DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF THE EXECUTIVE DIRECTOR
MARYLAND GENERAL ASSEMBLY

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Executive Director

November 18, 2016

The Honorable Richard S. Madaleno, Jr., Co-Chair
The Honorable Jay Walker, Co-Chair
Members of the Tax Credit Evaluation Committee

Ladies and Gentlemen:

As you know, the Tax Credit Evaluation Act of 2012 (Chapters 568 and 569) establishes a legislative process for evaluating certain tax credits. The legislative evaluation committee created by the Act is required to evaluate the businesses that create new jobs tax credit by July 1, 2017.

To assist the tax credit evaluation committee in its work, the Department of Legislative Services (DLS) is required to evaluate the credit on a number of factors, including: (1) the purpose for which the tax credit was established; (2) whether the original intent of the tax credit is still appropriate; (3) whether the tax credit is meeting its objectives; (4) whether the goals of the tax credit could be more effectively carried out by other means; and (5) the cost of the tax credit to the State and local governments.

During the 2016 interim, DLS reviewed the businesses that create new jobs tax credit but was unable to satisfactorily evaluate the credit, primarily due to failures by various State agencies and local governments to certify and collect information about the credit. This lack of program transparency prevents DLS from:

- verifying that credits are being awarded and claimed as required by statute;
- determining the full economic impacts of the program;
- calculating the program's overall State and local costs; and
- analyzing whether the program is effective in achieving its objectives.

In lieu of a full evaluation, this letter will provide background information about the tax credit and limited information about credit activity. It will also discuss the difficulties DLS had in adequately evaluating the tax credit and recommendations that the evaluation committee and the General Assembly should consider in future deliberations about the credit.

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Businesses That Create New Jobs Tax Credit

Background

Chapters 623 and 624 of 1997 first established the businesses that create new jobs tax credit program. The program was subsequently modified by legislation enacted in 1998 through 2006. As modified, a business that establishes or expands a business facility and creates and/or retains a specified number of jobs can qualify for both a local property tax credit and a State tax credit. For a business to be eligible, a county or municipal corporation must first enact legislation to authorize the credit.

Both credits are based on a specified percentage of the property tax imposed on the assessment of the new or expanded premises and the personal property tax imposed on specified personal property. In general, the local property tax credit comprises 65% of the total credit received by the business and the State tax credit equals the remaining 35%. Standard credits are claimed over six years, with the total value of the credit ranging between 40% and 80% of the eligible taxes imposed. The enhanced credit is claimed over 24 years with a percentage value of 90% of the eligible taxes in each year.

Standard and Enhanced Credits

To qualify for the standard credit, a business must create at least 25 new positions as part of the new or expanded business facility, which must be at least 5,000 square feet. Businesses located in counties with a population of 30,000 or less must create at least 10 new positions. The definition of full-time position is "a full-time position of indefinite duration" or, in Montgomery County or Washington County, "a full-time position of indefinite duration or a contract position of definite duration lasting at least 12 months with an unlimited renewal option." The position must be newly created as a result of the business facility establishment or expansion. A new or expanded premises is "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."

To qualify for the enhanced credit, a business engaged in certain eligible activities must (1) obtain at least 250,000 square feet of new or expanded premises, continue to employ at least 2,500 individuals in existing full-time positions, and employ at least 500 individuals in new permanent full-time positions or (2) obtain 250,000 square feet of new or expanded premises and employ at least 1,250 individuals in new permanent full-time positions. In Montgomery County only, a business must spend at least $150 million to obtain at least 700,000 square feet of new or expanded business premises (through the purchase, construction, or lease of a new premises) and employ at least 1,100 individuals including at least 500 new, permanent full-time positions. All of the positions must receive employer-provided subsidized health care benefits, be paid at least 150% of the federal minimum wage, and be located in or neighboring the new, expanded, or renovated premises. A business must, within six years of the date of the notification of its intent to claim the credit, create the required jobs and obtain and occupy the business facility.

Credit Certification

Before obtaining the new or expanded premises or hiring employees, a business must provide written notice to the county or municipal corporation in which the facility is located of its intent to claim the credit. The county or municipal corporation must (1) certify to the State Department of Assessments and Taxation (SDAT) and the Department of Commerce (Commerce) that the business has met the requirements of the credit for the taxable year following the date on which it qualified and (2) compute the value of the local property tax credit in each year the business qualifies.

Upon notification from a local jurisdiction, SDAT must (1) compute and certify the value of the State credit that can be claimed against the income tax or insurance premium tax and (2) notify the Comptroller and Maryland Insurance Administration (MIA), respectively, of the tax credit that can be claimed in each year.

On October 1 of each year, each county and municipal corporation that has granted a tax credit must report to SDAT, Commerce, and the Comptroller the amount of any credit granted and whether the business is in compliance with program requirements. **Exhibit 1** shows the process of granting, calculating, certifying, and reporting tax credits as required by statute.

Exhibit 1
Businesses That Create New Jobs Tax Credit Required Certification and Reporting Requirements

Local Jurisdiction
Enacts legislation authorizing program and credit(s)

Business
Provides written notice to the local jurisdiction of its intent to claim the credit prior to obtaining the new or expanded premises and hiring new employees

Local Jurisdiction
Computes the property tax credit
Certifies the business as meeting program requirements and sends notification to:

SDAT **Department of Commerce**
Computes and certifies the State tax credit to:

Comptroller **MIA**

Local Jurisdiction that Has Granted Tax Credits
By October 1 of each year, reports on credits granted and program compliance to:

SDAT **Department of Commerce** **Comptroller**

MIA: Maryland Insurance Administration SDAT: State Department of Assessments and Taxation

Source: Department of Legislative Services

State Agencies

In order to conduct its evaluation, DLS requested from State agencies information on the businesses that participated in the program, the tax credits awarded, and the number of jobs created or retained. Despite the statutorily required credit certification and reporting requirements described above, SDAT, Commerce, and MIA did not provide this information. The Comptroller's Office provided limited data on the State credits claimed but did not disclose information for most years.

SDAT initially responded to a request for information by stating that the agency does not administer the credit. After DLS requested additional information, SDAT responded that it only confirms to local governments that property assessment information is accurate and does not certify any additional information, including the amount of the State tax credit. DLS then advised SDAT of its statutory requirement to certify the State credit; however, SDAT did not subsequently provide any data on the amount of State tax credits or property tax credits certified or the number of businesses that have claimed credits. In addition, the Comptroller's Office and MIA have no record of SDAT sending any certifications of State tax credits that can be claimed in each year.

Commerce responded to a request for information by indicating that it did not have any information as it does not administer the credit. According to Commerce, it has not received required information from local jurisdictions on businesses that have met the tax credit requirements or certification that businesses are in compliance with program requirements. DLS notes that Commerce does not include information about the tax credit on its website.

Chapter 582 of 2016 requires the Comptroller's Office, notwithstanding any federal or State confidentiality requirements, to share with DLS and other appropriate State agencies data related to State tax incentive programs so as to better assess the effectiveness of those programs. However, the Comptroller's Office only provided DLS with limited data on the number of businesses that claimed income tax credits or the total amount of credits claimed, citing federal confidentiality requirements. According to the Comptroller, no credits were claimed in tax years 2000 and 2001, and a total of $1.3 million was claimed in tax year 2003. For the remaining years, credits were claimed, but the Comptroller would not disclose any information about those credits.

State agencies also did not provide any information on the local jurisdictions that have authorized the credit. The agencies advise that there is no record of receiving the statutorily required information from each county and municipal corporation that has granted a tax credit. It is not known what actions, if any, State agencies took to inform local jurisdictions of this requirement or to follow up with local jurisdictions about the requirement.

Local Jurisdictions

Since there is no record of State agencies receiving required information from local jurisdictions that have granted tax credits, DLS contacted each county and Baltimore City to determine whether the local jurisdiction has established a program and, if so, to find out information about the program. Allegany, Anne Arundel, Baltimore, Caroline, Frederick, Garrett, Montgomery, and Talbot counties responded to the information request. Of those eight jurisdictions, Montgomery and Frederick counties were the only jurisdictions to inform DLS that it had established the program. A further review of which jurisdictions may have implemented the program indicates that at least six jurisdictions have passed a local law authorizing tax credits, as shown in **Exhibit 2**.

Exhibit 2
Businesses That Create New Jobs Tax Credit
Counties with Authorizing Legislation

County	Year Authorized
Carroll	2004
Frederick	2011
Kent	2001
Montgomery	1998
Prince George's	2010
Washington	2002

Source: Department of Legislative Services

Frederick and Montgomery counties were the only local jurisdictions that provided DLS information on the credit. Frederick County established the tax credit in 2011, and one company qualified for the credit in fiscal 2017 by expanding its facility by 38,309 feet and hiring 98 new full-time employees. Another company has applied for the credit in Frederick County, but the expansion is not complete. Montgomery County advises that, since 1999, a total of 16 businesses have been awarded credits including 1 business that is claiming the enhanced credit.

Credits Certified in Montgomery County

The annual revenue loss from the credit depends primarily on the assessed property value of the new or expanded premises, the property tax rate, the tax liability of the business, and the years in which the business claims the credit. The State credit comprises about 35% of the total tax credit with local property tax credits comprising the remaining 65%. DLS calculated the estimated State credit for each business claiming the credit in Montgomery County through fiscal 2016, based on information provided by the county. For any business that can claim the credit beyond fiscal 2016, DLS projected the amount of the credit that the business will continue to claim. It is unknown, however, whether the credit would be claimed against the State income tax or insurance premium tax in each year.

In fiscal 1999 through 2016, businesses in Montgomery County were awarded an estimated total of $38.8 million in credits, $25.2 million in local property tax credits, and $13.6 million in State tax credits. Based on the projects that have been certified, businesses will claim an additional $16.6 million in credits through fiscal 2026, bringing the total to $55.4 million, of which the State's total share is $19.4 million.

While Montgomery County has certified a total of 18 projects, a total of 16 businesses have received credits as Discovery Communications and Marriott International have each received two credits. Discovery Communications is the only business to have received an enhanced credit, and DLS estimates that the company will receive a total of $43.1 million, comprising a little less than 80% of the program's overall fiscal costs in the county. Fifteen companies will receive a total of $12.3 million in standard tax credits. Ten companies received a standard credit of $360,000 with four companies receiving credits of $1.0 million or more: Qiagen Sciences ($1.0 million), Lockheed Martin ($1.4 million), Marriott International ($2.0 million), and Chevy Chase Bank ($5.0 million).

The businesses that have received a tax credit in Montgomery County are large established companies reflecting the program's minimum job and construction requirements. One-third of the these businesses are Fortune 500 businesses, with another business acquired by a Fortune 500 company three years after its initial credit award. Although Montgomery County has not certified a new project since fiscal 2009, Governor Lawrence J. Hogan, Jr. recently announced a proposal to provide Marriott International with up to $62.0 million in State and local subsidies for a new headquarters location in Bethesda. As part of the proposal, Marriott would receive up to $18.0 million in State and local tax credits, which DLS assumes would be businesses that create new jobs tax credits.

Montgomery County did not respond to DLS requests for information on the number of jobs associated with the program or construction activity.

Findings and Recommendations

Based on the information provided above, DLS makes a number of findings and recommendations about the businesses that create new jobs tax credit, as discussed below.

The Credit is Overly Complex, Difficult to Administer, Appears to Have Few Claimants, and Overlaps with Other State Employment Tax Credits

The businesses that create new jobs tax credit is a complex credit with numerous requirements. There are two credits, a standard and enhanced credit, each with its own requirements and credit calculations. In addition to a local property tax credit, there is a State tax credit that is calculated based on a specified percentage of the property tax imposed on the assessment of the new or expanded premises and the personal property tax imposed on specified personal property. Unlike with many other State business tax credits, there is no maximum limit on the credit value or limit on the aggregate amount of credits that can be awarded in each year. The total cost of each tax credit cannot be accurately estimated since the credit depends on the eligible assessment of real and personal property for up to 24 years.

Within Montgomery County, a limited number of companies have claimed the standard credit and only one company is known to have claimed the enhanced credit. The State also has one other tax credit – a credit for aerospace, electronics, or defense contracts – that has the primary aim of job retention by large businesses. However, these credits have complex and differing eligibility requirements.

Recommendation: Considering the tax credit's complexity, lack of transparency, and overlap with other employment tax credits, DLS recommends that the General Assembly consider eliminating the businesses that create new jobs tax credit. If the General Assembly considers job retention a goal and wishes to retain the credit, DLS recommends consolidating the existing job retention credits into one program with less complex and more streamlined eligibility requirements.

Various State Agencies Have Not Met Statutory Requirements for Certifying and Calculating the Credit and Providing Information About the Credit

Under current law, SDAT is required to certify the value of the State tax credit and notify the Comptroller and MIA of the tax credit that can be claimed in each year. SDAT, however, does not appear to be certifying the credit as required and then providing this information to MIA and the Comptroller's Office, as those agencies have no record of receiving this information. Absent this information, it is not clear that the appropriate State agencies are verifying that a taxpayer is correctly claiming the credit.

Recommendation: DLS recommends that the General Assembly adopt legislation to require that SDAT may only certify the State tax credit for a business if the local jurisdiction in which the business is located has in the most recent applicable year (1) certified that the business has met the program requirements for the taxable year that follows the date on which the business met the requirements and (2) reported to SDAT, Commerce, and the Comptroller the amount of any local property tax credit granted, whether the business is in compliance with program requirements, and any other information required by statute.

Recommendation: DLS recommends that SDAT comment on why it is not certifying the State tax credit amounts as required by statute.

Recommendation: DLS recommends that the General Assembly adopt legislation requiring a taxpayer claiming the credit to include with the applicable tax return a certification from SDAT of the amount of the credit that can be claimed.

Local Governments Have Not Met Statutory Requirements for Certifying and Providing Information about the Credit

Local jurisdictions that have granted tax credits have not provided required information to State agencies about the tax credits that have been certified. In addition, local jurisdictions did not provide information on the jobs and investment associated with the program. As a result, the total jobs created or retained by the program and the overall fiscal and economic impacts of the program are not known.

Recommendation: DLS recommends that the General Assembly adopt legislation requiring (1) a local jurisdiction to report to SDAT the number of jobs and investment associated with each tax credit project and (2) SDAT to report annually to the General Assembly on the local jurisdictions that have authorized the program, the name and location

of each business claiming the credit, and the credit claimed by the business and the jobs and investment associated with each qualifying project.

Recommendation: In order to better assess the credit's effectiveness in promoting job creation for different categories of businesses, DLS recommends that local jurisdictions collect and report the following information for each credit recipient: (1) whether the credit resulted from a business expansion, new business, or relocation; (2) whether the business had a presence in Maryland before claiming the credit; (3) the total employment of the business; and (4) the total number of years the company has been in business.

Recommendation: Considering the General Assembly's interest in providing business opportunities for small, minority-, and women-owned businesses, DLS recommends that the General Assembly require SDAT to report in its annual report on the number of businesses that qualify as small, minority-, and women-owned businesses.

DLS trusts that this information will be useful to members of the tax credit evaluation committee in its deliberations about the businesses that create new jobs tax credit.

Sincerely,

Warren Deschenaux

Warren G. Deschenaux
Executive Director

WGD/eck

cc: Thomas V. Mike Miller, Jr., President of the Senate
Michael E. Busch, Speaker of the House of Delegates