

ORDINANCE NO. ORD-2016- 10

**AN ORDINANCE ADOPTING THE "WASHINGTON COUNTY, MARYLAND JOB  
CREATION AND CAPITAL INVESTMENT REAL PROPERTY TAX CREDITS  
ORDINANCE"**

**RECITALS**

By virtue of the authority contained in Maryland Code Annotated, *Tax-Property Article*, § 9-323, State law authorizes the Board of County Commissioners of Washington County, Maryland, to grant a Real Property Tax Credit against Washington County real property tax imposed on real property owned or leased by a new or expanding business entity that creates new jobs, provided that the new or expanding business meets specific eligibility requirements.

Pursuant to the cited authority, the Board of County Commissioners of Washington County, Maryland, desires to adopt this Ordinance to be known as the "Washington County, Maryland Job Creation and Capital Investment Real Property Tax Credits Ordinance" for the purpose of encouraging the creation of jobs in Washington County.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the Ordinance entitled the "Washington County, Maryland Job Creation and Capital Investment Real Property Tax Credits Ordinance" be and is hereby adopted.

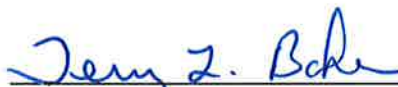
ADOPTED the 3rd day of May, 2016.

EFFECTIVE the 3rd day of May, 2016.

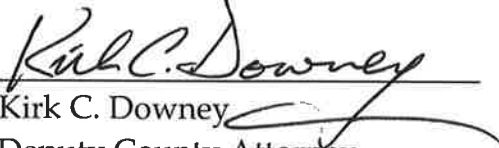
ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

  
\_\_\_\_\_  
Vicki C. Lumm, Clerk

  
\_\_\_\_\_  
Terry L. Baker, President

Approved as to form and  
legal sufficiency:

  
Kirk C. Downey  
Deputy County Attorney

Mail to:  
County Attorney's Office  
100 W. Washington St., Rm. 202  
Hagerstown, MD 21740

**WASHINGTON COUNTY, MARYLAND JOB CREATION  
AND CAPITAL INVESTMENT REAL PROPERTY TAX CREDITS ORDINANCE**

**Section 1. Tax Credit.**

The Treasurer shall allow a Tax Credit against the County real property tax imposed on real property owned or leased by a Business Entity if the Business Entity qualifies for the Tax Credit under this Ordinance.

**Section 2. Definitions.**

In this Ordinance, the following words have the meanings indicated:

(a) *Affiliate* means a person that directly or indirectly owns at least 80% of a Business Entity or at least 80% of which is owned, directly or indirectly, by a Business Entity (as Affiliate is defined in Maryland Code Annotated, *Tax-Property Article* § 9-323(f), as from time to time amended).

(b) *Assessment* means the assessment assigned to the New or Expanded Premises by the Maryland State Department of Assessments and Taxation.

(c) *Board* means the Board of County Commissioners of Washington County, Maryland.

(d) *Business Entity* means 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 (as Business Entity is defined in Maryland Code Annotated, *Tax-Property Article* § 9-323(f), as from time to time amended).

(e) *County* means Washington County, Maryland.

(f) *Full-Time Position* means a position requiring at least 840 hours of an individual's time during at least 24 weeks in a 6-month period (as Full-Time Position is defined in Maryland Code Annotated, *Tax-Property Article* § 9-323(f), as from time to time amended).

(g) *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 (as New or Expanded Premises is defined in Maryland Code Annotated, *Tax-Property Article* § 9-323(f), as from time to time amended).

(h) *New Permanent Full-Time Position* means a position that is a full-time position of indefinite duration; located in Washington County; newly created, as a result of the establishment or expansion of a business facility in the County; and filled (as New Permanent Full-Time Position is defined in Maryland Code Annotated, *Tax-Property Article* § 9-323(f), as from time to time amended). Pursuant to Maryland Code Annotated, *Tax-Property Article* § 9-323(f), a New Permanent Full-Time Position does not include a position that is (A) created when an employment function is shifted from an existing business facility of the Business Entity or its Affiliates located in Washington County to another business facility of the same Business Entity or its Affiliates, if the position does not represent a net new job in the County; (B) created through a change in ownership of a trade or business; (C) 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 the County; (D) 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 the County; or (E) filled for a period of less than twelve (12) months.

(i) *Notification Date* means the date on which a Business Entity provides written notice to the Board that the Business Entity intends to claim the Tax Credit and when the Business Entity expects to meet the requirements for claiming the Tax Credit as specified in Section 4 of this Ordinance.

(j) *Ordinance* means this Washington County, Maryland Job Creation and Capital Investment Real Property Tax Credits Ordinance, as from time to time amended.

(k) *State* means the State of Maryland.

(l) *Tax Credit* means the Tax Credit granted under this Ordinance to a qualifying Business Entity against the County real property tax imposed on the New or Expanded Premises.

(m) *Treasurer* means the County Treasurer or the Treasurer's designee.

(n) *WCDBD* means the Washington County Department of Business Development.

### **Section 3. Qualifications for Tax Credit.**

(a) To qualify for the Tax Credit under this Ordinance, before a Business Entity, whether existing or newly located in the County, obtains the New or Expanded Premises or hires employees to fill the New Permanent Full-Time Position(s) at the New or Expanded Premises, the Business Entity must provide written notification to the Board, through the *WCDBD*, stating:

- (1) that the Business Entity intends to claim the Tax Credit; and
- (2) when the Business Entity expects to meet the requirements specified for the Tax Credit in Section 4 of this Ordinance.

(b) A Business Entity does not qualify for and, therefore, is ineligible to apply for a Tax Credit if:

- (1) the Tax Credit has otherwise been granted on the New or Expanded Premises under this Ordinance for the taxable year in which the Tax Credit is claimed; or
- (2) the Business Entity is a type of business entity that the Board, by resolution before the Notification Date, has made ineligible for the Tax Credit; or the New Permanent Full-Time Position(s) is a type of position that the Board, by resolution before the Notification Date, has made ineligible for the Tax Credit; or the New or Expanded Premises is located in a geographic area that the Board, by resolution before the Notification Date, has made ineligible for the Tax Credit; or
- (3) the Business Entity owes taxes to the County, including, but not limited to, real property, personal property, income, and recaptured taxes under this Ordinance.

### **Section 4. Amount and Duration of Tax Credit; Pass-Through to Lessees.**

(a) To qualify for the Tax Credit under Section 4(a) of this Ordinance, an existing Business Entity (1) must obtain at least an additional 1,500 sq. ft. of New or Expanded

Premises by purchasing newly constructed premises, constructing new premises, causing new premises to be constructed, or leasing previously unoccupied premises; and (2) must employ at least 1 individual in a New Permanent Full-Time Position during a 12-month period during which the Business Entity also must obtain and occupy the New or Expanded Premises. The Tax Credit to the existing Business Entity shall equal a percentage of the amount of real property tax imposed on the Assessment of the New or Expanded Premises as follows: (i) 52% during the first and second taxable years; (ii) 39% during the third and fourth taxable years; and (iii) 26% during the fifth and sixth taxable years.

(b) To qualify for the Tax Credit under Section 4(b) of this Ordinance, a new Business Entity locating in the County (1) must obtain at least 2,500 sq. ft. of New or Expanded Premises by purchasing newly constructed premises, constructing new premises, causing new premises to be constructed, or leasing previously unoccupied premises; and (2) must employ at least 5 individuals in New Permanent Full-Time Positions during a 24-month period during which the Business Entity also must obtain and occupy the New or Expanded Premises. The Tax Credit to the new Business Entity shall equal a percentage of the amount of real property tax imposed on the Assessment of the New or Expanded Premises as follows: (i) 30% during the first and second taxable years; (ii) 20% during the third and fourth taxable years; (iii) and 10% during the fifth and sixth taxable years.

(c) To qualify for the Tax Credit under Section 4(c) of this Ordinance, an existing Business Entity in the County or a new Business Entity locating in the County (1) must invest at least \$10,000,000 in capital improvements to New or Expanded Premises in the County by purchasing newly constructed premises, constructing new premises, causing new premises to be constructed, or leasing previously unoccupied premises; and (2) must, as a result of the capital improvements, create 100 New Permanent Full-Time Positions. The Tax Credit to the new or existing Business Entity shall equal a percentage of the amount of real property tax imposed on the Assessment of the New or Expanded Premises as follows: (i) 100% for each of the first 5 taxable years; (ii) 75% in taxable years 6 through 10; (iii) 50% in taxable years 11 through 15; and (iv) 0% in taxable year 16 and each taxable year thereafter.

(d) In order to receive a Tax Credit as allowed under this Ordinance, the Business Entity, whether existing or newly located in the County, must continue to occupy the New or Expanded Premises and must maintain, as filled, the New Permanent Full-Time Position(s) for the requisite time periods, as applicable and as defined.

(e) The lessor of real property on which the Tax Credit has been granted shall reduce the amount of taxes for which a lessee Business Entity is contractually liable under the lease agreement by the amount of any Tax Credit granted pursuant to this Ordinance for improvements to the real property made by the lessee Business Entity.

(f) For Tax Credits granted under Paragraphs (a) and (b) of Section 4, and for Tax Credits granted under Paragraph (c) of Section 4, after the sixth and sixteenth taxable years, respectively, a Business Entity shall no longer be eligible for the Tax Credit under this Ordinance pursuant to the WCDBD certification granted for the previous years. The Treasurer shall not allow further Tax Credit after said taxable years, unless the Business Entity meets anew all qualification requirements under this Ordinance, applies to the WCDBD for recertification, and is approved by the WCDBD to receive a new Tax Credit for tax years subsequent to the sixth and sixteenth taxable year, as applicable.

(g) If, at any time during which a Business Entity claims the Tax Credit under this Ordinance, the Business Entity fails to satisfy any applicable qualification requirement, the Business Entity's eligibility for the Tax Credit under this Ordinance will be extinguished. The Treasurer shall not allow further Tax Credit under the certification. A tax credit, once extinguished, cannot be revived or reinstated.

#### **Section 5. Recapture of Tax Credit.**

(a) For each year that a Business Entity receives the Tax Credit under this Ordinance, the Business Entity shall be required to continue to satisfy all applicable requirements under this Ordinance. If, at any time during the Tax Credit period, a Business Entity does not satisfy all applicable requirements under this Ordinance, then the Business Entity shall not receive the Tax Credit for the taxable year during which the failure occurs. The Tax Credit shall be due and owing to the County upon notice from the Treasurer to the Business Entity that the Tax Credit must be repaid.

(b) Interest shall accrue on any repayable Tax Credit at the rate established for overdue property taxes beginning thirty (30) days after the notice from the Treasurer.

(c) Any un-repaid Tax Credit is a lien on real and personal property owned by the Business Entity in the same manner as unpaid real property taxes under State and County law.

## **Section 6. Administration of Tax Credit; Time for Application.**

(a) When a Business Entity believes that it meets all eligibility requirements for the Tax Credit under this Ordinance and has complied with the qualification requirement in Section 3(a) by giving notice to the Board, the Business Entity shall request certification from the WCDBD, on an application form provided by the WCDBD, and shall provide sufficient information to show that all qualification requirements under this Ordinance and applicable State law have been met.

(b) Upon receipt of a request from a Business Entity for certification for the Tax Credit, the WCDBD shall:

- (1) determine the eligibility of the Business Entity for the Tax Credit according to the qualification requirements under this Ordinance;
- (2) notify the Maryland State Department of Assessments and Taxation and the Treasurer that a Business Entity has been approved for the Tax Credit; and
- (3) require submission of reports by the Business Entity for each year that the Tax Credit is sought, and during any requisite time period after any year when the Tax Credit was provided, to verify that the Business Entity continues to satisfy all applicable qualification requirements under this Ordinance.

(c) As required by this Ordinance, a Business Entity must give notice to the Board and submit application for certification to the WCDBD by no later than October 31 of the preceding calendar year to ensure that the WCDBD is able to verify the Business Entity's eligibility and to notify the Maryland State Department of Assessments and Taxation and the Treasurer of the Business Entity's eligibility for the Tax Credit by no later than December 31 of the calendar year preceding the taxable year beginning on July 1 when the Business Entity is eligible for and intends to claim the Tax Credit.

(d) Under no circumstance will this Ordinance permit bundling of a Tax Credit granted under this Ordinance with any other Tax Credit, either granted under this Ordinance or any other local ordinance, rule, regulation, or code, to result in a tax refund or other payment to a Business Entity.

(e) A person who submits a false or fraudulent certification application to the WCDBD, withholds information to obtain the Tax Credit, or provides any false or



fraudulent information to obtain the Tax Credit under this Ordinance, must repay the County all amounts previously credited for any and all years that Tax Credits were provided and all accrued interest and penalties that would apply to those amounts as overdue taxes. A person who, on behalf of a Business Entity or as an Affiliate, is found to have engaged in any conduct described in this sub-section, is liable for all court costs and expenses of the County in any civil action brought by the County against the person. The County may collect any repayable Tax Credit and otherwise enforce this Ordinance by any appropriate legal action.

(f) The Board may adopt regulations to administer this Ordinance.