
By: **The President (By Request - Administration) and Senators Brinkley,
Forehand, and Giannetti**

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 - Biotechnology Investment Incentive**
3 **Act**

4 FOR the purpose of altering a certain credit allowed against the State income tax for
5 certain investments in certain technology businesses; imposing certain
6 eligibility restrictions for the credit; altering certain limits on the amount of
7 credits that may be claimed by certain persons; repealing a provision making
8 the credit refundable under certain circumstances; imposing certain limits on
9 the amount of credits the Secretary of Business and Economic Development may
10 certify for investments in a single business; providing that the credit may be
11 claimed over a certain period; providing that certain unused credits may be
12 carried forward to certain taxable years; repealing certain provisions providing
13 for the recapture of the credit under certain circumstances; requiring certain
14 persons to submit certain documentation, notices, and tax returns to the
15 Department of Business and Economic Development to remain eligible to claim
16 the credit; providing for the forfeiture of certain unclaimed credit under certain
17 circumstances; requiring certain regulations to provide for allocation of certain
18 available credit under certain circumstances; and generally relating to a certain
19 tax credit for certain investments in certain technology businesses in the State.

20 BY repealing and reenacting, with amendments,
21 Article - Tax - General
22 Section 10-725(b), (d), and (i)
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2005 Supplement)

25 BY repealing
26 Article - Tax - General
27 Section 10-725(f)
28 Annotated Code of Maryland
29 (2004 Replacement Volume and 2005 Supplement)

1 BY adding to
2 Article - Tax - General
3 Section 10-725(f)
4 Annotated Code of Maryland
5 (2004 Replacement Volume and 2005 Supplement)

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

8 **Article - Tax - General**

9 10-725.

10 (b) (1) Subject to PARAGRAPH (2) OF THIS SUBSECTION AND subsections (d)
11 and (e) of this section, a qualified investor or a qualified Maryland venture capital
12 firm may claim a credit against the State income tax in an amount equal to the final
13 credit certificate approved by the Secretary for an investment in a qualified Maryland
14 biotechnology company as provided under this section.

15 (2) TO BE ELIGIBLE FOR THE TAX CREDIT DESCRIBED IN PARAGRAPH (1)
16 OF THIS SUBSECTION, THE PROSPECTIVE INVESTOR MUST NOT:

17 (I) AFTER MAKING THE PROPOSED INVESTMENT, OWN OR
18 CONTROL MORE THAN 20% OF THE QUALIFIED MARYLAND BIOTECHNOLOGY
19 COMPANY INTO WHICH THE INVESTMENT IS TO BE MADE; OR

20 (II) BE A FOUNDER, PRINCIPAL, DIRECTOR, OFFICER, MEMBER OF,
21 OR GENERAL PARTNER IN, THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY.

22 (d) (1) The tax credit allowed in an initial tax credit certificate issued under
23 this section is 50% of the investment in a qualified Maryland biotechnology company,
24 not to exceed:

25 (i) [\$50,000] 10% OF THE TOTAL APPROPRIATIONS TO THE
26 RESERVE FUND FOR THAT FISCAL YEAR, for a qualified investor that is an individual;

27 (ii) [\$250,000] 20% OF THE TOTAL APPROPRIATIONS TO THE
28 RESERVE FUND FOR THAT FISCAL YEAR, for a qualified investor that is a corporation;
29 or

30 (iii) [\$250,000] 20% OF THE TOTAL APPROPRIATIONS TO THE
31 RESERVE FUND FOR THAT FISCAL YEAR, for a qualified Maryland venture capital
32 firm.

33 (2) [If the tax credit allowed under this section in any taxable year
34 exceeds the total tax otherwise payable by the qualified investor or qualified
35 Maryland venture capital firm for that taxable year, the qualified investor or
36 qualified Maryland venture capital firm may claim a refund in the amount of the
37 excess] DURING ANY FISCAL YEAR, THE SECRETARY MAY NOT CERTIFY ELIGIBILITY

1 FOR TAX CREDITS FOR INVESTMENTS IN A SINGLE QUALIFIED MARYLAND
2 BIOTECHNOLOGY COMPANY THAT IN THE AGGREGATE EXCEED THE LESSER OF:

3 (I) \$2,000,000; OR

4 (II) 20% OF THE TOTAL APPROPRIATIONS TO THE RESERVE FUND
5 FOR THAT FISCAL YEAR.

6 (3) THE TAX CREDIT MAY BE CLAIMED:

7 (I) AT THE RATE OF ONE-THIRD OF THE TOTAL AMOUNT OF THE
8 TAX CREDIT PER TAXABLE YEAR;

9 (II) FOR A PERIOD OF 3 YEARS; AND

10 (III) BEGINNING IN THE THIRD TAXABLE YEAR AFTER THE TAXABLE
11 YEAR IN WHICH THE INVESTMENT WAS MADE.

12 (4) IF THE TAX CREDIT ALLOWED FOR ANY TAXABLE YEAR EXCEEDS
13 THE TOTAL TAX OTHERWISE DUE FROM THE QUALIFIED INVESTOR OR QUALIFIED
14 MARYLAND VENTURE CAPITAL FIRM FOR THAT TAXABLE YEAR, THE QUALIFIED
15 INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM MAY APPLY THE
16 EXCESS AS A TAX CREDIT FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

17 (I) THE FULL AMOUNT OF THE EXCESS TAX CREDIT BEING USED;
18 OR

19 (II) THE EXPIRATION OF THE EIGHTH TAXABLE YEAR AFTER THE
20 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.

21 [(f) (1) The credit claimed under this section shall be recaptured as provided
22 in paragraph (2) of this subsection if, within 2 years from the close of the taxable year
23 in which the credit is approved, the qualified investor sells, transfers, or otherwise
24 disposes of the ownership interest in the qualified Maryland biotechnology company
25 that gave rise to the credit.

26 (2) The amount required to be recaptured under this subsection is the
27 product of multiplying:

28 (i) the portion of the credit attributable to the ownership interest
29 disposed of as described in paragraph (1) of this subsection; and

30 (ii) 1. 100%, if the disposition occurs during the taxable year in
31 which the tax credit is approved;

32 2. 67%, if the disposition occurs during the first year after
33 the close of the taxable year for which the tax credit is approved; or

34 3. 33%, if the disposition occurs more than 1 year but not
35 more than 2 years after the close of the taxable year for which the tax credit is
36 approved.

1 (3) The qualified investor or a qualified Maryland venture capital firm
2 that claimed the credit shall pay the amount to be recaptured as determined under
3 paragraph (2) of this subsection as taxes payable to the State for the taxable year in
4 which the disposition described under paragraph (1) of this subsection occurs.]

5 (F) (1) TO REMAIN ELIGIBLE TO CLAIM THE TAX CREDIT, THE QUALIFIED
6 INVESTOR OR A QUALIFIED MARYLAND VENTURE CAPITAL FIRM MUST SUBMIT TO
7 THE DEPARTMENT, UNTIL THE TAXABLE YEAR AFTER THE ENTIRE AMOUNT OF THE
8 CREDIT THAT IS ELIGIBLE TO BE CLAIMED HAS BEEN CLAIMED:

9 (I) BEGINNING IN THE TAXABLE YEAR IN WHICH THE
10 INVESTMENT IS MADE, ANNUAL DOCUMENTATION SATISFACTORY TO THE
11 DEPARTMENT THAT THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY IS
12 STILL OPERATING AS AN ACTIVE BUSINESS, TO BE RECEIVED BY THE DEPARTMENT
13 ON OR BEFORE JUNE 30 OF EACH YEAR;

14 (II) IMMEDIATE NOTICE OF ANY INFORMATION RECEIVED BY THE
15 QUALIFIED INVESTOR OR THE QUALIFIED MARYLAND VENTURE CAPITAL FIRM
16 INDICATING THAT THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY HAS
17 CEASED OPERATING AS AN ACTIVE BUSINESS; AND

18 (III) A COPY OF ANY TAX RETURN ON WHICH ANY PORTION OF THE
19 TAX CREDIT IS CLAIMED.

20 (2) IF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY CEASES
21 OPERATING AS AN ACTIVE BUSINESS, THE QUALIFIED INVESTOR OR THE QUALIFIED
22 MARYLAND VENTURE CAPITAL FIRM SHALL FORFEIT ALL UNCLAIMED PORTIONS OF
23 THE TAX CREDIT.

24 (i) (1) The Department and the Comptroller jointly shall adopt regulations
25 to carry out the provisions of this section.

26 (2) THE REGULATIONS SHALL PROVIDE FOR A PROCESS TO ALLOCATE
27 THE AVAILABLE TAX CREDIT IN A FISCAL YEAR WHEN:

28 (I) QUALIFIED INVESTORS AND QUALIFIED MARYLAND VENTURE
29 CAPITAL FIRMS WHO APPLY AT THE SAME TIME, FOR EXAMPLE IN A SYNDICATION,
30 AND ARE TOGETHER ELIGIBLE FOR AN AMOUNT OF TAX CREDIT THAT EXCEEDS THE
31 AMOUNT OF THE APPROPRIATIONS TO THE RESERVE FUND FOR THAT FISCAL; AND

32 (II) TAX CREDITS BECOME AVAILABLE BECAUSE AN APPLICANT IS
33 NO LONGER ELIGIBLE FOR THE CREDITS FOR WHICH THE APPLICANT WAS
34 CERTIFIED.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
36 effect July 1, 2006.