

MARYLAND TAX-GENERAL § 10-722
TITLE 10. INCOME TAX
SUBTITLE 7--INCOME TAX CREDITS

Current through end of 2002 Regular Session.

(a)(1) In this section the following words have the meanings indicated.

(2) "Administration" means the Maryland Energy Administration.

(3)(i) "Allowable costs" means amounts properly chargeable to capital account, other than for land, that are paid or incurred on or after July 1, 2001, for:

1. Construction or rehabilitation;
2. Commissioning costs;
3. Interest paid or incurred during the construction or rehabilitation period;
4. Architectural, engineering, and other professional fees allocable to construction or rehabilitation;
5. Closing costs for construction, rehabilitation, or mortgage loans;
6. Recording taxes and filing fees incurred with respect to construction or rehabilitation; and
7. Finishes and furnishings consistent with the regulations adopted by the Administration under this section, lighting, plumbing, electrical wiring, and ventilation.

(ii) "Allowable costs" does not include:

1. The cost of telephone systems and computers, other than electrical wiring costs;
2. Legal fees allocable to construction or rehabilitation;
3. Site costs, including temporary electric wiring, scaffolding, demolition costs, and fencing and security facilities;
4. Finishes or furnishings that are not consistent with the regulations

adopted by the Administration under this section; or

5. The cost of purchasing or installing fuel cells, wind turbines, or photovoltaic modules.

(4) "Applicable energy efficiency standards" means ASHRAE/IESNA Standard 90.1-1999, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

(5) "Base building" means all areas of a building not intended for occupancy by a tenant or owner, including the structural components of the building, exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking areas, mechanical rooms and mechanical systems, and owner-controlled or operated service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms, stairways, and corridors.

(6) "Commissioning" means:

(i) The testing and fine-tuning of heat, ventilating, and air-conditioning systems and other systems to assure proper functioning and adherence to design criteria; and

(ii) The preparation of system operation manuals and instruction of maintenance personnel.

(7) "Credit allowance year" means the later of:

(i) The taxable year during which:

1. The property, construction, completion, or rehabilitation on which the credit allowed under this section is based is originally placed in service; or

2. A fuel cell, wind turbine, or photovoltaic module constitutes a qualifying alternate energy source and is fully operational; or

(ii) The earliest taxable year for which the credit may be claimed under the initial credit certificate issued under subsection (k) of this section.

(8) "Eligible building" means a building located in the State that:

(i) 1. Is a building used primarily for nonresidential purposes if the building contains at least 20,000 square feet of interior space;

2. Is a residential multifamily building with at least 12 dwelling units that contains at least 20,000 square feet of interior space; or

3. Is any combination of buildings described in item 1 or 2 of this item;

(ii) In the case of a newly constructed building for which a certificate of occupancy was not issued before July 1, 2001:

1. Is located on a qualified brownfields site, as defined under Article 83A, § 5-1401 of the Code; or

2. A. Is located in a priority funding area under § 5-7B-02 of the State Finance and Procurement Article; and

B. Is not located on wetlands, the alteration of which requires a permit under § 404 of the federal Clean Water Act, 33 U.S.C. § 1344; and

(iii) In the case of a rehabilitation of a building:

1. Is located in a priority funding area under § 5-7B-02 of the State Finance and Procurement Article or on a qualified brownfields site as defined under Article 83A, § 5-1401 of the Code; or

2. Is not an increase of more than 25% in the square footage of the building.

(9) "Fuel cell" means a device that produces electricity directly from hydrogen or hydrocarbon fuel through a noncombustive electrochemical process.

(10) "Green base building" means a base building that is part of an eligible building and meets the requirements set out in subsection (i) of this section.

(11) "Green whole building" means a building for which the base building is a green base building and all tenant space is green tenant space.

(12) "Green tenant space" means tenant space in a building if the building is an eligible building and the tenant space meets the requirements of subsection (j) of this section.

(13) "Incremental cost of building-integrated photovoltaic modules" means:

(i) The cost of building-integrated photovoltaic modules and any associated inverter, additional wiring or other electrical equipment for the photovoltaic modules, or additional mounting or structural materials, less the cost of spandrel glass or other building material that would have been

used if building-integrated photovoltaic modules were not installed;

(ii) Incremental labor costs properly allocable to on-site preparation, assembly, and original installation of photovoltaic modules; and

(iii) Incremental costs of architectural and engineering services and designs and plans directly related to the construction or installation of photovoltaic modules.

(14) "Qualifying alternate energy sources" means building-integrated and nonbuilding-integrated photovoltaic modules, wind turbines, and fuel cells installed to serve the base building or tenant space that:

(i) Have the capability to monitor their actual power output;

(ii) Are fully commissioned upon installation, and annually thereafter, to ensure that the systems meet their design specifications; and

(iii) In the case of wind turbines, meet any applicable noise ordinances.

(15) "Tenant improvements" means improvements that are necessary or appropriate to support or conduct the business of a tenant or occupying owner.

(16) "Tenant space" means the portion of a building intended for occupancy by a tenant or occupying owner.

(b)(1) An individual or a corporation may claim a credit against the State income tax as provided under this section for green buildings and green building components.

(2) If the credit allowed under this section exceeds the State income tax, any unused credit may be carried forward and applied for succeeding taxable years until the earlier of:

(i) The full amount of the credit is used; or

(ii) The expiration of the 10th year after the taxable year for which the credit was allowed.

(3) For each of the credits under subsections (c) through (h) of this section, the credit may not be allowed for any taxable year unless:

(i) The taxpayer has obtained and filed an initial credit certificate and an eligibility certificate issued under subsection (k) of this section;

(ii) A certificate of occupancy for the building has been issued; and

(iii) The property with respect to which the credit is claimed is in service during the taxable year.

(4) The total amount allowed in the aggregate for all credits under this section may not exceed the maximum set forth in the initial credit certificate obtained under subsection (k) of this section.

(5) In determining the amount of the credits under this section, a cost paid or incurred may not be the basis for more than one credit.

(c)(1) For the taxable year that is the credit allowance year, an owner or tenant may claim a credit in an amount equal to 8% of the allowable costs paid or incurred by the owner or tenant for the construction of a green whole building or the rehabilitation of a building that is not a green whole building to be a green whole building.

(2) The allowable costs used to determine the credit amount allowed under this subsection for a green whole building may not exceed in the aggregate:

(i) \$120 per square foot for that portion of the building that comprises the base building; and

(ii) \$60 per square foot for that portion of the building that comprises the tenant space.

(d)(1) For the taxable year that is the credit allowance year, an owner may claim a credit in an amount equal to 6% of the allowable costs paid or incurred by the owner for the construction of a green base building or the rehabilitation of a building that is not a green base building to be a green base building.

(2) The allowable costs used to determine the credit amount allowed under this subsection for a green base building may not exceed, in the aggregate, \$120 per square foot.

(e)(1) For the taxable year that is the credit allowance year, an owner or tenant may claim a credit in an amount equal to 6% of the allowable costs for tenant improvements paid or incurred by the owner or tenant in the construction or completion of green tenant space or the rehabilitation of tenant space that is not green tenant space to be green tenant space.

(2)(i) The allowable costs used to determine the credit amount allowed under this subsection for green tenant space may not exceed, in the aggregate, \$60 per square foot.

(ii) If an owner and tenant both incur allowable costs for tenant improvements under this subsection and the costs exceed \$60 per square foot in the aggregate, the owner has priority as to costs constituting the basis for the green tenant space credit under this subsection.

(3) The credit under this subsection for green tenant space may not be claimed by an owner of a building that occupies fewer than 10,000 square feet of the building.

(4) The credit under this subsection for green tenant space may not be claimed by a tenant that occupies fewer than 5,000 square feet.

(f)(1) For the taxable year that is the credit allowance year, an owner or tenant may claim a credit in the amount determined under this subsection for the installation of a fuel cell that is a qualifying alternate energy source and is installed to serve a green whole building, green base building, or green tenant space.

(2) The amount of the credit allowed under this subsection is 30% of the sum of the capitalized costs paid or incurred by an owner or tenant with respect to each fuel cell installed, including the cost of the foundation or platform and the labor costs associated with installation.

(3) The costs used to determine the credit amount allowed under this subsection for installation of a fuel cell:

(i) May not exceed \$1,000 per kilowatt of installed DC rated capacity of the fuel cell; and

(ii) Shall be reduced by the amount of any federal, State, or local grant:

1. Received by the taxpayer and used for the purchase or installation of the fuel cell; and

2. Not included in the federal gross income of the taxpayer.

(g)(1) For the taxable year that is the credit allowance year, an owner or tenant may claim a credit in the amount determined under this subsection for the installation of photovoltaic modules that constitute a qualifying alternate energy source and are installed to serve a green whole building, green base building, or green tenant space.

(2) The amount of the credit allowed under this subsection is:

(i) 20% of the incremental cost paid or incurred by an owner or tenant for building-integrated photovoltaic modules; and

(ii) 25% of the cost of nonbuilding-integrated photovoltaic modules, including the cost of the foundation or platform and the labor costs associated with installation.

(3) The costs used to determine the credit amount allowed under this subsection for installation of photovoltaic modules:

(i) May not exceed the product obtained by multiplying \$3 times the number of watts included in the DC rated capacity of the photovoltaic modules; and

(ii) Shall be reduced by the amount of any federal, State, or local grant:

1. Received by the taxpayer and used for the purchase or installation of the photovoltaic equipment; and

2. Not included in the federal gross income of the taxpayer.

(4) A credit may not be claimed under this subsection for the installation of photovoltaic modules if the credit under § 10-719 of this subtitle is claimed with respect to the photovoltaic modules.

(h)(1) For the taxable year that is the credit allowance year, an owner or tenant may claim a credit in the amount determined under paragraph (2) of this subsection for the installation of a wind turbine that is a qualifying alternate energy source and is installed to serve a green whole building, green base building, or green tenant space.

(2) The amount of the credit allowed under this subsection is 25% of the sum of the capitalized costs paid or incurred by an owner or tenant with respect to each wind turbine installed, including the cost of the foundation or platform and the labor costs associated with installation.

(i)(1) By regulation, the Administration shall adopt standards for a building to qualify as a green base building eligible for the tax credits under this section that are consistent with the criteria for green base buildings set forth by the United States Green Building Council or other similar criteria.

(2) The regulations adopted under this subsection shall provide that the energy use shall be no more than 65% for new construction of a base building, or 75% in the case of rehabilitation of a base building, of the energy use attributable to a reference building which meets the requirements of applicable energy efficiency standards.

(j)(1) By regulation, the Administration shall adopt standards for tenant space to qualify as green tenant space eligible for the tax credits under this

section that are consistent with the criteria for green tenant space set forth by the United States Green Building Council or other similar criteria.

(2) The regulations adopted under this subsection shall provide that the energy use shall be no more than 65% for new construction, or 75% in the case of rehabilitation, of the energy use attributable to a reference building which meets the requirements of applicable energy efficiency standards.

(k)(1)(i) On application by a taxpayer, the Administration shall issue an initial credit certificate if the taxpayer has made a showing that the taxpayer is likely within a reasonable time to place in service property for which a credit under this section would be allowed.

(ii) The initial credit certificate issued under this paragraph:

1. Shall state the earliest taxable year for which the credit may be claimed and an expiration date; and
2. Shall apply only to property placed in service on or before the expiration date.

(iii) To avoid unwarranted hardship, the Administration at its discretion may extend the expiration date stated under an initial credit certificate.

(iv) The initial credit certificate shall state the maximum amount of credit allowable in the aggregate for all credits allowed under this section.

(v) The Administration may not issue initial credit certificates, in the aggregate, for more than \$25,000,000 worth of credits.

(vi) Except as provided in subparagraph (vii) of this paragraph, initial credit certificates shall be limited in their applicability, as follows:

Credits in the aggregate may not be allowed for more than:	With respect to taxable years beginning:
\$1 million	2003
\$2 million	2004
\$3 million	2005
\$4 million	2006
\$5 million	2007
\$4 million	2008
\$3 million	2009
\$2 million	2010
\$1 million	2011

(vii) As of the end of a calendar year, if certificates for credit amounts totaling less than the amount permitted with respect to taxable years beginning in that calendar year have been issued, the maximum amount that may be allowed for taxable years beginning in the subsequent calendar year shall be increased by the amount of the preceding year's shortfall.

(viii) The Administration may not issue an initial credit certificate after December 31, 2011.

(ix) On January 1, 2004, and each year thereafter, the Administration shall provide to the Comptroller a list of all taxpayers in the prior taxable year that have been issued an initial credit certificate and shall specify for each taxpayer the earliest taxable year for which the credit may be claimed and the maximum amount of the credit allowable in the aggregate for all credits allowed under this section.

(2)(i) For each taxable year for which a taxpayer claims a credit under this section with respect to a green whole building, green base building, green tenant space, fuel cell, photovoltaic module, or wind turbine, the taxpayer shall obtain an eligibility certificate from an architect or professional engineer licensed to practice in this State.

(ii) An eligibility certificate issued under this paragraph shall consist of a certification, under the seal of the architect or engineer, that the property that is the basis for the credit that is claimed is in service and that:

1. The building, base building, or tenant space with respect to which the credit is claimed is a green whole building, green base building, or green tenant space; and
2. Any fuel cell, photovoltaic module, or wind turbine with respect to which the credit is claimed constitutes a qualifying alternate energy source and is fully operational.

(iii) The certification under subparagraph (ii) of this paragraph:

1. Shall be made in accordance with the regulations adopted by the Administration under this section specifying the standards and guidelines for each credit under this section; and
2. Shall set forth the specific findings on which the certification was based.

(iv) The taxpayer shall file the eligibility certificate and the associated initial credit certificate with the taxpayer's income tax return and shall file duplicate copies of the eligibility certificate with the Administration.

(v) The eligibility certificate shall include:

1. Sufficient information to identify each building or space; and
2. Any other information that the Administration or the Comptroller requires by regulation.

(3) If the Administration has reason to believe that an architect or professional engineer, in making any certification under this subsection, engaged in professional misconduct, the Administration shall inform the appropriate professional board of the suspected misconduct.

(4)(i) The Comptroller and the Administration may adopt regulations necessary to carry out the provisions of this section.

(ii) Regulations adopted under this section shall construe the provisions of this section in such a manner as to encourage the development of green whole buildings, green base buildings, and green tenant space and to maintain high, but commercially reasonable, standards for obtaining tax credits under this section.

(5) On or before April 1, 2005, the Comptroller and the Administration, jointly and in consultation with the Department of the Environment, shall submit to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly, a written report regarding:

(i) The number of certifications and taxpayers claiming the credit under this section;

(ii) The amount of the credits claimed;

(iii) The geographical distribution of the credits claimed; and

(iv) Any other available information the Administration determines to be meaningful and appropriate.

(6) The Comptroller shall ensure that the information is presented and classified in a manner consistent with the confidentiality of tax return information.

(l) On or before July 1, 2002, the Administration, in consultation with the Department of the Environment and the Department of Natural Resources, shall

adopt regulations with respect to the certification of green whole buildings, green base buildings, and green tenant space that are consistent with criteria set forth by the State's Green Buildings Council or other similar criteria for:

- (1) Energy use;
- (2) Appliance and heating, cooling, and hot water equipment standards;
- (3) Air conditioning equipment, including chillers;
- (4) Building materials, finishes, and furnishings;
- (5) Stormwater runoff for new construction;
- (6) Water conservation and efficiency; and
- (7) Indoor air quality, in consultation with the Department of Health and Mental Hygiene.