

Chapter 351

(Senate Bill 137)

AN ACT concerning

Income Tax Credit – Preservation and Conservation Easements

FOR the purpose of altering certain provisions of law concerning a credit against the State income tax for certain preservation and conservation easements to allow an individual or a member of a pass-through entity to claim the credit for an easement conveyed to the Maryland Environmental Trust, the Maryland Agricultural Land Preservation Foundation, or the Department of Natural Resources under certain circumstances; requiring the Board of Public Works to approve tax credits on a first-come, first-served basis; providing that the total number of tax credits claimed by members of pass-through entities may not exceed a certain amount for each taxable year; requiring the Comptroller to adopt certain regulations; defining certain terms; making certain stylistic changes; providing for the application of this Act; and generally relating to a State income tax credit for certain preservation and conservation easements.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–723
Annotated Code of Maryland
(2010 Replacement Volume and 2015 Supplement)

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

Article – Tax – General

10–723.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DEPARTMENT” MEANS THE DEPARTMENT OF NATURAL RESOURCES.

(3) “MEMBER” MEANS:

(I) A SHAREHOLDER OF AN S CORPORATION;

(II) A GENERAL OR LIMITED PARTNER OF A PARTNERSHIP, A LIMITED PARTNERSHIP, OR A LIMITED LIABILITY PARTNERSHIP;

(III) A MEMBER OF A LIMITED LIABILITY COMPANY; OR

(IV) A BENEFICIARY OF A BUSINESS TRUST OR A STATUTORY TRUST.

(4) “PASS-THROUGH ENTITY” MEANS:

(I) AN S CORPORATION;

(II) A PARTNERSHIP;

(III) A LIMITED LIABILITY COMPANY THAT IS NOT TAXED AS A CORPORATION UNDER THIS TITLE; OR

(IV) A BUSINESS TRUST OR A STATUTORY TRUST THAT IS NOT TAXED AS A CORPORATION UNDER THIS TITLE.

[(a)] (B) (1) An individual OR A MEMBER OF A PASS-THROUGH ENTITY may claim a credit against the State income tax as provided in this section for an easement conveyed to the Maryland Environmental Trust, [or] the Maryland Agricultural Land Preservation Foundation, OR THE DEPARTMENT for the purpose of preserving open space, natural resources, agriculture, forest land, watersheds, significant ecosystems, viewsheds, or historic properties, if:

(i) the easement is perpetual; and

(ii) the easement is accepted and approved by the Board of Public Works.

(2) Subject to subsection [(c)(2)] (D)(2) of this section, the credit under this section shall be allowed for the taxable year in which the [donation] CONVEYANCE is approved by the Board of Public Works.

[(b)] (C) (1) Except as otherwise provided in this section, the amount of the credit allowed under this section is the amount by which the fair market value of the property before the conveyance of the easement exceeds the fair market value of the property after the conveyance of the easement.

(2) The fair market value of the property before and after the conveyance of the easement shall be substantiated by an appraisal prepared by a certified real estate appraiser, as defined under § 16-101 of the Business Occupations and Professions Article.

(3) The amount of the credit shall be reduced by the amount of any payment received for the easement.

[(c)] (D) (1) For any taxable year, the credit allowed under this section may not exceed the lesser of:

- (i) the State income tax for that taxable year; or
- (ii) \$5,000.

(2) If the credit otherwise allowable under subsection **[(b)] (C)** of this section exceeds the limit under paragraph (1) of this subsection, **[an individual] A TAXPAYER** may apply the excess as a credit against the State income tax for succeeding taxable years until the earlier of:

- (i) the full amount of the excess is used; or
- (ii) the expiration of the 15th taxable year after the taxable year in which the **[donation] CONVEYANCE** was approved by the Board of Public Works.

(3) For each taxable year, the amount carried forward to the taxable year under paragraph (2) of this subsection may not exceed the limit under paragraph (1) of this subsection.

(4) THE SUM OF ALL CREDITS CLAIMED BY MEMBERS OF A PASS-THROUGH ENTITY IN A TAXABLE YEAR MAY NOT EXCEED THE AMOUNT SPECIFIED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.

(5) (I) FOR A TAXABLE YEAR, THE TOTAL AGGREGATE AMOUNT OF CREDITS CLAIMED BY MEMBERS OF PASS-THROUGH ENTITIES UNDER THIS SECTION MAY NOT EXCEED \$200,000.

(II) FOR PASS-THROUGH ENTITIES, THE BOARD OF PUBLIC WORKS SHALL APPROVE CREDITS FOR CONVEYANCES UNDER THIS SECTION ON A FIRST-COME, FIRST-SERVED BASIS.

[(d)] (E) The credit under this section may not be claimed for a required dedication of open space for the purpose of fulfilling density requirements to obtain a subdivision or building permit.

(F) THE COMPTROLLER SHALL ADOPT REGULATIONS TO SPECIFY PROCEDURES FOR A MEMBER OF A PASS-THROUGH ENTITY TO CLAIM THE CREDIT UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016, and shall be applicable to all taxable years beginning after December 31, 2015.

Approved by the Governor, May 10, 2016.