

HOUSE BILL 14

Unofficial Copy
Q3

2000 Regular Session
(01r0824)

ENROLLED BILL

-- Ways and Means/Budget and Taxation --

Introduced by **Delegates Taylor, Dewberry, Hurson, Arnick, Busch, Guns, Harrison, Hixson, Howard, Kopp, Montague, Rawlings, Owings, Rosenberg, Vallario, and Wood Wood, W. Baker, Barve, Bohanan, Bozman, Brown, Cane, Clagett, Cole, Conroy, Conway, D'Amato, DeCarlo, Donoghue, Doorv, Dvpski, Finifter, Franchot, Frush, Giannetti, Goldwater, Griffith, Hammen, Healey, Hecht, Heller, Hubers, James, V. Jones, Klausmeier, Krysiak, Love, Mandel, McHale, Mitchell, Moe, Petzold, Pitkin, Rosso, Rudolph, Snodgrass, Stern, Turner, Valderrama, Weir, Zirkin, Cryor, Bartlett, Carlson, and Shriver**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____M.

Speaker.

CHAPTER 516

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 or
6 incurred for certain research and development conducted in the State; providing
7 for calculation of the credit based on the amount by which certain research and
8 development expenses for a taxable year exceed a certain base amount; providing
9 for applications to the Department of Business and Economic Development for

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

16 BY adding to
 17 Article - Tax - General
 18 Section 10-205(i) and 10-718
 19 Annotated Code of Maryland
 20 (1997 Replacement Volume and 1999 Supplement)

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

23 **Article - Tax - General**

24 10-205.

25 (1) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE
 26 AMOUNT OF A CREDIT CLAIMED UNDER § 10-718 OF THIS TITLE FOR MARYLAND
 27 QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES.

28 10-718.

29 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 30 INDICATED.

31 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND
 32 ECONOMIC DEVELOPMENT.

33 ~~(3) "MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES"~~
 34 ~~MEANS EXPENSES THAT:~~

35 ~~(4) ARE INCURRED FOR RESEARCH OR DEVELOPMENT THAT:~~

36 ~~1. IS CONDUCTED IN THIS STATE; AND~~

1 ~~2. IS NOT FUNDED, WITHIN THE MEANING OF § 41(H)(D)(4)(H)~~
2 ~~§ 41(D)(4)(H) OF THE INTERNAL REVENUE CODE, BY ANY GRANT, CONTRACT, OR~~
3 ~~OTHERWISE BY A PERSON OR GOVERNMENTAL ENTITY OTHER THAN THE PERSON~~
4 ~~CLAIMING THE CREDIT UNDER THIS SECTION; AND~~

5 (H) QUALIFY AS:

6 1. ~~RESEARCH OR EXPERIMENTAL EXPENDITURES~~
7 ~~DEDUCTIBLE UNDER § 174 OF THE INTERNAL REVENUE CODE, DETERMINED~~
8 ~~WITHOUT REGARD TO § 280C(C) OF THE INTERNAL REVENUE CODE OR ANY~~
9 ~~ELECTIONS MADE BY A TAXPAYER TO AMORTIZE EXPENSES ON ITS FEDERAL INCOME~~
10 ~~TAX RETURN THAT WERE OTHERWISE DEDUCTIBLE; OR~~

11 2. ~~BASIC RESEARCH PAYMENTS AS DEFINED UNDER § 41 OF~~
12 ~~THE INTERNAL REVENUE CODE.~~

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

16 (I) SUBSTITUTING "MARYLAND QUALIFIED RESEARCH AND
17 DEVELOPMENT EXPENSE" FOR "QUALIFIED RESEARCH EXPENSE";

18 (II) SUBSTITUTING "MARYLAND QUALIFIED RESEARCH AND
19 DEVELOPMENT" FOR "QUALIFIED RESEARCH"; AND

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

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

25 2. FOR A TAXPAYER WHO HAS FEWER THAN 4 BUT AT LEAST
26 1 PRIOR TAXABLE YEAR, THE PERCENTAGE AS DETERMINED UNDER ITEM 1 OF THIS
27 ITEM, DETERMINED USING THE NUMBER OF IMMEDIATELY PRECEDING TAXABLE
28 YEARS THAT THE TAXPAYER HAS.

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

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

36 (6) "MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES"
37 MEANS QUALIFIED RESEARCH EXPENSES AS DEFINED IN § 41(B) OF THE INTERNAL

1 REVENUE CODE INCURRED FOR MARYLAND QUALIFIED RESEARCH AND
 2 DEVELOPMENT.

3 (B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR A
 4 CORPORATION MAY CLAIM ~~A CREDIT~~ CREDITS AGAINST THE STATE INCOME TAX IN
 5 AN AMOUNT EQUAL TO:

6 (1) 3% OF THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT
 7 EXPENSES, NOT EXCEEDING THE MARYLAND BASE AMOUNT FOR THE INDIVIDUAL
 8 OR CORPORATION, PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION
 9 DURING THE TAXABLE YEAR; AND

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

14 (C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF
 15 THE TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND
 16 DEVELOPMENT ~~EXPENSE WAS~~ EXPENSES WERE INCURRED, AN INDIVIDUAL OR
 17 CORPORATION SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT FOR THE
 18 ~~CREDIT UNDER~~ CREDITS ALLOWED UNDER SUBSECTION (B)(1) AND (2) OF THIS
 19 SECTION.

20 (2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE
 21 DEPARTMENT UNDER SUBSECTION (B)(1) OF THIS SECTION MAY NOT EXCEED
 22 ~~\$10,000,000~~ \$3,000,000 FOR ANY CALENDAR YEAR.

23 ~~(3)~~ (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
 24 INDIVIDUALS AND CORPORATIONS ~~EXCEEDS \$10,000,000~~ UNDER SUBSECTION (B)(1)
 25 OF THIS SECTION EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF
 26 THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER
 27 SUBSECTION (B)(1) OF THIS SECTION FOR EACH APPLICANT ~~A CREDIT~~ IN AN AMOUNT
 28 EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE
 29 APPLICANT TIMES A FRACTION:

30 ~~(4)~~ 1. THE NUMERATOR OF WHICH IS ~~\$10,000,000~~ THE MAXIMUM
 31 SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

32 ~~(5)~~ 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
 33 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B)(1) OF THIS
 34 SECTION IN THE CALENDAR YEAR.

35 (3) (1) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE
 36 DEPARTMENT UNDER SUBSECTION (B)(2) OF THIS SECTION MAY NOT EXCEED
 37 \$3,000,000 FOR ANY CALENDAR YEAR.

38 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
 39 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B)(2) OF THIS SECTION
 40 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS

1 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION
2 (B)(2) OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE
3 PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A
4 FRACTION:

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

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

10 (4) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF
11 THE TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND
12 DEVELOPMENT ~~EXPENSE WAS~~ EXPENSES WERE INCURRED, THE DEPARTMENT
13 SHALL CERTIFY TO THE INDIVIDUAL OR CORPORATION THE AMOUNT OF THE
14 RESEARCH AND DEVELOPMENT TAX ~~CREDIT~~ CREDITS APPROVED BY THE
15 DEPARTMENT FOR THE INDIVIDUAL OR CORPORATION UNDER SUBSECTION (B)(1)
16 AND (2) OF THIS SECTION.

17 (5) TO CLAIM THE APPROVED ~~CREDIT~~ CREDITS ALLOWED UNDER THIS
18 SECTION, AN INDIVIDUAL OR CORPORATION SHALL:

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

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

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

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

29 (2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE
30 YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT
31 EXPENSE WAS INCURRED.

32 (E) (1) IN DETERMINING THE AMOUNT OF THE CREDIT UNDER THIS
33 SECTION:

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

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

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

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

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

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

13 (IV) DETERMINATION OF THE CREDIT IN THE CASE OF SHORT
14 TAXABLE YEARS.

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

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

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

26 (I) THE LOCATION WHERE SERVICES ARE PERFORMED;

27 (II) THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR
28 PERSONS PERFORMING SERVICES;

29 (III) THE LOCATION WHERE SUPPLIES USED IN RESEARCH AND
30 DEVELOPMENT ARE CONSUMED; AND

31 (IV) ANY OTHER FACTORS THAT THE DEPARTMENT DETERMINES
32 ARE RELEVANT FOR THE DETERMINATION.

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

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

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

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

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

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

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