

Bill No. 15-09

Concerning: Establishing a Commercial and Industrial
Business Tax Credit

Revised: _____ Draft No. _____

Introduced: July 21, 2015

Expires: _____

Enacted: _____

Executive: _____

Effective: _____

Frederick County Code, Chapter 1-8, Section(s) 441-
445

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President Bud Otis on behalf of County Executive Jan Gardner

AN ACT to:

COMMERCIAL AND INDUSTRIAL BUSINESS TAX CREDIT

For the purpose of establishing a tax credit against real property tax imposed by Frederick County, Maryland, for certain manufacturing, fabricating and assembly facilities that locate or expand within Frederick County.

By adding:

Frederick County Code, Chapter 1-8, Article XIII, Section(s) 441-445

Other:

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

Bill No. _____

The County Council of Frederick County, Maryland, finds it necessary and appropriate to add Article XIII: Commercial and Industrial Tax Credit, Sections 1-8-441 through 1-8-445 to the Frederick County Code.

NOW, THEREFORE, BE IT IN ENACTED, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

Harold F. (Bud) Otis, President
County Council of Frederick County,
Maryland

Exhibit 1

CHAPTER 1-8: FINANCE AND TAXATION

ARTICLE XIII: COMMERCIAL AND INDUSTRIAL TAX CREDIT

SECTION 1-8-441. ESTABLISHMENT.

(A) As authorized by, and subject to, the provisions set forth in the Annotated Code of Maryland, Tax Property Article, Section 9-205, Frederick County, Maryland hereby establishes a property tax credit against the County real property tax on real property owned or occupied by a commercial or industrial manufacturing, fabricating or assembling facility that qualifies under this Article, which real property tax credit shall be known as the Frederick County Commercial and Industrial Business Tax Credit.

(B) The Frederick County Director of Treasury ("County Treasurer") shall administer this tax credit.

SECTION 1-8-442. DEFINITIONS.

(A) "Commercial or Industrial Business" means a person that conducts manufacturing, fabricating or assembling operations within Frederick County.

(B) "Facility" means the property within Frederick County that is either developed or expanded for manufacturing, fabricating or assembling purposes and for which this tax credit is sought.

(C) "Substantial Investment" means (1) the acquisition or expansion of a building, land or equipment for manufacturing, fabricating or assembling purposes within Frederick County that totals a new investment of at least Five Million Dollars (\$5,000,000.00) and (2) the creation of at least twenty five (25) new permanent full time positions at the facility paying at least 150% of the federal minimum wage and which positions may not have been transferred to the facility from another location in Frederick County.

(D) "Tax Credit Agreement" means an agreement entered into with the County by the commercial or industrial business responsible for the Facility which sets forth reporting and other administrative requirements and conditions with which, in the County Executive's discretion, the commercial or industrial business and facility must comply to receive this tax credit.

SECTION 1-8-443. QUALIFYING CONDITIONS.

(A) To qualify for this tax credit the commercial or industrial business must make a substantial investment in developing and operating a facility within Frederick County.

(B) The commercial or industrial business seeking this credit for a facility must apply for this tax credit with the Frederick County Treasurer on or before October 1 of the tax year for which the facility is first eligible for this tax credit.

(C) The facility must be in continual operation throughout each tax year for which this credit is granted.

(D) the facility must be located in an appropriately zoned area and may not be located in an agricultural or resource conservation zone.

(E) the facility must be lawfully used for manufacturing, fabricating or assembling purposes, as such terms are defined for purposes of the Annotated Code of Maryland, Tax-Property Article.

(F) both single and multiple use properties are eligible to qualify for this tax credit, assuming all other eligibility requirements are met, although multiple use properties will only be eligible to receive a tax credit on the facility portion of the property devoted to active manufacturing, fabricating or assembling purposes.

(G) the commercial or industrial business responsible for the qualifying facility and the owner of the real property where the facility is located, if other than the commercial or industrial business, must, if requested, enter into a tax credit agreement with Frederick County.

SECTION 1-8-444. AMOUNT AND DURATION OF CREDIT.

(A) A facility shall be eligible for this commercial and industrial business tax credit for a term not to exceed ten (10) consecutive years after first qualifying for this property tax credit. The first tax year the tax credit shall become available for a qualifying facility shall be the first full tax year in which its county property taxes would increase due to the substantial investment in new construction or an improvement to an existing facility (the "first tax year"). The last tax year this property tax credit shall be available shall be the tenth tax year that follows the increase in county real property tax due to the substantial investment in the facility.

(B) The County Executive shall establish the term and amount of each tax credit granted under this Article, as the County Executive believes is in Frederick County's best interest, in an amount expressed as a percent of the additional Frederick County real property tax imposed as a result of an increase in assessment due to the new construction or expansion of a qualifying facility (the "incremental tax"). In the event the average amount of the credit over the term of the credit would exceed 60% of total incremental tax, the tax credit must be reviewed and approved by the County Council before the tax credit is granted.

(C) The amount of a tax credit granted under this program may not exceed the property tax increase attributable to the increase in the assessment of the facility over the assessment before the substantial investment was made to the qualifying facility (the “incremental tax”).

SECTION 1-8-445. GENERAL PROVISIONS.

(A) This property tax credit shall be a credit only against the County real property tax imposed pursuant to Maryland Annotated Code Tax-Property Article Section 6-202 and shall not be a credit against any special taxing district tax including, but not limited to tax for fire and rescue services, imposed pursuant to Maryland or Frederick County law.

(B) Property owners shall file annually on or before April 30 of each calendar year an affidavit, signed under oath or affirmation subject to penalties for perjury, with the County Treasurer certifying that the facility continues to operate in Frederick County and qualifies for this tax credit; failure to do so shall mean that the otherwise qualifying property shall not be entitled to receive this tax credit for the following tax year (July 1 through June 30).

(C) In addition to terminating as may be provided in the tax credit agreement or elsewhere in this ordinance, any tax credit granted under this provision shall terminate:

(1) at the moment ownership of the qualifying facility or real property on which it sits is transferred or conveyed in any manner whatsoever, except that this provision shall not apply simply because the facility or real property is subject to a mortgage or deed of trust granted as part of a financing of the property or if the transfer or conveyance is between a parent business entity and its wholly owned subsidiary business entity or between 2 or more subsidiary business entities wholly owned by the same parent business entity;

(2) at the moment in which the qualifying facility is substantially destroyed;

(3) at the moment the qualifying facility ceases to be used in whole or part for manufacturing, fabricating or assembling purposes, including but not limited to failing to maintain the minimum employment level required for the initial substantial investment; or

(4) at the end of the tenth tax year after the qualifying facility was first eligible for this tax credit.

(D) To the extent this tax credit terminates other than at the end of a tax year, the property owner shall repay, without demand, Frederick County the amount of the tax credit received for that tax year. Interest shall accrue from the moment the tax credit terminates at the rate established for overdue property taxes. To the extent permitted by law, any unrepaid tax credit is a lien on the real property that had received the tax credit and may be collected in the

same manner as unpaid property taxes may be collected under the Annotated Code of Maryland, Tax-Property Article.

(E) In the event the commercial or industrial business making the substantial investment that qualifies for this tax credit is a lessee of real property subject to this credit, the amount of this tax credit shall pass through to the commercial or industrial business that makes the substantial investment qualifying the facility for this credit, except that the term of the tax credit may not exceed the remaining term of the lease and may not, in any event, exceed ten years.

(F) In the event a commercial or industrial business qualifies for this commercial and industrial business tax credit as well as for a second real property tax credit available from the County and applications are timely filed for both credits, the qualifying business may elect which credit to receive, but may not receive both credits. Upon expiration or termination of the selected credit, if the qualifying business is not then in default of the qualifications for either tax credit and the tax credits were for different length terms the business shall then receive the remaining credit available during any remaining time on the second credit.