

Title 14 INDEPENDENT AGENCIES

Subtitle 26 MARYLAND ENERGY ADMINISTRATION

Chapter 02 Green Building Tax Credit Program

Authority: Tax-General Article, §10-722, Annotated Code of Maryland

.01 Purpose and Scope

A. The Maryland Green Building Program encourages building owners, engineers, architects, and developers to construct and operate buildings that are energy efficient, minimize site disturbance, provide high quality indoor environments, conserve water, incorporate recycled and recyclable materials, and incorporate renewable and energy efficient power generation.

B. The Program provides tax credits against the State income tax for certain costs for the construction or rehabilitation of buildings and the purchase of equipment that meets certain energy efficiency and environmental standards.

.02 Incorporation by Reference

A. In this chapter, the following documents are incorporated by reference.

B. Documents Incorporated.

(1) ANSI/ASHRAE/IESNA Energy Standard for Buildings Except Low-Rise Residential Buildings I-P Edition (American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1-1999).

(2) LEED Rating System LEED 2009 ((Leadership in Energy & Environmental Design, 2009) including the Project List (Project list is applicable for LEED 2009)

(3) LEED for Existing Buildings/The LEED Green Building Rating System (tm) for Improving Building Performance through Upgrades and Operations LEED 2009

(4) LEED-NC "Green Building Rating System for New Construction and Major Renovations" LEED 2009

(5) LEED-EB "Green Building Rating System for Existing Buildings - Upgrades, Operations, and Maintenance" LEED 2009

(6) LEED-CI "Green Building Rating System for Commercial Interiors" LEED 2009

(7) LEED-CS "Green Building Rating System for Core and Shell Development" LEED 2009.

.03 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

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

(2) Allowable costs.

(a) "Allowable costs" means amounts properly chargeable to a capital account, other than for land, that are paid or incurred on or after July 1, 2001, for construction or rehabilitation; commissioning; interest paid or incurred during the construction or rehabilitation period; architectural, engineering, and other professional fees allocable to construction or rehabilitation; closing costs for construction, rehabilitation, or mortgage loans; recording taxes and filing fees incurred with respect to construction or rehabilitation; energy management systems; and finishes and furnishings consistent with the regulations adopted by the Administration under this section, lighting, plumbing, electrical wiring, and ventilation.

(b) "Allowable costs" does not include the cost of telephone systems and computers, other than electrical wiring costs; legal fees allocable to construction or rehabilitation; site costs, including temporary electric wiring, scaffolding, demolition costs, and fencing and security facilities; finishes or furnishings that are not consistent with this chapter; or the cost of purchasing or installing fuel cells, wind turbines, or photovoltaic modules.

(3) "Applicable energy efficiency standards" means ANSI/ASHRAE/IESNA Energy Standard for Buildings Except Low-Rise Residential Buildings, 1-P Edition (American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1-1999).

(4) "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, owner-controlled or owner-operated service spaces, sidewalks, main lobby, shafts, vertical transportation mechanisms, stairways, and corridors.

(5) "Commissioning" means:

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

(b) The preparation of system operation manuals; and

(c) The instruction of maintenance personnel.

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

(a) The taxable year during which:

(i) The property, construction, completion, or rehabilitation on which the credit allowed under this chapter is based is originally placed in service; or

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

(b) The earliest taxable year for which the credit may be claimed according to the initial credit certificate.

(7) "Eligible building" means a building in Maryland that:

(a) Complies with one of the following:

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

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

(iii) Is a combination of the buildings described in §B(7) of this regulation;

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

(i) Is located on a qualified brownfields site, as defined under Article 83A, §5-1401, Annotated Code of Maryland; or

(ii) Is located in a priority funding area under State Finance and Procurement Article, §5-7B-02, Annotated Code of Maryland, and is not located on wetlands whose alteration requires a permit under Section 404 of the Federal Clean Water Act, 33 U.S.C. §1344; and

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

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

(ii) Is not an increase of more than 25 percent in the square footage of the building.

(8) "Green base building" means a base building that is part of an eligible building and meets the requirements of this chapter.

(9) "Green tenant space" means tenant space in a building if a building is an eligible building and the tenant space meets the requirements of this chapter.

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

(11) "LEED" means Leadership in Energy and Environmental Design.

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

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

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

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

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

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

(15) "USGBC" means the United States Green Building Council.

.04 Green Whole Buildings New Construction: Standards and Methods For Determining Compliance.

A. A green whole building, newly constructed, is a building that:

(1) Uses not more than 65 percent of the energy attributable to a reference building which meets the requirements of applicable energy efficiency standards under ASHRAE 90.1-1999;

And

(2) At a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED Rating System LEED 2009 For New Construction and Major Renovations in the following categories, if the whole building includes green tenant space:

(a) Sustainable Sites, Credit 8-Light Pollution Reduction;

(b) Water Efficiency, Credit 3-Water Use Reduction;

(c) Materials and Resources, Credit 2-Construction Waste Management; and

(d) Energy and Atmosphere: Credits 1 through 6, with at least 15 points.

B. A green whole building, rehabilitated, is a building that:

(1) Uses no more than 75 percent of the energy attributable to a reference building which meets the requirements of applicable energy efficiency standards under ASHRAE 90.1-1999 and at a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED Rating System LEED 2009 For New Construction and Major Renovations in the following categories, if the rehabilitated space includes green rented space:

- (a) Sustainable Sites, Credit 8-Light Pollution Reduction;
- (b) Water Efficiency, Credit 3-Water Use Reduction;
- (c) Materials and Resources, Credit 2-Construction Waste Management; and
- (d) Energy and Atmosphere: Credits 1 through 6, with at least 15 points; or

(2) At a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED Rating System LEED 2009 For Core and Shell Development in the following categories, if the "rehabilitated" space does not include green tenant space:

- (a) Sustainable Sites, Credit 8 - Light Pollution Reductions;
- (b) Water Efficiency, Credit 3 - Water Use Reduction;
- (c) Materials and Resources, Credit 2 - Construction Waste Management; and
- (d) Energy and Atmosphere Credits 1 through 6, with at least 15 points ;or

(3) At a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED 2009 for Existing Buildings: Operations & Maintenance in the following categories, if the "rehabilitated" space is upgraded to maintain occupancy:

- (a) Sustainable Sites, Credit 8-Light Pollution Reduction;
- (b) Water Efficiency, Credit 3-Water Efficient Landscaping
- (c) Materials and Resources, Credit 3-Sustainable Purchasing – Facility Alternations and Additions; and
- (d) Energy and Atmosphere: Credits 1 through 6, with at least 15 points

C. A green whole building shall comply with all applicable State, county, and local regulations governing the construction of a building and related processes.

.05 Green Base Buildings: Standards and Methods For Determining Compliance

A. A green base building, newly constructed, is a building that:

(1) Uses not more than 65 percent of the energy attributable to a reference building that meets the requirements of applicable energy efficiency standards under ASHRAE 90.1-1999 and

(2) At a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED Rating System 2009 for Core and Shell Development in the following categories, if the occupancy does not include green tenant space:

(a) Sustainable Sites, Credit 8 - Light Pollution Reductions;

(b) Water Efficiency, Credit 3 - Water Use Reduction;

(c) Materials and Resources, Credit 2 - Construction Waste Management; and

(d) Energy and Atmosphere Credits 1 through 6, with at least 15 points

B. A green base building, rehabilitated, is a building that:

(1) Uses not more than 75 percent of the energy attributable to a reference building that meets the requirements of applicable energy efficiency standards under ASHRAE 90.1-1999;

(2) At a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED Rating System 2009 for Core and Shell Development in the following categories, if the occupancy does not include green tenant space:

(a) Sustainable Sites, Credit 8 - Light Pollution Reductions;

(b) Water Efficiency, Credit 3 - Water Use Reduction;

(c) Materials and Resources, Credit 2 - Construction Waste Management; and

(d) Energy and Atmosphere Credits 1 through 6, with at least 15 points

.06 Green Tenant Space: Standards and Methods for Determining Compliance

A. A green tenant space newly constructed, is a building space that uses not more than 65 percent of the energy attributable to a reference building that meets the requirements of applicable energy efficiency standards under ASHRAE 90.1-1999 and at a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED Rating System for LEED 2009 for Commercial Interiors in the following categories:

(1) Water Efficiency, Credit 1-Water Use Reduction;

(2) Materials and Resources, Credit 2 - Construction Waste Management; and

(3) Energy and Atmosphere: Credits 1 through 6, with at least 15 points.

B. A green tenant space, rehabilitated, is a building space that uses not more than 75 percent of the energy attributable to a reference building that meets the requirements of applicable energy efficiency standards under ASHRAE 90.1-1999; and at a minimum, is certified as meeting the requirements to qualify for a rating of "Gold" in the LEED 2009 Commercial Interiors in the following categories:

(1) Water Efficiency, Credit 1-Water Use Reduction;

(2) Materials & Resources, Credit 2- Construction Waste Management; and

(3) Energy and Atmosphere: Credits 1 through 6, with at least 15 points.

.07 Initial Credit Certificate

A. 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 three years of submitting the initial tax credit application to place in service property for which a credit under this chapter is allowed.

B. The Administration may require the taxpayer to provide additional information as necessary.

C. In determining the amount of credits, a cost paid or incurred may not be the basis for more than one credit.

D. The initial credit certificate shall state:

(1) The maximum amount of credit allowable in the aggregate for all credits allowed under this section;

(2) The earliest taxable year for which the credit may be claimed; and

(3) An expiration date

E. Expiration and Extension of the Initial Credit Certificate:

(1) The Initial credit certificate shall expire no more than nine months after the date the property is expected to be placed in service as stated on the Initial Credit Certificate unless extended by the Administration.

(2) The holder of an Initial Credit Certificate may request an extension of the expiration date if the holder:

(a) Applies for the extension in writing to the Administration, and

(b) Demonstrates that the extension is necessary to avoid undue hardship.

F. Abandonment and Reissuance of an Initial Credit Certificate:

(1) The Administration may declare an Initial Credit Certificate to be abandoned if:

(a) The holder voluntarily returns the Initial Credit Certificate and notifies the Administration that he/she does not intend to construct the property as originally proposed to meet the standards for which the Certificate was issued; or

(b) If the property is not constructed and in-service before the expiration of the initial credit certificate and the holder has not demonstrated good cause to issue an extension to avoid undue hardship.

(2) Prior to declaring an Initial Credit Certificate abandoned, the Administration will notify the Holder in writing, by certified mail, that the Administration intends to declare the certificate abandoned unless the holder demonstrates in writing to the Administration within two weeks of the date of the letter that:

(a) An extension of the certificate is warranted to avoid undue hardship, and

(b) The property can be placed in service within a reasonable time frame.

(3) If the Administration declares an Initial Credit Certificate abandoned, the Administration may reissue the initial credit certificate to a new holder that meets the qualifications for issuing an Initial Credit Certificate.

(4) The Administration may issue notification that the Initial Credit Certificate is available on a first come, first serve basis.

G. Prior to claiming a tax credit for green buildings and green building components, the taxpayer shall:

(1) Provide in writing to the Administration the as-built details of the property related to Maryland Code, Section 10-722 (c)(d)(e)(f)(g) and (h). If such as-built details are identical to what was provided in the Initial Credit Certificate application materials as the basis for the amount of tax credit allowed, the taxpayer shall so indicate in writing to the Administration, rather than providing the as-built details.

(2) If the as-built property differs from how the property was represented in the initial tax credit application such that the as-built property is not eligible for the full amount of tax credit stated in the Initial Credit Certificate, MEA shall correct the Initial Credit Certificate to reflect the amount of tax credit allowable based on the as-built project.

.08 Eligibility Certificate

A. Beginning with the taxable year after December 31, 2002, for each taxable year for which a taxpayer claims a credit, the taxpayer shall obtain an eligibility certificate from an architect or professional engineer who:

- (1) Is licensed to practice in Maryland; and
- (2) Has passed the USGBC's LEED Professional Accreditation Exam.

B. If the taxpayer is claiming a tax credit for a building, the eligibility certificate shall, under the seal of the architect or professional engineer, certify that the property that is the basis for the credit:

- (1) Is in service;
- (2) Is a green base building or a green whole building that meets the requirements of this chapter.

C. If the taxpayer is claiming a credit for a qualifying alternate energy source, the eligibility certificate shall certify that the fuel cell, wind turbine, photovoltaic module, or one or more of them, is fully operational.

.09 Filing

The taxpayer shall file the initial credit certificate and eligibility certificate with the taxpayer's income tax return and provide a duplicate copy to the Maryland Energy Administration.