

# Chapter 1

## (Senate Bill 106)

AN ACT concerning

### **Labor and Employment – Job Creation and Recovery Tax Credit**

FOR the purpose of establishing the Job Creation and Recovery Tax Credit; providing a credit against the State income tax for certain employers employing certain individuals in certain qualified positions; defining certain terms; providing for certification by the Department of Labor, Licensing, and Regulation of persons eligible for the credit and of the maximum amount of credit for which a qualified employer is eligible; limiting to a certain amount the credit each qualified employer may receive; providing for a cap of the total aggregate amount of the tax credit that the Department may approve; ~~allowing the credit as a credit against the payment of certain withholding taxes under certain circumstances;~~ making the credit refundable under certain circumstances; requiring certain reports; authorizing the adoption of certain regulations; making the provisions of this Act severable; making this Act an emergency measure; and generally relating to tax credits in connection with the employment of certain individuals in certain qualified positions in the State and the Job Creation and Recovery Tax Credit ~~program~~.

BY adding to

Article – Labor and Employment

Section 11–1101 through 11–1107 to be under the new subtitle “Subtitle 11. Job Creation and Recovery Tax Credit”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY adding to

Article – Tax – General

Section 10–728

Annotated Code of Maryland

(2004 Replacement Volume and 2009 Supplement)

### Preamble

WHEREAS, The current economic situation in the State and the country has left many Maryland workers unable to find new full–time employment; and

WHEREAS, Many of these workers are currently receiving unemployment insurance benefits from the State or have exhausted those benefits; and

WHEREAS, There are employers in the State who would like to hire new employees but face economic challenges in expanding their workforce at this time; and

WHEREAS, New jobs would reduce the burden of unemployment for Maryland workers and their families; and

WHEREAS, Expanding the State workforce would stimulate the State's economy by enhancing personal spending and tax revenues associated with increased employment; and

WHEREAS, Creating new jobs for workers currently receiving unemployment insurance benefits would reduce the burden on the Unemployment Insurance Trust Fund and the employers who contribute to that Fund; and

WHEREAS, A State tax credit program for employers based on the creation of new jobs in the State would encourage and assist them in expanding their workforces and in reducing the burden of unemployment on the State and its citizens; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Labor and Employment**

**SUBTITLE 11. JOB CREATION AND RECOVERY TAX CREDIT.**

**11-1101.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) “QUALIFIED EMPLOYEE” MEANS AN INDIVIDUAL WHO, AT THE TIME OF HIRING:**

**(1) IS A RESIDENT OF THE STATE;**

**(2) (I) IS RECEIVING UNEMPLOYMENT INSURANCE BENEFITS;**

**OR**

**(II) HAS EXHAUSTED THE INDIVIDUAL’S UNEMPLOYMENT INSURANCE BENEFITS WITHIN THE PAST 12 MONTHS; AND**

**(3) IS NOT EMPLOYED FULL TIME.**

**(C) “QUALIFIED EMPLOYER” MEANS A PERSON THAT IS:**

(1) (I) CONDUCTING OR OPERATING A TRADE OR BUSINESS IN THE STATE AND FILING MARYLAND INCOME TAX RETURNS; OR

(II) AN ORGANIZATION OPERATING IN THE STATE THAT IS EXEMPT FROM TAXATION UNDER § 501(C) OF THE INTERNAL REVENUE CODE; AND

(2) CERTIFIED IN ACCORDANCE WITH § ~~11-1103~~ 11-1102 OF THIS SUBTITLE AS QUALIFYING FOR THE TAX CREDIT UNDER THIS SUBTITLE.

(D) (1) “QUALIFIED POSITION” MEANS A POSITION THAT:

(I) IS FULL TIME;

(II) REQUIRES OR IS EXPECTED TO REQUIRE THE SERVICES OF AN EMPLOYEE FOR AN INDEFINITE DURATION AND WITHOUT INTERRUPTION FOR A PERIOD OF 12 MONTHS OR MORE;

(III) IS LOCATED IN THE STATE; AND

(IV) IS NEWLY CREATED OR HAS BEEN VACANT FOR A PERIOD OF AT LEAST 6 MONTHS AT THE TIME OF HIRING.

(2) “QUALIFIED POSITION” DOES NOT INCLUDE A POSITION THAT IS CREATED:

(I) WHEN AN EMPLOYMENT FUNCTION IS SHIFTED FROM AN EXISTING BUSINESS FACILITY OF A BUSINESS ENTITY IN THE STATE TO ANOTHER BUSINESS FACILITY OF THE SAME BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;

(II) THROUGH A CHANGE IN OWNERSHIP OF A TRADE OR BUSINESS;

(III) THROUGH A CONSOLIDATION, MERGER, OR RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;

(IV) WHEN AN EMPLOYMENT FUNCTION IS CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY TO ANOTHER BUSINESS ENTITY; OR

(V) BY DISPLACING AN EXISTING EMPLOYEE.

## 11-1102.

(A) THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL CERTIFY A PERSON AS A QUALIFIED EMPLOYER ELIGIBLE FOR A TAX CREDIT UNDER THIS SUBTITLE IF THE PERSON MEETS THE REQUIREMENTS OF THIS SECTION.

(B) TO BE ELIGIBLE FOR A TAX CREDIT UNDER THIS SUBTITLE, A PERSON MUST HIRE A QUALIFIED EMPLOYEE TO FILL A QUALIFIED POSITION AND BEGIN EMPLOYMENT IN THAT POSITION BETWEEN ~~JANUARY 1, 2010~~, THE EFFECTIVE DATE OF CHAPTER 1 (S.B. 106) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2010 AND DECEMBER 31, 2010.

(C) TO BE CERTIFIED AS A QUALIFIED EMPLOYER FOR A TAX CREDIT UNDER THIS SUBTITLE, A PERSON SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION CERTIFIED AND EXECUTED UNDER THE PENALTY OF PERJURY THAT SPECIFIES:

(1) THE NAME AND SOCIAL SECURITY NUMBER OF EACH QUALIFIED EMPLOYEE;

(2) THE DATE OF HIRE OF EACH QUALIFIED EMPLOYEE, THE WAGES PAID TO EACH QUALIFIED EMPLOYEE, THE DATE WAGES BEGAN TO BE PAID TO EACH QUALIFIED EMPLOYEE, AND THE POSITION FOR WHICH EACH QUALIFIED EMPLOYEE WAS HIRED;

(3) THE NUMBER OF QUALIFIED POSITIONS CREATED;

(4) THE EVIDENCE THAT THE EMPLOYER MEETS THE REQUIREMENTS OF § 11-1101(C) OF THIS SUBTITLE;

(5) THE EVIDENCE THAT THE POSITION MEETS THE REQUIREMENTS OF § 11-1101(D) OF THIS SUBTITLE; AND

(6) ANY OTHER INFORMATION THAT THE DEPARTMENT MAY REQUIRE.

(D) BASED ON THE INFORMATION PROVIDED TO THE DEPARTMENT UNDER SUBSECTION (C) OF THIS SECTION, AND IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (E) OF THIS SECTION, WITHIN 60 DAYS AFTER RECEIVING THE APPLICATION, THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL CERTIFY THE MAXIMUM AMOUNT OF THE TAX CREDIT FOR WHICH A QUALIFIED EMPLOYER IS ELIGIBLE.

(E) (1) SUBJECT TO THE LIMITATIONS IN PARAGRAPHS (2), (3), AND (4) OF THIS SUBSECTION, THE CREDIT EARNED UNDER THIS SECTION IS ~~\$3,000~~ **\$5,000** MULTIPLIED BY THE NUMBER OF QUALIFIED EMPLOYEES HIRED BY THE QUALIFIED EMPLOYER ~~DURING THE 2010 CALENDAR YEAR~~ BETWEEN THE EFFECTIVE DATE OF CHAPTER 1 (S.B. 106) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2010 AND DECEMBER 31, 2010.

(2) THE CREDIT EARNED BY A QUALIFIED EMPLOYER UNDER THIS SUBTITLE MAY NOT EXCEED \$250,000.

(3) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE MAY NOT EXCEED \$20,000,000.

(4) THE CREDITS WILL BE AVAILABLE AND CERTIFIED ON A FIRST-COME, FIRST-SERVED BASIS AT THE TIME OF APPLICATION.

(F) FOR ANY QUALIFIED POSITION CERTIFIED UNDER SUBSECTION (D) OF THIS SECTION THAT IS VACATED FOR ANY REASON, THE QUALIFIED EMPLOYER MUST SUBMIT AN AMENDED APPLICATION UNDER SUBSECTION (C) OF THIS SECTION TO RECEIVE THE TAX CREDIT FOR HIRING A REPLACEMENT QUALIFIED EMPLOYEE FOR THAT VACATED POSITION.

(G) THE SECRETARY AND THE COMPTROLLER MAY JOINTLY ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE AND THE PROVISIONS OF § 10-728 OF THE TAX - GENERAL ARTICLE.

11-1103.

(A) AFTER RECEIVING THE CERTIFICATION IN ACCORDANCE WITH § 11-1102(D) OF THIS SUBTITLE, AND IN ACCORDANCE WITH § 11-1107 OF THIS SUBTITLE, A QUALIFIED EMPLOYER MAY CLAIM AN INCOME TAX CREDIT IN THE AMOUNT PROVIDED IN THAT CERTIFICATION.

(B) TO CLAIM THE CREDIT CERTIFIED UNDER § 11-1102(D) OF THIS SUBTITLE, A QUALIFIED EMPLOYER SHALL SUBMIT TO THE COMPTROLLER:

(1) A TAX RETURN FOR THE TAXABLE YEAR TO WHICH THE CERTIFICATION APPLIES, CLAIMING THE CREDIT; AND

(2) A COPY OF THE DEPARTMENT'S CERTIFICATION OF THE APPROVED CREDIT AMOUNT.

11-1104.

(A) (1) A QUALIFIED POSITION MUST REMAIN FILLED FOR A PERIOD OF 1 YEAR AFTER THE QUALIFIED EMPLOYEE IS HIRED AND BEGINS EMPLOYMENT.

(2) IF THE POSITION IS VACATED PRIOR TO THE EXPIRATION OF THE 1-YEAR PERIOD, THE EMPLOYER SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF THE VACANCY.

(B) IF A POSITION IS FILLED FOR LESS THAN THE REQUIRED 1-YEAR PERIOD, THE EMPLOYER SHALL BE ENTITLED TO A PRO-RATA PORTION OF THE TAX CREDIT BASED ON THE DURATION OF EMPLOYMENT.

11-1105.

(A) THE DEPARTMENT, THE COMPTROLLER, AND THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT MAY SHARE ANY INFORMATION RECEIVED FROM A QUALIFIED EMPLOYER ABOUT ELIGIBILITY FOR A CREDIT ALLOWED UNDER THIS SUBTITLE FOR THE PURPOSE OF ADMINISTERING THIS TAX CREDIT.

(B) INFORMATION THAT IS RECEIVED UNDER SUBSECTION (A) OF THIS SECTION IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS THAT APPLY TO THE DEPARTMENT, THE COMPTROLLER, THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, AND THE UNIT THAT RECEIVES THE INFORMATION.

11-1106.

ON OR BEFORE APRIL 1, 2011, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE QUALIFIED EMPLOYERS CERTIFIED AS ELIGIBLE FOR JOB CREATION AND RECOVERY TAX CREDITS ~~AND~~, THE NUMBER OF ~~JOBS~~ QUALIFIED POSITIONS FOR WHICH THEY WERE CERTIFIED, THE TOTAL AMOUNT OF CREDITS CERTIFIED FOR EACH QUALIFIED EMPLOYER, AND THE TOTAL AMOUNT OF CREDITS CERTIFIED.

11-1107.

(A) (1) THE TAX CREDIT AUTHORIZED UNDER THIS SUBTITLE:

~~(1)~~ (1) MAY BE CLAIMED ONLY FOR INDIVIDUALS HIRED INTO QUALIFIED POSITIONS FOR WHICH THEY BEGIN RECEIVING WAGES ON OR

**AFTER ~~JANUARY 1, 2010~~, THE EFFECTIVE DATE OF CHAPTER 1 (S.B. 106) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2010 BUT ON OR BEFORE DECEMBER 31, 2010; AND**

**~~(2)~~ ~~(I)~~ (II) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, MUST BE CLAIMED ON THE QUALIFIED EMPLOYER'S 2010 OR 2011 STATE INCOME TAX RETURN.**

**~~(I)~~ ~~1.~~ (2) IN DETERMINING WHICH YEAR OR YEARS TO CLAIM THE CREDIT, THE QUALIFIED EMPLOYER SHALL CLAIM THE CREDIT FOR EACH CALENDAR MONTH OF 2010 AS THAT MONTH CORRESPONDS TO THE QUALIFIED EMPLOYER'S TAXABLE YEAR.**

**~~2.~~ (3) IF THE QUALIFIED EMPLOYER'S 2009 TAX YEAR INCLUDES 2010 CALENDAR MONTHS, THE QUALIFIED EMPLOYER SHALL CLAIM THE CREDIT ON THE QUALIFYING EMPLOYER'S 2009 TAX RETURN FOR THOSE 2010 CALENDAR MONTHS CORRESPONDING TO THE QUALIFIED EMPLOYER'S 2009 TAXABLE YEAR.**

**(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE AMOUNT OF CREDIT THAT MAY BE CLAIMED IN A TAXABLE YEAR FOR EACH QUALIFIED EMPLOYEE IS ~~\$250~~ \$416.67 MULTIPLIED BY THE NUMBER OF MONTHS THE QUALIFIED EMPLOYEE WAS EMPLOYED IN THAT TAXABLE YEAR, PROVIDED THAT THE TOTAL NUMBER OF MONTHS FOR WHICH THE CREDIT IS CLAIMED FOR A PARTICULAR QUALIFIED EMPLOYEE DOES NOT EXCEED 12 MONTHS.**

**(2) IF, AT THE TIME OF FILING, A QUALIFIED EMPLOYER'S TAX RETURN FOR TAXABLE YEAR 2010 INCLUDES A QUALIFIED EMPLOYEE WHO REMAINED EMPLOYED DURING CALENDAR YEAR 2011, A QUALIFIED EMPLOYER MAY CLAIM ON THAT TAX RETURN THE TAX CREDIT APPLICABLE TO THAT EMPLOYEE FOR THE MONTHS DURING 2011, PROVIDED THAT THE TOTAL NUMBER OF MONTHS FOR WHICH THE CREDIT IS CLAIMED FOR A PARTICULAR QUALIFIED EMPLOYEE DOES NOT EXCEED 12 MONTHS.**

**(C) ~~EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, IF~~ *IF* THE CREDIT ALLOWED UNDER THIS SECTION IN ANY CORRESPONDING TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE BUSINESS ENTITY OR INDIVIDUAL FOR THAT TAXABLE YEAR, THE BUSINESS ENTITY OR INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.**

**(D) A REFUND PAYABLE UNDER SUBSECTION (C) OF THIS SECTION:**

(1) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM CORPORATIONS IF THE PERSON ENTITLED TO THE REFUND IS A CORPORATION SUBJECT TO TAXATION UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE; AND

(2) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM INDIVIDUALS IF THE PERSON ENTITLED TO THE REFUND IS:

(I) AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE; OR

(II) AN ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C) OF THE INTERNAL REVENUE CODE.

(E) IF, AT THE TIME OF FILING, A PERSON IS DELINQUENT IN THE PAYMENT OF UNEMPLOYMENT INSURANCE CONTRIBUTIONS, STATE INCOME TAXES, WITHHOLDING TAXES, OR OTHER DEBT OR DELINQUENT ACCOUNTS DUE TO THE STATE, THE PERSON IS NOT ELIGIBLE FOR A ~~REFUND~~ CREDIT UNDER THIS ~~SECTION~~ SUBTITLE.

#### Article – Tax – General

10-728.

(A) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A STATE TAX CREDIT AGAINST THE INCOME TAX AS PROVIDED UNDER TITLE 11, SUBTITLE 11 OF THE LABOR AND EMPLOYMENT ARTICLE.

(B) AN ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C) OF THE INTERNAL REVENUE CODE MAY APPLY THE CREDIT UNDER THIS SUBSECTION:

(1) AS A CREDIT AGAINST STATE INCOME TAX DUE ON UNRELATED BUSINESS TAXABLE INCOME AS PROVIDED UNDER §§ 10-304 AND 10-812 OF THIS TITLE; ~~OR~~

~~(2) AS A CREDIT FOR THE PAYMENT TO THE COMPTROLLER OF TAXES THAT THE ORGANIZATION:~~

~~(I) IS REQUIRED TO WITHHOLD FROM THE WAGES OF EMPLOYEES UNDER § 10-908 OF THIS TITLE; AND~~

~~(II) IS REQUIRED TO PAY TO THE COMPTROLLER UNDER § 10-906(A) OF THIS TITLE.~~



SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be applicable to individuals hired and beginning work on or after ~~January 1, 2010~~, the effective date of this Act but on or before December 31, 2010.

SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

**Approved by the Governor, March 25, 2010.**