
By: **The President (By Request - Administration) and Senators Brinkley,
Colburn, Giannetti, Haines, Hooper, Jacobs, Kittleman, Munson,
Schrader, Stoltzfus, and Teitelbaum**

Introduced and read first time: January 23, 2006

Rules suspended

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development - Research and Development Tax**
3 **Credit**

4 FOR the purpose of altering certain limits on the aggregate amount of credits that the
5 Department of Business and Economic Development may approve for any
6 calendar year under the Maryland research and development tax credit;
7 imposing a certain limit on the amount of credit that an individual or
8 corporation may obtain in a calendar year; providing for certain reallocation of
9 the credit under certain circumstances; providing for the application of this Act;
10 and generally relating to the Research and Development Tax Credit.

11 BY repealing and reenacting, with amendments,
12 Article - Tax - General
13 Section 10-721
14 Annotated Code of Maryland
15 (2004 Replacement Volume and 2005 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Tax - General**

19 10-721.

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

21 (2) "Department" means the Department of Business and Economic
22 Development.

23 (3) "Maryland base amount" means the base amount as defined in § 41(c)
24 of the Internal Revenue Code that is attributable to Maryland, determined by:

1 (i) substituting "Maryland qualified research and development
2 expense" for "qualified research expense";

3 (ii) substituting "Maryland qualified research and development" for
4 "qualified research"; and

5 (iii) using, instead of the "fixed base percentage":

6 1. the percentage that the Maryland qualified research and
7 development expense for the 4 taxable years immediately preceding the taxable year
8 in which the expense is incurred is of the gross receipts for those years; or

9 2. for a taxpayer who has fewer than 4 but at least 1 prior
10 taxable year, the percentage as determined under item 1 of this item, determined
11 using the number of immediately preceding taxable years that the taxpayer has.

12 (4) "Maryland gross receipts" means gross receipts that are reasonably
13 attributable to the conduct of a trade or business in this State, determined under
14 methods prescribed by the Comptroller based on standards similar to the standards
15 under § 10-402 of this title.

16 (5) "Maryland qualified research and development" means qualified
17 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this
18 State.

19 (6) "Maryland qualified research and development expenses" means
20 qualified research expenses as defined in § 41(b) of the Internal Revenue Code
21 incurred for Maryland qualified research and development.

22 (b) Subject to the limitations of this section, an individual or a corporation
23 may claim credits against the State income tax in an amount equal to:

24 (1) 3% of the Maryland qualified research and development expenses,
25 not exceeding the Maryland base amount for the individual or corporation, paid or
26 incurred by the individual or corporation during the taxable year; and

27 (2) 10% of the amount by which the Maryland qualified research and
28 development expenses paid or incurred by the individual or corporation during the
29 taxable year exceed the Maryland base amount for the individual or corporation.

30 (c) (1) By September 15 of the calendar year following the end of the taxable
31 year in which the Maryland qualified research and development expenses were
32 incurred, an individual or corporation shall submit an application to the Department
33 for the credits allowed under subsection (b)(1) and (2) of this section.

34 (2) (i) Except as provided under paragraph (4) of this subsection, the
35 total amount of credits approved by the Department under subsection (b)(1) of this
36 section may not exceed [\$3,000,000] \$6,000,000 for any calendar year.

1 (ii) Subject to paragraph (4) of this subsection, if the total amount
2 of credits applied for by all individuals and corporations under subsection (b)(1) of this
3 section exceeds the maximum specified under subparagraph (i) of this paragraph, the
4 Department shall approve a credit under subsection (b)(1) of this section for each
5 applicant in an amount equal to the product of multiplying the credit applied for by
6 the applicant times a fraction:

7 1. the numerator of which is the maximum specified under
8 subparagraph (i) of this paragraph; and

9 2. the denominator of which is the total of all credits applied
10 for by all applicants under subsection (b)(1) of this section in the calendar year.

11 (III) AN INDIVIDUAL OR CORPORATION MAY NOT RECEIVE A CREDIT
12 OF MORE THAN \$500,000 FOR ANY CALENDAR YEAR UNDER SUBSECTION (B)(1) OF
13 THIS SECTION.

14 (IV) IF THE CALCULATION IN SUBPARAGRAPH (II) OF THIS
15 PARAGRAPH WOULD RESULT IN AN INDIVIDUAL OR CORPORATION RECEIVING A
16 CREDIT OF MORE THAN \$500,000, THE EXCESS SHALL BE ALLOCATED TO THE
17 REMAINING ELIGIBLE APPLICANTS.

18 (3) (i) Except as provided in paragraph (4) of this subsection, the total
19 amount of credits approved by the Department under subsection (b)(2) of this section
20 may not exceed [\$3,000,000] \$6,000,000 for any calendar year.

21 (ii) Subject to paragraph (4) of this subsection, if the total amount
22 of credits applied for by all individuals and corporations under subsection (b)(2) of this
23 section exceeds the maximum specified under subparagraph (i) of this paragraph, the
24 Department shall approve a credit under subsection (b)(2) of this section for each
25 applicant in an amount equal to the product of multiplying the credit applied for by
26 the applicant times a fraction:

27 1. the numerator of which is the maximum specified under
28 subparagraph (i) of this paragraph; and

29 2. the denominator of which is the total of all credits applied
30 for by all applicants under subsection (b)(2) of this section in the calendar year.

31 (III) AN INDIVIDUAL OR CORPORATION MAY NOT RECEIVE A CREDIT
32 OF MORE THAN \$500,000 FOR ANY CALENDAR YEAR UNDER SUBSECTION (B)(2) OF
33 THIS SECTION.

34 (IV) IF THE CALCULATION IN SUBPARAGRAPH (II) OF THIS
35 PARAGRAPH WOULD RESULT IN AN INDIVIDUAL OR CORPORATION RECEIVING A
36 CREDIT OF MORE THAN \$500,000, THE EXCESS SHALL BE ALLOCATED TO THE
37 REMAINING ELIGIBLE APPLICANTS.

38 (4) (i) For any calendar year, if the maximum specified under
39 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by

1 all individuals and corporations under subsection (b)(1) of this section, the maximum
2 specified under paragraph (3)(i) of this subsection shall be increased for that calendar
3 year by an amount equal to the amount by which the maximum specified under
4 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by
5 all individuals and corporations under subsection (b)(1) of this section.

6 (ii) For any calendar year, if the maximum specified under
7 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by
8 all individuals and corporations under subsection (b)(2) of this section, the maximum
9 specified under paragraph (2)(i) of this subsection shall be increased for that calendar
10 year by an amount equal to the amount by which the maximum specified under
11 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by
12 all individuals and corporations under subsection (b)(2) of this section.

13 (5) By December 15 of the calendar year following the end of the taxable
14 year in which the Maryland qualified research and development expenses were
15 incurred, the Department shall certify to the individual or corporation the amount of
16 the research and development tax credits approved by the Department for the
17 individual or corporation under subsection (b)(1) and (2) of this section.

18 (6) To claim the approved credits allowed under this section, an
19 individual or corporation shall:

20 (i) file an amended income tax return for the taxable year in which
21 the Maryland qualified research and development expense was incurred; and

22 (ii) attach a copy of the Department's certification of the approved
23 credit amount to the amended income tax return.

24 (d) If the credit allowed under this section in any taxable year exceeds the
25 State income tax for that taxable year, an individual or corporation may apply the
26 excess as a credit against the State income tax for succeeding taxable years until the
27 earlier of:

28 (1) the full amount of the excess is used; or

29 (2) the expiration of the 7th taxable year after the taxable year in which
30 the Maryland qualified research and development expense was incurred.

31 (e) (1) In determining the amount of the credit under this section:

32 (i) all members of the same controlled group of corporations, as
33 defined under § 41(f) of the Internal Revenue Code, shall be treated as a single
34 taxpayer; and

35 (ii) the credit allowable by this section to each member shall be its
36 proportionate shares of the qualified research expenses giving rise to the credit.

37 (2) The Comptroller shall adopt regulations providing for:

1 (i) determination of the amount of the credit under this section in
2 the case of trades or businesses, whether or not incorporated, that are under common
3 control;

4 (ii) pass-through and allocation of the credit in the case of estates
5 and trusts, partnerships, unincorporated trades or businesses, and S corporations;

6 (iii) adjustments in the case of acquisitions and dispositions
7 described in § 41(f)(3) of the Internal Revenue Code; and

8 (iv) determination of the credit in the case of short taxable years.

9 (3) The regulations adopted under paragraph (2) of this subsection shall
10 be based on principles similar to the principles applicable under § 41 of the Internal
11 Revenue Code and regulations adopted thereunder.

12 (f) (1) The Department of Business and Economic Development and the
13 Comptroller jointly shall adopt regulations to prescribe standards for determining
14 when research or development is considered conducted in the State for purposes of
15 determining the credit under this section.

16 (2) In adopting regulations under this subsection, the Department and
17 the Comptroller may consider:

18 (i) the location where services are performed;

19 (ii) the residence or business location of the person or persons
20 performing services;

21 (iii) the location where supplies used in research and development
22 are consumed; and

23 (iv) any other factors that the Department determines are relevant
24 for the determination.

25 (g) (1) On or before January 10 of each year, the Department shall report to
26 the Governor and, subject to § 2-1246 of the State Government Article, to the General
27 Assembly, on the credits approved under this section.

28 (2) The report required under paragraph (1) of this subsection shall
29 include for each individual or corporation approved to receive a credit under
30 subsection (b)(1) and (2) of this section in the prior calendar year:

31 (i) the individual's or corporation's name and address; and

32 (ii) the amount of the credit approved.

33 (3) The report required under paragraph (1) of this subsection shall
34 include the name of the individual or corporation and the aggregate amount of credits
35 approved in all calendar years for each individual or corporation under subsection
36 (b)(1) and (2) of this section.

1 (4) The report required under paragraph (1) of this subsection shall
2 summarize for the credits approved under subsection (b)(1) of this section and for the
3 credits approved under subsection (b)(2) of this section:

4 (i) the total number of applicants for credits under this section in
5 each calendar year;

6 (ii) the number of applications for which a tax credit was approved
7 in each calendar year; and

8 (iii) the total credits authorized under this section for all calendar
9 years under this section.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 2006, and shall be applicable to all credits under § 10-721 of the Tax -
12 General Article approved by the Department of Business and Economic Development
13 for taxable years ending after December 31, 2005.