

SENATE BILL 309

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Q3

2000 Regular Session  
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By: **Senators Hogan, Neall, Lawlah, Hooper, Stoltzfus, DeGrange, Mooney,  
Currie, Roesser, Middleton, Hoffman, Kasemeyer, Madden, McFadden,  
Munson, Ruben, and Stone**

Introduced and read first time: February 1, 2000  
Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 30, 2000

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CHAPTER 515

1 AN ACT concerning

2 **Maryland Research and Development Tax Credit**

3 FOR the purpose of allowing a credit against the State income tax for certain research  
4 or development expenses incurred by an individual or corporation; allowing a  
5 credit against the State income tax based on certain increases in expenses paid  
6 or incurred for certain research and development conducted in the State;  
7 providing for calculation of the credit based on the amount by which certain  
8 research and development expenses for a taxable year exceed a certain base  
9 amount; providing for applications to the Department of Business and Economic  
10 Development for approval of the credit and certification by the Department to  
11 taxpayers of approved credit amounts; limiting the total amount of credits that  
12 the Department may approve for any calendar year to a certain amount;  
13 requiring the Department to approve a prorated credit for each applicant if the  
14 total amount applied for exceeds the maximum that may be approved; providing  
15 that certain unused credits may be carried forward to certain taxable years;  
16 requiring a certain addition modification if a certain credit is claimed; requiring  
17 the Comptroller to adopt certain regulations; requiring the Department of  
18 Business and Economic Development and the Comptroller jointly to adopt  
19 certain regulations; defining certain terms; requiring the submission of a  
20 certain report by a certain date; providing for the application and termination of  
21 this Act; and generally relating to certain credits against the State income tax  
22 based on certain expenses paid or incurred for certain research and development  
23 conducted in the State.

24 BY adding to  
25 Article - Tax - General

1 Section 10-205(i) and 10-718  
2 Annotated Code of Maryland  
3 (1997 Replacement Volume and 1999 Supplement)

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

6 **Article - Tax - General**

7 10-205.

8 (I) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
9 AMOUNT OF A CREDIT CLAIMED UNDER § 10-718 OF THIS TITLE FOR MARYLAND  
10 QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES.

11 10-718.

12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
13 INDICATED.

14 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND  
15 ECONOMIC DEVELOPMENT.

16 (3) "MARYLAND BASE AMOUNT" MEANS THE BASE AMOUNT AS DEFINED  
17 IN § 41(C) OF THE INTERNAL REVENUE CODE THAT IS ATTRIBUTABLE TO MARYLAND,  
18 DETERMINED BY:

19 (I) SUBSTITUTING "MARYLAND QUALIFIED RESEARCH AND  
20 DEVELOPMENT EXPENSE" FOR "QUALIFIED RESEARCH EXPENSE";

21 (II) SUBSTITUTING "MARYLAND QUALIFIED RESEARCH AND  
22 DEVELOPMENT" FOR "QUALIFIED RESEARCH"; AND

23 (III) USING, INSTEAD OF THE "FIXED BASE PERCENTAGE":

24 1. THE PERCENTAGE THAT THE MARYLAND QUALIFIED  
25 RESEARCH AND DEVELOPMENT EXPENSE FOR THE 4 TAXABLE YEARS IMMEDIATELY  
26 PRECEDING THE TAXABLE YEAR IN WHICH THE EXPENSE IS INCURRED IS OF THE  
27 GROSS RECEIPTS FOR THOSE YEARS; OR

28 2. FOR A TAXPAYER WHO HAS FEWER THAN 4 BUT AT LEAST  
29 1 PRIOR TAXABLE YEAR, THE PERCENTAGE AS DETERMINED UNDER ITEM 1 OF THIS  
30 ITEM, DETERMINED USING THE NUMBER OF IMMEDIATELY PRECEDING TAXABLE  
31 YEARS THAT THE TAXPAYER HAS.

32 (4) "MARYLAND GROSS RECEIPTS" MEANS GROSS RECEIPTS THAT ARE  
33 REASONABLY ATTRIBUTABLE TO THE CONDUCT OF A TRADE OR BUSINESS IN THIS  
34 STATE, DETERMINED UNDER METHODS PRESCRIBED BY THE COMPTROLLER BASED  
35 ON STANDARDS SIMILAR TO THE STANDARDS UNDER § 10-402 OF THIS TITLE.

1 (5) "MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT" MEANS  
2 QUALIFIED RESEARCH AS DEFINED IN § 41(D) OF THE INTERNAL REVENUE CODE  
3 THAT IS CONDUCTED IN THIS STATE.

4 (6) "MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES"  
5 MEANS QUALIFIED RESEARCH EXPENSES AS DEFINED IN § 41(B) OF THE INTERNAL  
6 REVENUE CODE INCURRED FOR MARYLAND QUALIFIED RESEARCH AND  
7 DEVELOPMENT.

8 (B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR A  
9 CORPORATION MAY CLAIM CREDITS AGAINST THE STATE INCOME TAX IN AN  
10 AMOUNT EQUAL TO:

11 (1) 3% OF THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT  
12 EXPENSES, NOT EXCEEDING THE MARYLAND BASE AMOUNT FOR THE INDIVIDUAL  
13 OR CORPORATION, PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION  
14 DURING THE TAXABLE YEAR; AND

15 (2) 10% OF THE AMOUNT BY WHICH THE MARYLAND QUALIFIED  
16 RESEARCH AND DEVELOPMENT EXPENSES PAID OR INCURRED BY THE INDIVIDUAL  
17 OR CORPORATION DURING THE TAXABLE YEAR EXCEED THE MARYLAND BASE  
18 AMOUNT FOR THE INDIVIDUAL OR CORPORATION.

19 (C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF  
20 THE TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND  
21 DEVELOPMENT EXPENSES WERE INCURRED, AN INDIVIDUAL OR CORPORATION  
22 SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT FOR THE CREDITS ALLOWED  
23 UNDER SUBSECTION (B)(1) AND (2) OF THIS SECTION.

24 (2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE  
25 DEPARTMENT UNDER SUBSECTION (B)(1) OF THIS SECTION MAY NOT EXCEED  
26 ~~\$10,000,000~~ \$3,000,000 FOR ANY CALENDAR YEAR.

27 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL  
28 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B)(1) OF THIS SECTION  
29 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS  
30 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION  
31 (B)(1) OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE  
32 PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A  
33 FRACTION:

34 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED  
35 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

36 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL  
37 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B)(1) OF THIS  
38 SECTION IN THE CALENDAR YEAR.

1 (3) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE  
2 DEPARTMENT UNDER SUBSECTION (B)(2) OF THIS SECTION MAY NOT EXCEED  
3 ~~\$10,000,000~~ \$3,000,000 FOR ANY CALENDAR YEAR.

4 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL  
5 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B)(2) OF THIS SECTION  
6 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS  
7 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION  
8 (B)(2) OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE  
9 PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A  
10 FRACTION:

11 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED  
12 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

13 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL  
14 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B)(2) OF THIS  
15 SECTION IN THE CALENDAR YEAR.

16 (4) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF  
17 THE TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND  
18 DEVELOPMENT EXPENSES WERE INCURRED, THE DEPARTMENT SHALL CERTIFY TO  
19 THE INDIVIDUAL OR CORPORATION THE AMOUNT OF THE RESEARCH AND  
20 DEVELOPMENT TAX CREDITS APPROVED BY THE DEPARTMENT FOR THE INDIVIDUAL  
21 OR CORPORATION UNDER SUBSECTION (B)(1) AND (2) OF THIS SECTION.

22 (5) TO CLAIM THE APPROVED CREDITS ALLOWED UNDER THIS SECTION,  
23 AN INDIVIDUAL OR CORPORATION SHALL:

24 (I) FILE AN AMENDED INCOME TAX RETURN FOR THE TAXABLE  
25 YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT  
26 EXPENSE WAS INCURRED; AND

27 (II) ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF  
28 THE APPROVED CREDIT AMOUNT TO THE AMENDED INCOME TAX RETURN.

29 (D) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR  
30 EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, AN INDIVIDUAL OR  
31 CORPORATION MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME  
32 TAX FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

33 (1) THE FULL AMOUNT OF THE EXCESS IS USED; OR

34 (2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE  
35 YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT  
36 EXPENSE WAS INCURRED.

37 (E) (1) IN DETERMINING THE AMOUNT OF THE CREDIT UNDER THIS  
38 SECTION:

1 (I) ALL MEMBERS OF THE SAME CONTROLLED GROUP OF  
2 CORPORATIONS, AS DEFINED UNDER § 41(F) OF THE INTERNAL REVENUE CODE,  
3 SHALL BE TREATED AS A SINGLE TAXPAYER; AND

4 (II) THE CREDIT ALLOWABLE BY THIS SECTION TO EACH MEMBER  
5 SHALL BE ITS PROPORTIONATE SHARES OF THE QUALIFIED RESEARCH EXPENSES  
6 GIVING RISE TO THE CREDIT.

7 (2) THE COMPTROLLER SHALL ADOPT REGULATIONS PROVIDING FOR:

8 (I) DETERMINATION OF THE AMOUNT OF THE CREDIT UNDER THIS  
9 SECTION IN THE CASE OF TRADES OR BUSINESSES, WHETHER OR NOT  
10 INCORPORATED, THAT ARE UNDER COMMON CONTROL;

11 (II) PASS-THROUGH AND ALLOCATION OF THE CREDIT IN THE  
12 CASE OF ESTATES AND TRUSTS, PARTNERSHIPS, UNINCORPORATED TRADES OR  
13 BUSINESSES, AND S CORPORATIONS;

14 (III) ADJUSTMENTS IN THE CASE OF ACQUISITIONS AND  
15 DISPOSITIONS DESCRIBED IN § 41(F)(3) OF THE INTERNAL REVENUE CODE; AND

16 (IV) DETERMINATION OF THE CREDIT IN THE CASE OF SHORT  
17 TAXABLE YEARS.

18 (3) THE REGULATIONS ADOPTED UNDER PARAGRAPH (2) OF THIS  
19 SUBSECTION SHALL BE BASED ON PRINCIPLES SIMILAR TO THE PRINCIPLES  
20 APPLICABLE UNDER § 41 OF THE INTERNAL REVENUE CODE AND REGULATIONS  
21 ADOPTED THEREUNDER.

22 (F) (1) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT  
23 AND THE COMPTROLLER JOINTLY SHALL ADOPT REGULATIONS TO PRESCRIBE  
24 STANDARDS FOR DETERMINING WHEN RESEARCH OR DEVELOPMENT IS  
25 CONSIDERED CONDUCTED IN THE STATE FOR PURPOSES OF DETERMINING THE  
26 CREDIT UNDER THIS SECTION.

27 (2) IN ADOPTING REGULATIONS UNDER THIS SUBSECTION, THE  
28 DEPARTMENT AND THE COMPTROLLER MAY CONSIDER:

29 (I) THE LOCATION WHERE SERVICES ARE PERFORMED;

30 (II) THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR  
31 PERSONS PERFORMING SERVICES;

32 (III) THE LOCATION WHERE SUPPLIES USED IN RESEARCH AND  
33 DEVELOPMENT ARE CONSUMED; AND

34 (IV) ANY OTHER FACTORS THAT THE DEPARTMENT DETERMINES  
35 ARE RELEVANT FOR THE DETERMINATION.

36 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) Except as otherwise provided in this section, this Act shall be applicable to  
2 all taxable years beginning after December 31, 1999 but before January 1, 2005.

3 (b) If a taxpayer's taxable year for income tax purposes is not the calendar  
4 year:

5 (1) for the taxable year that ends in calendar year 2000, the taxpayer  
6 may apply for a prorated credit for research and development expenses paid or  
7 incurred in the taxable year for that part of the taxable year that falls in calendar  
8 year 2000; and

9 (2) for the taxable year that begins in calendar year 2004, the taxpayer  
10 may apply for only a prorated credit for research and development expenses paid or  
11 incurred in the taxable year for that part of the taxable year that falls in calendar  
12 year 2004.

13 SECTION 3. AND BE IT FURTHER ENACTED, That the Department of  
14 Economic and Employment Development and the Comptroller shall jointly assess the  
15 cost of the research and development tax credit program established under this Act  
16 and the program's success in increasing the level of investment in research and  
17 development activities and attracting and retaining businesses that engage in  
18 research and development in Maryland. Subject to § 2-1246 of the State Government  
19 Article, a consolidated report of the findings of the Department and the Comptroller  
20 and any other information of value to the General Assembly in determining the  
21 effectiveness of the research and development tax credit program shall be submitted  
22 to the General Assembly on or before December 15, 2005.

23 ~~SECTION 3.~~ SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take  
24 effect July 1, 2000. It shall remain effective for a period of 6 years and, at the end of  
25 June 30, 2006, with no further action required by the General Assembly, this Act shall  
26 be abrogated and of no further force and effect.