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By: **The Speaker (By Request - Administration) and Delegates Bartlett, Bates, Bohanan, Boschert, Cluster, Costa, DeBoy, Donoghue, Edwards, Elliott, Frank, Fulton, Gilleland, Hammen, Impallaria, Jameson, Kach, Krebs, Leopold, McDonough, McKee, Minnick, Murray, O'Donnell, Parrott, Shank, Shewell, Stull, Taylor, Trueschler, F. Turner, and Walkup**

Introduced and read first time: January 25, 2005  
Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development - Entrepreneurial Investment**  
3 **Technology Tax Credit**

4 FOR the purpose of providing a credit against certain State income tax due from  
5 investors in certain technology businesses; defining certain terms; providing for  
6 certification of the investment activity by the Department of Business and  
7 Economic Development; providing for the application of this Act; and generally  
8 relating to tax credits in connection with investments in technology businesses  
9 in the State.

10 BY adding to  
11 Article 83A - Department of Business and Economic Development  
12 Section 5-1701 through 5-1707 to be under the new subtitle "Subtitle 17.  
13 Entrepreneurial Investment Technology Tax Credit"  
14 Annotated Code of Maryland  
15 (2003 Replacement Volume and 2004 Supplement)

16 BY adding to  
17 Article - Tax - General  
18 Section 10-725  
19 Annotated Code of Maryland  
20 (2004 Replacement Volume)

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

1 **Article 83A - Department of Business and Economic Development**

2 SUBTITLE 17. ENTREPRENEURIAL INVESTMENT TECHNOLOGY TAX CREDIT.

3 5-1701.

4 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE TAX CREDIT  
5 PROVIDED UNDER THIS SUBTITLE IS FOR THE PURPOSE OF INCREASING  
6 TECHNOLOGY DEVELOPMENT IN THE LIFE SCIENCES AND OTHER ADVANCED  
7 TECHNOLOGY ENTERPRISES CARRIED OUT IN THE STATE TO BRING ECONOMIC  
8 BENEFITS TO RESIDENTS OF THE STATE AND GENERATE INCREASED HIGH VALUE  
9 EMPLOYMENT OPPORTUNITIES IN THE STATE.

10 (B) TO ENSURE THAT THE TAX CREDIT IS CLAIMED FOR INVESTMENT IN  
11 QUALIFIED TECHNOLOGY BUSINESSES AS DEFINED IN THIS SUBTITLE, AN INVESTOR  
12 SEEKING ELIGIBILITY FOR THE TAX CREDIT MUST FIRST APPLY FOR AND RECEIVE  
13 FROM THE DEPARTMENT A CERTIFICATE OF ELIGIBILITY.

14 5-1702.

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
16 INDICATED.

17 (B) "CREDIT YEAR" MEANS THE FIRST TAXABLE YEAR IN WHICH THE  
18 QUALIFIED INVESTOR CLAIMS ANY PORTION OF THE TAX CREDIT PROVIDED UNDER  
19 THIS SUBTITLE.

20 (C) (1) "INVESTMENT" MEANS THE PROVISION OF FUNDS, AT A RISK OF  
21 LOSS, TO A QUALIFIED TECHNOLOGY BUSINESS TO FINANCE THE OPERATIONS OR A  
22 PORTION OF THE OPERATIONS OF THE TECHNOLOGY BUSINESS.

23 (2) FOR PURPOSES OF THIS SECTION, AN INVESTMENT IS AT A RISK OF  
24 LOSS WHEN THE RETURN ON THE INVESTMENT DEPENDS ENTIRELY ON THE  
25 SUCCESS OF THE BUSINESS OPERATIONS OF THE TECHNOLOGY BUSINESS.

26 (3) AN INVESTMENT INCLUDES FUNDS PROVIDED IN EXCHANGE FOR:

27 (I) AN EQUITY INTEREST IN THE TECHNOLOGY BUSINESS;

28 (II) A DEBT INSTRUMENT CONVERTIBLE TO AN EQUITY INTEREST  
29 UNDER CONDITIONS SPECIFIED BY THE INVESTOR; OR

30 (III) AN AGREEMENT TO RECEIVE ALL OR A PORTION OF SPECIFIED  
31 REVENUES GENERATED BY THE TECHNOLOGY BUSINESS.

32 (D) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,  
33 "PERSONAL NET WORTH" MEANS THE NET VALUE OF THE ASSETS OF AN INDIVIDUAL  
34 REMAINING AFTER TOTAL LIABILITIES ARE DEDUCTED.

1 (2) "PERSONAL NET WORTH" INCLUDES THE INDIVIDUAL'S SHARE OF  
2 ASSETS HELD JOINTLY OR AS COMMUNITY PROPERTY WITH THE INDIVIDUAL'S  
3 SPOUSE.

4 (3) "PERSONAL NET WORTH" DOES NOT INCLUDE THE INDIVIDUAL'S  
5 EQUITY IN HIS OR HER PRIMARY PLACE OF RESIDENCE.

6 (E) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT DETERMINED BY THE  
7 DEPARTMENT TO QUALIFY FOR THE TAX CREDIT UNDER § 5-1705 OF THIS SUBTITLE.

8 (F) "QUALIFIED INVESTOR" MEANS AN INDIVIDUAL CERTIFIED BY THE  
9 SECRETARY UNDER § 5-1704 OF THIS SUBTITLE AS AN INVESTOR ELIGIBLE FOR THE  
10 TAX CREDIT PROVIDED UNDER THIS SUBTITLE.

11 (G) "QUALIFIED TECHNOLOGY BUSINESS" MEANS A TECHNOLOGY BUSINESS  
12 THAT:

13 (1) EMPLOYS FEWER THAN 25 PERSONS;

14 (2) HAS BEEN OPERATING AS AN ACTIVE BUSINESS NO LONGER THAN 5  
15 YEARS;

16 (3) HAS ANNUAL NONGRANT REVENUES OF LESS THAN \$2,000,000;

17 (4) HAS ITS HEADQUARTERS AND BASE OF OPERATIONS IN THE STATE;  
18 AND

19 (5) IS DETERMINED BY THE DEPARTMENT TO BE A TECHNOLOGY  
20 BUSINESS IN WHICH AN INVESTMENT OF FUNDS WOULD ADVANCE THE PURPOSES  
21 OF THIS SUBTITLE.

22 (H) "TECHNOLOGY BUSINESS" MEANS A BUSINESS THAT:

23 (1) CONDUCTS ACTIVITIES IN THE LIFE SCIENCES OR OTHER ADVANCED  
24 TECHNOLOGY INDUSTRY SECTORS; AND

25 (2) EMPLOYS IN THE STATE HIGHLY EDUCATED OR TRAINED MANAGERS  
26 OR WORKERS WHO USE SOPHISTICATED SCIENTIFIC RESEARCH SERVICE OR  
27 PRODUCTION EQUIPMENT, PROCESSES, OR KNOWLEDGE TO DISCOVER, DEVELOP,  
28 TEST, TRANSFER, OR MANUFACTURE A TECHNOLOGY-BASED PRODUCT OR SERVICE.

29 5-1703.

30 (A) A QUALIFIED INVESTOR MAY CLAIM AS A CREDIT AGAINST THE STATE TAX  
31 ON THE INVESTOR'S MARYLAND TAXABLE INCOME AN AMOUNT EQUAL TO 45% OF  
32 THE FUNDS THE INVESTOR INVESTS IN THE TECHNOLOGY BUSINESS ON OR AFTER  
33 JANUARY 1, 2005, UP TO A MAXIMUM AMOUNT OF:

34 (1) \$100,000 PER INVESTMENT; AND

35 (2) \$200,000 IN ANY TAXABLE YEAR.

1 (B) THE TAX CREDIT MAY BE CLAIMED:

2 (1) AT THE RATE OF ONE-THIRD OF THE TOTAL AMOUNT OF THE TAX  
3 CREDIT PER TAXABLE YEAR;

4 (2) FOR A PERIOD OF 3 YEARS; AND

5 (3) BEGINNING IN THE THIRD TAXABLE YEAR AFTER THE TAXABLE  
6 YEAR IN WHICH THE INVESTMENT WAS MADE.

7 (C) IF THE TAX CREDIT ALLOWED FOR ANY TAXABLE YEAR EXCEEDS THE  
8 TOTAL TAX OTHERWISE DUE FROM THE QUALIFIED INVESTOR FOR THAT TAXABLE  
9 YEAR, THE QUALIFIED INVESTOR MAY APPLY THE EXCESS AS A TAX CREDIT FOR  
10 SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

11 (1) THE FULL AMOUNT OF THE EXCESS TAX CREDIT BEING USED; OR

12 (2) THE EXPIRATION OF THE FIFTH TAXABLE YEAR AFTER THE CREDIT  
13 YEAR.

14 (D) THE INITIAL CREDIT YEAR MUST BE NO LATER THAN THE FIFTH TAXABLE  
15 YEAR AFTER THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.

16 (E) THE TAX CREDIT MAY NOT BE CARRIED BACK TO A PRECEDING TAXABLE  
17 YEAR.

18 (F) DURING ANY FISCAL YEAR, THE SECRETARY MAY NOT CERTIFY  
19 ELIGIBILITY FOR:

20 (1) TAX CREDITS EXCEEDING \$8,000,000; OR

21 (2) MORE THAN \$800,000 OF AGGREGATE TAX CREDITS FOR INVESTORS  
22 IN A SINGLE TECHNOLOGY BUSINESS.

23 (G) A TAX CREDIT EARNED BY A QUALIFIED INVESTOR UNDER THIS SUBTITLE  
24 SHALL BE CHARGED DIRECTLY TO THE STATE'S SHARE OF INCOME TAX REVENUES  
25 FROM INDIVIDUALS.

26 5-1704.

27 (A) TO BE ELIGIBLE TO BE CERTIFIED AS QUALIFYING FOR THE TAX CREDIT  
28 UNDER THIS SUBTITLE, THE PROSPECTIVE INVESTOR MUST:

29 (1) HAVE A PERSONAL NET WORTH THAT EQUALS OR EXCEEDS  
30 \$1,000,000;

31 (2) OWN AND INVEST ON A DISCRETIONARY BASIS AN AMOUNT NOT  
32 LESS THAN \$200,000 UNDER ACTIVE FINANCIAL MANAGEMENT;

33 (3) AGREE TO INVEST A MINIMUM OF \$50,000 IN A QUALIFIED  
34 TECHNOLOGY BUSINESS;

1 (4) AFTER MAKING THE PROPOSED INVESTMENT, NOT OWN OR  
2 CONTROL MORE THAN 20% OF THE TECHNOLOGY BUSINESS IN WHICH THE  
3 INVESTMENT IS TO BE MADE;

4 (5) NOT BE A FOUNDER, PRINCIPAL, DIRECTOR, OFFICER, MEMBER OF,  
5 OR PARTNER IN THE TECHNOLOGY BUSINESS; AND

6 (6) NOTIFY THE DEPARTMENT OF THE INDIVIDUAL'S INTENT TO SEEK  
7 CERTIFICATION BEFORE PROVIDING THE INVESTMENT IN THE TECHNOLOGY  
8 BUSINESS.

9 (B) TO BE CERTIFIED AS A QUALIFIED INVESTOR, THE INVESTOR SHALL  
10 SUBMIT THE FOLLOWING TO THE SECRETARY:

11 (1) A DESCRIPTION OF THE TECHNOLOGY BUSINESS INTO WHICH THE  
12 INVESTMENT WILL BE MADE, INCLUDING THE BUSINESS PLAN OF THE BUSINESS  
13 AND THE NUMBER AND WAGE SCALE OF EMPLOYEES;

14 (2) DETAILS OF THE PROPOSED INVESTMENT; AND

15 (3) ANY OTHER INFORMATION RELATED TO THE TECHNOLOGY  
16 BUSINESS OR THE INVESTOR SEEKING CERTIFICATION THAT THE SECRETARY  
17 REQUIRES;

18 (C) THE SECRETARY MAY REQUIRE ANY INFORMATION REQUIRED UNDER  
19 THIS SECTION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED AND PAID  
20 FOR BY THE INVESTOR SEEKING CERTIFICATION.

21 (D) TO REMAIN ELIGIBLE TO CLAIM THE TAX CREDIT, THE QUALIFIED  
22 INVESTOR MUST SUBMIT TO THE DEPARTMENT, UNTIL THE TAXABLE YEAR AFTER  
23 THE ENTIRE AMOUNT OF THE TAX CREDIT HAS BEEN CLAIMED AGAINST THE  
24 QUALIFIED INVESTOR'S STATE TAX:

25 (1) BEGINNING IN THE TAXABLE YEAR IN WHICH THE INVESTMENT IS  
26 MADE, ANNUAL DOCUMENTATION SATISFACTORY TO THE DEPARTMENT THAT THE  
27 QUALIFIED TECHNOLOGY BUSINESS IS STILL OPERATING AS AN ACTIVE BUSINESS,  
28 TO BE RECEIVED BY THE DEPARTMENT ON OR BEFORE JUNE 30 OF EACH YEAR;

29 (2) IMMEDIATE NOTICE OF ANY INFORMATION RECEIVED BY THE  
30 QUALIFIED INVESTOR INDICATING THAT THE QUALIFIED TECHNOLOGY BUSINESS  
31 HAS CEASED OPERATING AS AN ACTIVE BUSINESS; AND

32 (3) A COPY OF ANY TAX RETURN ON WHICH ANY PORTION OF THE TAX  
33 CREDIT IS CLAIMED.

34 (E) IF THE QUALIFIED TECHNOLOGY BUSINESS CEASES OPERATING AS AN  
35 ACTIVE BUSINESS, THE QUALIFIED INVESTOR SHALL FORFEIT ALL UNCLAIMED  
36 PORTIONS OF THE TAX CREDIT.

1 5-1705.

2 (A) TO BE ELIGIBLE AS A QUALIFIED INVESTMENT UNDER THIS SUBTITLE, AN  
3 INVESTMENT MUST BE DEEMED BY THE DEPARTMENT TO ENHANCE THE  
4 DEVELOPMENT IN THE STATE OF THE LIFE SCIENCES AND OTHER ADVANCED  
5 TECHNOLOGY SECTORS.

6 (B) AS A CONDITION OF ACCEPTING THE INVESTMENT FROM THE QUALIFIED  
7 INVESTOR, THE QUALIFIED TECHNOLOGY BUSINESS MUST AGREE TO PROVIDE THE  
8 DEPARTMENT:

9 (1) IMMEDIATE NOTICE OF ANY CESSATION OF ITS OPERATION AS AN  
10 ACTIVE BUSINESS; AND

11 (2) A COPY OF ANY FINAL RETURN FILED BY THE QUALIFIED  
12 TECHNOLOGY BUSINESS WITH THE COMPTROLLER, IMMEDIATELY AFTER ITS  
13 FILING.

14 5-1706.

15 TO CLAIM THE TAX CREDIT PROVIDED UNDER THIS SUBTITLE, A QUALIFIED  
16 INVESTOR MUST SUBMIT TO THE COMPTROLLER WITH THE TAX RETURN ON WHICH  
17 THE TAX CREDIT IS CLAIMED CERTIFICATION FROM THE SECRETARY THAT THE  
18 INVESTOR IS ELIGIBLE FOR THE TAX CREDIT.

19 5-1707.

20 (A) THE SECRETARY MAY ADOPT REGULATIONS TO SPECIFY CRITERIA AND  
21 PROCEDURES FOR CERTIFICATION OF ELIGIBILITY FOR THE TAX CREDIT PROVIDED  
22 UNDER THIS SUBTITLE.

23 (B) THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO §  
24 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY BY  
25 DECEMBER 31 OF EACH YEAR ON THE INVESTMENTS CERTIFIED AS ELIGIBLE FOR  
26 TAX CREDITS IN THE PRECEDING FISCAL YEAR.

27 **Article - Tax - General**

28 10-725.

29 (A) AN INDIVIDUAL MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX  
30 FOR INVESTMENTS IN A TECHNOLOGY BUSINESS AS PROVIDED UNDER ARTICLE 83A,  
31 § 5-1703 OF THE CODE.

32 (B) A CREDIT CLAIMED UNDER THIS SECTION SHALL BE CHARGED DIRECTLY  
33 TO THE STATE'S SHARE OF INCOME TAX REVENUES FROM INDIVIDUALS.

34 (C) THE COMPTROLLER AND THE DEPARTMENT OF BUSINESS AND ECONOMIC  
35 DEVELOPMENT MAY SHARE INFORMATION SUBMITTED BY THE QUALIFIED

1 INVESTOR TO EITHER AGENCY IN CONNECTION WITH THE TAX CREDIT AND THE  
2 CERTIFICATION OF ELIGIBILITY FOR THE TAX CREDIT.

3 (D) THE COMPTROLLER SHALL PROVIDE PROMPT NOTICE TO THE  
4 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT OF ANY FINAL RETURN  
5 FILED BY ANY QUALIFIED TECHNOLOGY BUSINESS THAT IS IDENTIFIED ON A LIST  
6 TO BE PROVIDED BY THE DEPARTMENT TO THE COMPTROLLER.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all  
8 taxable years beginning on or after January 1, 2005.

9 SECTION 3. AND BE IT FURTHER ENACTED, That the notice requirement  
10 applicable to qualified investors under Article 83A, § 5-1704(a)(6) of the Code as  
11 enacted by Section 1 of this Act does not apply to investments made before the  
12 effective date of this Act.

13 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 July 1, 2005.