

CHAPTER 300
FORMERLY
HOUSE BILL NO. 380

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO
ECONOMIC DEVELOPMENT INCENTIVES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 20, Title 30 of the Delaware Code by adding a new Subchapter X to read as follows:

“Subchapter X. Business Finder’s Fee Tax Credit.

§ 2090. Legislative Findings and Purpose; Creation of the Business Finder’s Fee Tax Credit.

The General Assembly finds and declares that the State should partner with the Delaware business community to create and develop new employment opportunities for the citizens of the State. The General Assembly further finds that existing Delaware businesses are ideally situated to encourage new businesses to relocate and bring new jobs to the State. The purpose of this subchapter shall be to create incentives for existing Delaware business firms to develop new Delaware employment opportunities by encouraging out-of-state business firms to relocate to Delaware. It is the General Assembly’s intent to achieve such a result through the implementation of the Business Finder’s Fee Tax Credit, which is designed to foster the recruitment efforts by Delaware businesses to relocate their suppliers, customers or other associated businesses to Delaware. The Business Finder’s Fee Tax Credit is also designed to increase tax revenues for the State, and add value to the State’s economy as a result of expanding Delaware’s employment base.

§ 2091. Definitions.

As used in this subchapter:

(a) “Affiliate” means any business organization or person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or business entity specified, or person who is an officer, director, partner, or trustee of the person specified.

(b) “Bank” means a banking organization or other financial institution engaged in the business of banking, chartered under federal or any state law, and regulated by any federal or any state banking regulatory authority. “Bank” shall include but not be limited to a commercial bank, savings bank, savings and loan association, and trust company, as well as an affiliate of such a bank.

(c) “Business Finder’s Fee Program” means the program authorized pursuant to this subchapter and designed to incentivize Delaware businesses to encourage their suppliers, customers, and other businesses to relocate to Delaware, resulting in job creation, increased tax revenues, and strengthened supply networks.

(d) “Certified Sponsor Firm” means a Sponsor Firm that has been approved by the Director pursuant to the provisions of § 2093.

(e) “Certified New Business Firm” means a New Business Firm that has been certified by the Director pursuant to the provisions of § 2093.

(f) “Credit” means a reduction of the final balance for tax reported due by a Certified Sponsor Firm or a Certified New Business Firm on a tax or information return pursuant to the Business Finder’s Fee Program.

(g) “DEDO” means the Delaware Economic Development Office, an office in the Executive Department of the State.

(h) “Director” means the Director of the Delaware Economic Development Office, as defined by § 5002(c) of Title 29.

(i) “Full-Time Delaware Employee” means any employee of a New Business Firm whose compensation is based on a work week of at least thirty-five hours and who spends at least ninety percent of his or her working hours in the State of Delaware.

(j) “New Business Certification Date” means the date DEDO officially certifies the joint application of the Sponsor Firm and the New Business Firm.

(k) “New Business Firm” means a business organization that certifies in a joint application pursuant to § 2093 of this title that it:

(1) is a validly organized and existing corporation, limited liability company, limited partnership, general partnership, limited liability partnership, statutory trust or sole proprietorship;

(2) has been doing business for at least three years at the time it applies for the credit;

(3) has a place of business outside of the state of Delaware;

(4) has a current business license issued by an out-of-state agency;

(5) does not have a place of business within the state of Delaware, and has not had a place of business within the state of Delaware for at least three years at the time it applies for the credit;

(6) is not a tenant of a Sponsor Firm, and has not entered into a rental agreement for a commercial rental unit, as defined in 25 Del. C. § 5141, with a Sponsor Firm; and

(7) is not an affiliate of a Sponsor Firm.

(l) “Real Estate Agency” means a person licensed as a real estate broker or salesperson under Chapter 29 of Title 24 and acting within the course and scope of that license, or a partnership, association or corporation engaged in the business of buying or selling real estate.

(m) “Real estate developer,” means a person in the business of:

(1) acquiring land (raw or improved);

(2) improving raw land or building structures (residential or commercial) on land so acquired (or both); and

(3) selling land, where applicable with the structure, to customers.

A person shall be treated as a real estate developer or as a contractor who is not a real estate developer depending, in each case, upon the business in which the person is engaged with respect to a specific parcel of real estate.

(n) “Sponsor Firm” means a business organization that certifies in a joint application pursuant to § 2093 that it:

(1) is a validly organized and existing corporation, limited liability company, limited partnership, general partnership, limited liability partnership, statutory trust or sole proprietorship;

(2) has been doing business in Delaware for at least three years at the time it applies for the credit;

(3) has a place of business in Delaware, has a current Delaware business license issued by the Delaware Division of Revenue or other Delaware licensing agency;

(4) has not entered into a rental agreement for a commercial rental unit, as defined by 25 Del. C. § 5141, with the New Business Firm;

(5) is not a Real Estate Agency, Real Estate Developer, or landlord, as defined by 25 Del. C. § 5141, for the New Business Firm, or a Bank or other lender who provides financing for the New Business Firm to establish a Delaware business location; and

(6) is not an affiliate of a New Business Firm.

§ 2092. Business Finder’s Fee Credit.

(a) Subject to the limitations of this subchapter, a Certified Sponsor Firm and a Certified New Business Firm shall each be eligible for a tax credit equal to Five Hundred Dollars (\$500.00) times the total number of Full-Time Delaware Employees of the Certified New Business Firm each tax year for three tax years from the New Business Certification Date.

(b) DEDO shall develop rules and regulations consistent with this subchapter to implement the provisions herein.

§ 2093. New Business Certification Process.

(a) To qualify for a Business Finder’s Fee Credit, a proposed Sponsor Firm and proposed New Business Firm shall submit a joint application to DEDO, which shall consider whether the application meets the following criteria:

(1) The proposed Sponsor Firm and proposed New Business firm each meet the requirements of this subchapter to be a Sponsor Firm and New Business Firm, respectively;

(2) The New Business Firm intends to relocate to the State of Delaware as a result of recruitment efforts by the Sponsor Firm, including, but not limited to, written solicitations, inducements, or other incentives, and intends to establish a Delaware business location, and to obtain a Delaware business license within eight months of the date of application;

(3) The New Business Firm intends to employ three or more Full-Time Delaware Employees within eight months of the date of application; and

(4) The New Business Firm is not receiving a tax credit pursuant to the New Economy Jobs Program set forth in Subchapter IX of Chapter 20 of this Title.

(b) DEDO shall review the joint application, and the Director shall, within the exercise of his or her discretion, certify those applications that meet the standards of § 2093(a).

§ 2094. Tax Credit Application Process.

(a) In order to obtain a credit, Certified Sponsor Firms and Certified New Business Firms shall submit a joint tax credit application to DEDO for the Business Finder's Fee Tax Credit on or after the anniversary of the New Business Certification Date, which certifies the number of Full-Time Delaware Employees that have been continuously employed by the New Business Firm for a period of at least three months prior to the date of the tax credit application.

(b) The Certified Sponsor Firm and the New Business Firm shall identify on the joint application the tax against which each seeks to apply a credit, should said joint application be approved by the Director. Credits may be claimed against any one of the taxes imposed by the following provisions:

- (1) Chapter 11 of Title 5;
- (2) Sections 702 and 703 of Title 18; or
- (3) Chapters 11, 19, 23, 25, 27, 29, 43 or 61 of this Title.

(c) DEDO shall review and conduct due diligence to verify the employment as reported in the credit application. After such review the Director shall, within the exercise of his or her discretion, approve qualifying applications for a credit of Five Hundred Dollars (\$500.00) for each Full-Time Delaware Employee of the Certified New Business Firm. The Director shall submit a written authorization for each such approved application to the Certified Sponsor Firm, Certified New Business Firm, the Division of Revenue, and, if applicable, the Bank Commissioner and the Insurance Commissioner, indicating the amount of Business Finder's Fee Tax Credit approved for each Certified Sponsor Firm and Certified New Business Firm.

(d) To claim the credit allowed by this subchapter, Certified Sponsor Firms and Certified New Business Firms shall attach the Director's written authorization for each approved application to the Delaware tax return against which the credit is claimed, and submit such tax return to the appropriate state tax authority. To the extent that the Business Finder's Fee Tax Credit exceeds the amount of the tax otherwise due, unused credits shall be paid to the Certified Sponsor Firm or Certified New Business Firm in the nature of a tax refund. Certified Sponsor Firms and Certified New Business Firms shall also attach an executed non-disclosure form provided by the Division of Revenue or other taxing agency.

(e) Certified Sponsor Firms and New Business Firms are eligible for a tax credit for each of the three tax years from the anniversary of the New Business Certification Date, and are not eligible for the tax credit thereafter.

§ 2095. Reports.

DEDO shall report annually to the General Assembly, on or before March 1, the names of all Certified Sponsor and New Business Firms, the total amount of tax credits awarded pursuant to this program, and the number of jobs created.

§ 2096. Reconsideration.

Where any applicant for a New Business Finder's Fee tax credit pursuant to this subchapter objects to any determination by the Director, such applicant shall be entitled to a reconsideration of such decision by the Director or the Director's designee. Such request shall be filed with the Director within 60 days from the issuance of such denial of certification decision. The Director shall, within 30 days of a request for such reconsideration, issue a written decision.

§ 2097. Limitations on credits.

(a) The aggregate amount of such tax credits approved for all Sponsor and New Business Firms shall not exceed \$3,000,000 in any state fiscal year.

(b) The Director shall ensure that each application has the date and time of submission recorded. Credits will be awarded in chronological order based upon the date and time upon which each complete application is received by the DEDO. If a credit award results in exceeding the \$3,000,000 limitation for the fiscal year in which it is awarded, the amount by which such credit award exceeds \$3,000,000 shall carry over to the succeeding fiscal year and shall receive priority for that year."

Section 2. This Act shall take effect on October 1, 2010.

Approved June 16, 2010