Existing Maryland manufacturers may claim the same income tax credit. Also, the legislation is designed to assist manufacturing companies by conforming to Internal Revenue Code (IRC) Section 179 expensing and bonus depreciation allowed under IRC Section 168(k). Finally, the legislation establishes an apprenticeship income tax credit.

Participation in Program

To participate in the More Jobs for Marylanders Program, a business must operate or conduct a trade or business that is primarily engaged in manufacturing, other than refining which is excluded from the program.[2] Prior to taking the action that qualifies for the program, a business must notify the Department of Commerce of its intent to seek certification of an eligible project.[3] A business must agree to create a minimum number of qualified positions[4] as defined by the Act. Specifically, a business in a Tier I county must

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[1] Ch. 149 (S.B. 317), Laws 2017; *S.B. 317 Fiscal and Policy Note (Revised)*, Maryland Department of Legislative Services, April 2017. This legislation generally takes effect June 1, 2017, but the effective dates applicable to specific provisions are indicated below.
[2] MD. CODE ANN., ECON. DEV. § 6-801(c).
[3] MD. CODE ANN., ECON. DEV. § 6-803.
[4] A "qualified position" means a position that: (i) is full-time and of indefinite duration; (ii) pays at least 120 percent of the state minimum wage; (iii) is located in a facility; (iv) is newly created at a single facility in Maryland; and (v) is filled. However, the term does not include a position that is: (i) created when an employment function is shifted from an existing facility of a business entity in the state to another facility of the same business if the position is not a net new job in the state; (ii) created through a change in ownership of a trade or business; (iii) created through a consolidation, merger or restructuring of a business entity if the position is not a net new job in the state; (iv) created when an employment function is contractually shifted from an existing business entity to another business entity in the state if the position is not a net new job in the state; or (v) filled for a period of less than 12 months. MD. CODE ANN., ECON. DEV. § 6-801(i).

create at least five qualified positions at the project location and businesses in Tier II counties must create at least 10 qualified positions at the project location.[5]

A Tier I county is a qualified distressed county (QDC).[6] According to the Department, Allegany, Dorchester, Somerset and Worcester counties and Baltimore City are currently designated as QDCs.[7] Also, the Department of Commerce may designate up to three additional counties as Tier I counties.[8] Tier II counties are all counties not classified as Tier I counties.[9]

Within 12 months of notifying the Department of Commerce of its intent to seek designation of an eligible project, a business entity must begin hiring employees to fill the qualified positions.[10] The legislation specifies the information that the Department of Commerce must include in a certificate and provides that the Department of Commerce may not issue a certificate on or after June 1, 2020.[11] The Department of Commerce may revoke its certification if the business makes false representations.[12]

Credits and Incentives Provided by Program

For new manufacturers locating a qualified project in a Tier I county, an income tax credit, property tax credit, sales and use tax refund and a waiver of corporate filing fees may be available if the company enrolls in the program.[13] Existing manufacturers located in Tier I or Tier II counties may receive an income tax credit if they are implementing a project qualified for the program.[14] If approved, a company located in either a Tier I or Tier II county may claim the benefits that are awarded for up to 10 consecutive benefit years.[15] If the number of qualified positions at the eligible project decreases to a number less than the number established in the first benefit year, the project is removed from the program and all benefits terminate.[16]

Tax Incentives for New Business Entities in Tier I Counties

For tax years beginning after December 31, 2017, new qualified businesses that participate in the program and operate an eligible project in a Tier I county may receive a refundable state income tax credit that equals the state employer withholding tax amount (currently,

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[5] MD. CODE ANN., ECON. DEV. § 6-803(a).
[6] MD. CODE ANN., ECON. DEV. § 6-801(j). A "qualified distressed county" is a county that meets certain high unemployment rates or has a low per capita personal income compared to state averages. MD. CODE ANN., ECON. DEV. § 1-101(e).
[7] *S.B. 317 Fiscal and Policy Note (Revised)*, Maryland Department of Legislative Services, April 2017.
[8] MD. CODE ANN., ECON. DEV. § 6-801(j).
[9] MD. CODE ANN., ECON. DEV. § 6-801(k).
[10] MD. CODE ANN., ECON. DEV. § 6-803(d).
[11] MD. CODE ANN., ECON. DEV. § 6-805.
[12] MD. CODE ANN., ECON. DEV. § 6-806.
[13] MD. CODE ANN., ECON. DEV. §§ 6-803(a); 6-804(b)(1).
[14] MD. CODE ANN., ECON. DEV. § 6-804(b)(2).
[15] MD. CODE ANN., ECON. DEV. § 6-804(a).
[16] MD. CODE ANN., ECON. DEV. § 6-804(d).

5.75 percent) multiplied by the total amount of wages paid for each qualified position at an eligible project.[17]

For tax years beginning after June 30, 2017, new qualified businesses in Tier I counties participating in the program also may receive a property tax credit equal to 100 percent of all state property tax (currently, $0.112 per $100 assessed or 0.112 percent) that is due.[18] This property tax credit does not affect the amount of the county or municipal property tax imposed on the property.[19]

For a sale of qualified personal property or services[20] on or after January 1, 2018, new qualified businesses in Tier I counties participating in the program are entitled to a refund of the amount of sales and use tax paid during the immediately preceding calendar year.[21] The qualified business entity must purchase the qualified personal property or services solely for use at an eligible project that is enrolled in the program. To receive the credit, the business must file a refund claim with the Department of Commerce on or after January 1 of the calendar year immediately following the purchase.[22]

Finally, new qualified businesses in Tier I counties participating in the program receive a waiver of corporate filing fees charged by the Maryland State Department of Assessments and Taxation.[23]

Tax Credit for Existing Manufacturers

For tax years beginning after December 31, 2017, existing businesses in the program in Tier 1 and Tier II counties receive the same refundable state income withholding tax credit

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[17] MD. CODE ANN., ECON. DEV. § 6-804(b)(1)(I); MD. CODE ANN., TAX-GEN. § 10-741(b). Note that a reserve fund is established for this credit. The Department may not issue certificates for income tax credit amounts in the aggregate totaling more than $9 million in a fiscal year, but any excess amount in the fund may be used in the next fiscal year. Beginning with the 2019 fiscal year, the governor is directed to include an appropriation for this fund in the annual budget. MD. CODE ANN., TAX-GEN. § 10-741(d).

[18] MD. CODE ANN., ECON. DEV. § 6-804(b)(1)(II); MD. CODE ANN., TAX-PROP. § 9-110(b); *S.B. 317 Fiscal and Policy Note (Revised)*, Maryland Department of Legislative Services, April 2017.

[19] MD. CODE ANN., TAX-PROP. § 9-110(b)(3). Currently, it is unclear as to how the property tax credit will be administered, specifically whether the credit will take the form of an abatement or a refund.

[20] "Qualified personal property or services" means "personal property or services purchased for use at an eligible project by a qualified business entity that is enrolled in the program." MD. CODE ANN., TAX-GEN. § 11-411(a)(8).

[21] MD. CODE ANN., ECON. DEV. § 6-804(b)(1)(III); MD. CODE ANN., TAX-GEN. § 11-411(b). Note that a reserve fund is established for this refund. The Department may not issue sales and use tax refunds in amounts in the aggregate totaling more than $1 million in a fiscal year. Any excess amount will be transferred to the corresponding tax credit reserve fund. Beginning with the 2019 fiscal year, the governor is directed to include an appropriation for this fund in the annual budget. MD. CODE ANN., TAX-GEN. § 11-411(d).

[22] MD. CODE ANN., TAX-GEN. § 11-411(c).

[23] MD. CODE ANN., ECON. DEV. § 6-804(b)(1)(IV); MD. CODE ANN., CORPS. & ASS'NS. § 1-203.1(b).

being provided to new manufacturers.[24] This credit is not available to existing business entities that move a facility to another county in Maryland on or after June 1, 2017.[25]

Bonus Depreciation and Enhanced Expensing for Manufacturers

For tax years beginning after December 31, 2018, manufacturing entities (other than refiners) are allowed to use bonus depreciation under IRC Section 168(k) and enhanced expensing under IRC Section 179.[26] This change applies to property that is placed in service by a manufacturing entity on or after January 1, 2019. In general, Maryland decouples from bonus depreciation and enhanced expensing.

Eligible Apprentice Tax Credit

Effective July 1, 2017, a taxpayer may claim an income tax credit for the first year of employment of an eligible apprentice who is enrolled in a program registered with the Maryland Apprenticeship and Training Council and employed by the taxpayer for at least seven full months.[27] The credit may not exceed the lesser of: (i) $1,000 for each eligible apprentice; or (ii) the taxpayer's tax liability.[28] The total amount of credits for a tax year issued by the Maryland Department of Labor, Licensing and Regulation under this provision may not exceed $500,000. This credit applies to tax years beginning after December 31, 2016 and before January 1, 2020.[29]

Commentary

The More Jobs for Marylanders Act is major tax incentive legislation that is designed to encourage the creation of manufacturing jobs in the state. The legislation is the "centerpiece" of Maryland Governor Larry Hogan's jobs initiative and was nearly unanimously passed by the legislature.[30] According to Governor Hogan, this legislation "will incentivize and encourage manufacturers to create thousands of jobs in the areas of the state that need them the most, like Baltimore City, Western Maryland, and the Lower Eastern Shore, while also offering benefits to both workers and job creators across the state."[31] Accordingly, the greatest incentives are provided to participants in the More Jobs for Marylanders Program that are new manufacturers located in Tier I counties. The legislation is designed to attract new businesses to counties that have high unemployment or low per capita income. However, the income tax credit also is available to existing manufacturers that participate in the program and create the requisite number of jobs.

Interestingly, the Maryland legislature included what essentially amounted to a policy statement, in which it stated that the "widespread adoption of tax subsidies intended to move jobs from one state to another reduces revenues in all participating states without

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[24] MD. CODE ANN., ECON. DEV. § 6-804(b)(2); MD. CODE ANN., TAX-GEN. § 10-741(b).
[25] MD. CODE ANN., ECON. DEV. § 6-804(c).
[26] MD. CODE ANN., TAX-GEN. § 10-210.1(a)(4), (b).
[27] MD. CODE ANN., TAX-GEN. § 10-742.
[28] MD. CODE ANN., TAX-GEN. § 10-742(c).
[29] S.B. 317, § 9.
[30] *Press Release*, Officer of Maryland Governor Larry Hogan, April 11, 2017.
[31] *Id.*

increasing the total number and quality of jobs."[32] Based on this conclusory legislative finding, the legislature directs the Maryland governor to work with the leaders of Delaware, the District of Columbia, North Carolina, Pennsylvania, Virginia and West Virginia to attempt to negotiate a regional agreement by July 1, 2018 to repeal any law in these jurisdictions that allows a tax subsidy for job creation. Furthermore, the agreement must list the tax subsidy laws such as tax credits, deductions, exemptions or other modifications for each jurisdiction. Also, the agreement must provide that each jurisdiction repeal these laws provided that the other jurisdictions enact corresponding legislation. The governor is directed to report to the legislature on the status of reaching an agreement by September 15, 2018.

Most of the tax incentives provided by this legislation are limited to manufacturers that participate in the program. However, the adoption of federal bonus depreciation and enhanced expensing applies to all manufacturers in the state and should encourage additional investment in new equipment. This provision should be most effective with small manufacturers that need capital to reinvest in their businesses. Because this should free up capital more rapidly, manufacturers may be able to upgrade facilities and hire new employees, in an attempt to level the playing field with neighboring states.

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[32] S.B. 317, § 7.