

AMENDMENT 1 to Bill No: 16-18

Introduced By: Council Vice President M. C. Keegan-Ayer (District 3)

Introduction Date: January 17, 2017

Adopted/Rejected/Withdrawn: January 17, 2017

An ACT to: Establish a small business real property tax credit within Frederick County.

On Page 1 of Bill, Paragraph 1, Add:

The County Council of Frederick County, Maryland, finds it necessary and appropriate to add Article XV: Small Business **REAL PROPERTY** Tax Credit, Sections 1-8-461 through 1-8-466 to the Frederick County Code.

On Exhibit 1, Page 1, Subtitle, Article XV, Add:

CHAPTER 1-8: FINANCE AND TAXATION

ARTICLE XV: SMALL BUSINESS **REAL PROPERTY TAX CREDIT**

On Exhibit 1, Page 1, Subsection 1-19-8.461. Establishment, Amend:

SECTION 1-8-461. ESTABLISHMENT.

(A) AS AUTHORIZED BY, AND SUBJECT TO, THE PROVISIONS SET FORTH IN THE ANNOTATED CODE OF MARYLAND, TAX PROPERTY ARTICLE, SECTION 9-312(i), FREDERICK COUNTY, MARYLAND HEREBY ESTABLISHES A PROPERTY TAX CREDIT AGAINST THE COUNTY PROPERTY TAX ON REAL PROPERTY OWNED OR **LEASED** [occupied] BY A [small] BUSINESS **ENTITY** THAT **MEETS THE REQUIREMENTS SPECIFIED IN** [qualified under] THIS ARTICLE, WHICH REAL PROPERTY TAX CREDIT SHALL BE KNOWN AS THE FREDERICK COUNTY SMALL BUSINESS **REAL PROPERTY** TAX CREDIT.

EXPLANATION:

BOLD CAPITALS INDICATE MATTER ADDED TO THE BILL.

[Brackets] indicate matter deleted from the bill.

(B) THE FREDERICK COUNTY DIRECTOR OF FINANCE ("DIRECTOR") SHALL ADMINISTER THIS TAX CREDIT.

On Exhibit 1, Pages 1-2, Subsection 1-19-8.462. Definitions, Amend:

[(A)] ["]AFFILIATE." means a]A PERSON:

(1) THAT DIRECTLY OR INDIRECTLY OWNS AT LEAST 80% OF A BUSINESS ENTITY; OR

(2) AT LEAST 80% OF WHICH IS OWNED, DIRECTLY OR INDIRECTLY, BY A BUSINESS ENTITY.

[(B)] ["]BUSINESS ENTITY." means a]A PERSON CONDUCTING A TRADE OR BUSINESS IN THE STATE THAT IS SUBJECT TO THE STATE INDIVIDUAL OR CORPORATE INCOME TAX OR INSURANCE PREMIUMS TAX.

DIRECTOR. THE DIRECTOR OF FINANCE FOR FREDERICK COUNTY OR DESIGNEE.

[(C)] ["]FULL-TIME POSITION." means a]A POSITION THAT REQUIRES AT LEAST 1800 HOURS OF AN EMPLOYEE'S TIME IN A CALENDAR YEAR, DURING WHICH TIME THE EMPLOYEE IS PAID AT A RATE AT LEAST EQUAL TO 150% OF THE FEDERAL MINIMUM WAGE.

[(D)] ["]NEW OR EXPANDED PREMISES." means]COMMERCIAL OR INDUSTRIAL REAL PROPERTY, INCLUDING A BUILDING OR PART OF A BUILDING THAT HAS NOT BEEN PREVIOUSLY OCCUPIED, WHERE A BUSINESS ENTITY OR ITS AFFILIATES LOCATE TO CONDUCT BUSINESS.

[(E)] ["]NEW PERMANENT FULL-TIME POSITION." means a]A POSITION THAT IS:

(1) A FULL-TIME POSITION OF INDEFINITE DURATION;

(2) LOCATED IN FREDERICK COUNTY;

(3) NEWLY CREATED, AS A RESULT OF THE ESTABLISHMENT OR EXPANSION OF A BUSINESS FACILITY IN THE COUNTY; AND

(4) FILLED.

EXPLANATION:

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[“]NEW PERMANENT FULL-TIME POSITION.[” d]DOES NOT INCLUDE A POSITION THAT IS:

- (1) CREATED WHEN AN EMPLOYMENT FUNCTION IS SHIFTED FROM AN EXISTING BUSINESS FACILITY OF THE BUSINESS ENTITY OR ITS AFFILIATES LOCATED IN FREDERICK COUNTY TO ANOTHER BUSINESS FACILITY OF THE SAME BUSINESS ENTITY OR ITS AFFILIATES, IF THE POSITION DOES NOT REPRESENT A NET NEW JOB IN FREDERICK COUNTY;
- (2) CREATED THROUGH A CHANGE IN OWNERSHIP OF A TRADE OR BUSINESS;
- (3) CREATED THROUGH A CONSOLIDATION, MERGER, OR RESTRUCTURING OF A BUSINESS ENTITY OR ITS AFFILIATES, IF THE POSITION DOES NOT REPRESENT A NET NEW JOB IN FREDERICK COUNTY;
- (4) CREATED WHEN AN EMPLOYMENT FUNCTION IS CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY OR ITS AFFILIATES LOCATED IN THE COUNTY TO ANOTHER BUSINESS ENTITY OR ITS AFFILIATES, IF THE POSITION DOES NOT REPRESENT A NET NEW JOB IN FREDERICK COUNTY; OR
- (5) FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.

On Exhibit 1, Pages 2-3, Subsection 1-19-8.463., Amend:

SECTION 1-8-463. [QUALIFICATIONS] ELIGIBILITY FOR TAX CREDIT.

(A) TO QUALIFY FOR THE FREDERICK COUNTY SMALL BUSINESS **REAL PROPERTY TAX CREDIT UNDER THIS ARTICLE**, BEFORE A BUSINESS ENTITY OBTAINS NEW OR EXPANDED PREMISES OR HIRES EMPLOYEES TO FILL THE NEW PERMANENT FULL-TIME POSITIONS AT THE NEW OR EXPANDED PREMISES, THE BUSINESS ENTITY MUST PROVIDE WRITTEN NOTIFICATION TO THE DIRECTOR STATING:

- (1) THAT THE BUSINESS ENTITY INTENDS TO CLAIM THE PROPERTY TAX CREDIT; AND
- (2) WHEN THE BUSINESS ENTITY EXPECTS TO OBTAIN THE NEW OR EXPANDED PREMISES AND HIRE THE REQUIRED NUMBER OF EMPLOYEES IN THE NEW PERMANENT FULL-TIME POSITIONS.

EXPLANATION:

BOLD CAPITALS INDICATE MATTER ADDED TO THE BILL.
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(B) TO FURTHER QUALIFY FOR THIS PROPERTY TAX CREDIT A BUSINESS ENTITY SHALL:

(1) OBTAIN AT LEAST 2,500 SQUARE FEET OF NEW OR EXPANDED PREMISES WITHIN FREDERICK COUNTY BY PURCHASING NEWLY CONSTRUCTED PREMISES, CONSTRUCTING NEW PREMISES, CAUSING NEW PREMISES TO BE CONSTRUCTED, OR LEASING PREVIOUSLY UNOCCUPIED PREMISES; AND

(2) EMPLOY AT LEAST FIVE INDIVIDUALS IN NEW PERMANENT FULL-TIME POSITIONS WITHIN FREDERICK COUNTY DURING A 24-MONTH PERIOD, DURING WHICH PERIOD THE BUSINESS ENTITY ALSO MUST OBTAIN AND OCCUPY THE NEW OR EXPANDED PREMISES.

(3) [Maintain the increased total] **CONTINUE TO OCCUPY THE NEW OR EXPANDED PREMISES AND CONTINUE TO EMPLOY THE INCREASED TOTAL WORK FORCE THROUGHOUT EACH YEAR FOR WHICH** [the term of] **THIS TAX CREDIT IS SOUGHT.**

(C) [Finally, as an additional condition t] TO QUALIFY FOR THIS PROPERTY TAX CREDIT, THE TOTAL NUMBER OF FULL TIME PERMANENT EMPLOYEES COLLECTIVELY EMPLOYED BY THE BUSINESS ENTITY AND ITS AFFILIATES MAY NOT EXCEED 50 AT THE TIME THE APPLICATION FOR THIS TAX CREDIT IS INITIALLY FILED.

On Exhibit 1, Page 3, Subsection 1-19-8.464. Tax Credit Percentages and Timing, Amend:

SECTION 1-8-464. TAX CREDIT PERCENTAGES AND TIMING.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF A BUSINESS ENTITY QUALIFIES FOR THIS PROPERTY TAX CREDIT, THE CREDIT SHALL EQUAL A PERCENTAGE OF THE AMOUNT OF PROPERTY TAX IMPOSED ON THE ASSESSMENT OF THE NEW OR EXPANDED PREMISES, AS FOLLOWS:

- (1) 40% IN THE 1ST AND 2ND TAXABLE YEARS;
- (2) 30% IN THE 3RD AND 4TH TAXABLE YEARS;
- (3) 20% IN THE 5TH AND 6TH TAXABLE YEARS; AND
- (4) 0% FOR EACH TAXABLE YEAR THEREAFTER.

(B) THIS SMALL BUSINESS PROPERTY TAX CREDIT MAY NOT BE GRANTED UNTIL THE FIRST FULL TAXABLE YEAR IN WHICH THE FREDERICK COUNTY PROPERTY TAX IMPOSED ON REAL PROPERTY OWNED OR LEASED BY

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THE BUSINESS ENTITY INCREASES DUE TO THE BUSINESS ENTITY'S QUALIFYING INVESTMENT IN THE NEW OR EXPANDED PREMISES.

(C) [After qualifying and being granted this property tax credit , the first tax year if this property tax credit will be the first tax year in which Frederick County real property taxes increase due to the qualifying investment in the new or expanded **property]****PROVIDED ELIGIBILITY IS MAINTAINED EACH SUBSEQUENT YEAR, [.** T] THE LAST TAX YEAR THIS PROPERTY TAX CREDIT SHALL BE AVAILABLE SHALL BE THE SIXTH TAX YEAR THAT FOLLOWS THE INCREASE IN FREDERICK COUNTY REAL PROPERTY TAX DUE TO THE QUALIFYING INVESTMENT IN NEW OR EXPANDED PROPERTY.

On Exhibit 1, Page 3, Subsection 1-19-8.465. Lessors, Amend:

SECTION 1-8-465. LESSORS.

THE LESSOR OF REAL PROPERTY GRANTED A SMALL BUSINESS PROPERTY TAX CREDIT SHALL REDUCE THE AMOUNT OF TAXES FOR WHICH A BUSINESS ENTITY IS CONTRACTUALLY LIABLE UNDER THE LEASE AGREEMENT BY THE AMOUNT OF ANY TAX CREDIT GRANTED UNDER THIS ARTICLE FOR IMPROVEMENTS MADE BY THE BUSINESS ENTITY., [except that t]THE TERM OF THE PROPERTY TAX CREDIT MAY NOT EXCEED THE REMAINING TERM OF THE LEASE AND MAY NOT, IN ANY EVENT, EXCEED SIX YEARS.

On Exhibit 1, Pages 4-5, Subsection 1-19-8.466. General Provisions, Amend:

SECTION 1-8-466. GENERAL PROVISIONS.

(A) THIS PROPERTY TAX CREDIT SHALL BE A CREDIT ONLY AGAINST THE FREDERICK 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) **BUSINESS ENTITIES AND AFFILIATES** 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 DIRECTOR CERTIFYING THAT THE **BUSINESS ENTITY** [facility] CONTINUES TO OPERATE IN **THE NEW OR EXPANDED PREMISES** IN FREDERICK COUNTY, THAT THE ADDITIONAL NEW JOBS REMAIN FILLED WITH FULL TIME EMPLOYEES

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AND THAT THE REAL PROPERTY OTHERWISE CONTINUES TO QUALIFY FOR THIS TAX CREDIT; FAILURE TO DO SO SHALL MEAN THAT THE OTHERWISE QUALIFYING REAL 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 ELSEWHERE IN THIS ORDINANCE, ANY TAX CREDIT GRANTED UNDER THIS PROVISION SHALL TERMINATE:

(1) [At the moment] **IF OWNERSHIP OF THE NEW OR EXPANDED PREMISES** [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 **NEW OR EXPANDED PREMISES** [facility or real property] IS SUBJECT TO A MORTGAGE OR DEED OF TRUST GRANTED AS PART OF A FINANCING OF THE [property] **PREMISES** 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 **OR BETWEEN A BUSINESS ENTITY AND AN AFFILIATE**;

(2) WHEN THE **NEW OR EXPANDED PREMISES** [qualifying facility] IS SUBSTANTIALLY DESTROYED;

(3) AT THE END OF THE SIXTH TAX YEAR AFTER THE **NEW OR EXPANDED PREMISES** [qualifying real property] WAS FIRST ELIGIBLE FOR THIS TAX CREDIT;

(4) [At the moment] **WHEN THE QUALIFYING BUSINESS ENTITY'S INCREASED TOTAL WORKFORCE OR [increased total] NEW AND EXPANDED PREMISES ARE REDUCED BELOW THEIR NUMBER OR SIZE WHEN QUALIFYING FOR THIS TAX CREDIT; OR**

(5) WHENEVER THE QUALIFYING BUSINESS ENTITY IS NO LONGER IN COMPLIANCE WITH THE TERMS OF 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] **DATE** 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.

EXPLANATION:

BOLD CAPITALS INDICATE MATTER ADDED TO THE BILL.
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(E) IN THE EVENT A BUSINESS ENTITY QUALIFIES FOR THIS SMALL BUSINESS TAX CREDIT AS WELL AS FOR A SECOND REAL PROPERTY TAX CREDIT AVAILABLE FROM FREDERICK COUNTY AND APPLICATIONS ARE TIMELY FILED FOR BOTH CREDITS, THE QUALIFYING BUSINESS MAY ELECT WHICH CREDIT TO RECEIVE, BUT MAY NOT RECEIVE BOTH CREDITS. **PROPERTIES PARTICIPATING IN A TAX INCREMENT FINANCING OR PAYMENT IN LIEU OF TAXES PROGRAM ARE NOT ELIGIBLE FOR A SMALL BUSINESS REAL PROPERTY TAX CREDIT.**

(F) THE BUSINESS ENTITY SEEKING THIS CREDIT MUST APPLY FOR THIS TAX CREDIT WITH THE DIRECTOR ON OR BEFORE OCTOBER 1 OF THE TAX YEAR FOR WHICH THE REAL PROPERTY IS FIRST ELIGIBLE FOR THIS TAX CREDIT AND MUST THEREAFTER REAPPLY ANNUALLY AT THE SAME TIME AS FILING THE REQUIRED ANNUAL CERTIFICATION OF CONTINUED COMPLIANCE.

(G) THIS SMALL BUSINESS TAX CREDIT PROGRAM SHALL [expire] TERMINATE ON DECEMBER 31, 2026.

EXPLANATION:

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