

Chapter 109

(House Bill 386)

AN ACT concerning

Income Tax Credit – Qualified Research and Development Expenses – Credit Amounts and Small Business Refund

FOR the purpose of defining “small business” as it relates to a certain refund in connection with a certain credit against the State income tax for certain research and development expenses incurred by an individual or corporation; altering the total amount of research and development credits that the Department of Business and Economic Development may approve in a calendar year; providing that certain unused credits by a small business may be claimed as a refund; providing for the application of this Act; and generally relating to certain credits against the State income tax based on certain expenses paid or incurred for certain research and development conducted in the State.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–721

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

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

Article – Tax – General

10–721.

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

(2) “Department” means the Department of Business and Economic Development.

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

(i) substituting “Maryland qualified research and development expense” for “qualified research expense”;

(ii) substituting “Maryland qualified research and development” for “qualified research”; and

(iii) using, instead of the “fixed base percentage”:

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

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

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

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

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

(7) “SMALL BUSINESS” MEANS A FOR-PROFIT CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR SOLE PROPRIETORSHIP WITH NET BOOK VALUE ASSETS TOTALING, AT THE BEGINNING OR THE END OF THE TAXABLE YEAR FOR WHICH MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES ARE INCURRED, AS REPORTED ON THE BALANCE SHEET, LESS THAN \$5,000,000.

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

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

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

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

(2) (i) Except as provided under paragraph (4) of this subsection, the total amount of credits approved by the Department under subsection (b)(1) of this section may not exceed ~~[\$3,000,000] \$9,000,000~~ \$4,000,000 for any calendar year.

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

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

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

(3) (i) Except as provided in paragraph (4) of this subsection, the total amount of credits approved by the Department under subsection (b)(2) of this section may not exceed ~~[\$3,000,000] \$9,000,000~~ \$4,000,000 for any calendar year.

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

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

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

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

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

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

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

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

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

(d) **(1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF** the credit allowed under this section in any taxable year exceeds the State income tax for that taxable year, an individual or corporation may apply the excess as a credit against the State income tax for succeeding taxable years until the earlier of:

[(1)] (I) the full amount of the excess is used; or

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

(2) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, A SMALL BUSINESS MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.

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

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

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

(2) The Comptroller shall adopt regulations providing for:

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

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

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

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

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

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

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

(i) the location where services are performed;

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

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

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

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

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

- (i) the individual's or corporation's name and address; and
- (ii) the amount of the credit approved.

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

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

- (i) the total number of applicants for credits under this section in each calendar year;
- (ii) the number of applications for which a tax credit was approved in each calendar year; and
- (iii) the total credits authorized under this section for all calendar years under this section.

(h) If the provisions of § 41 of the Internal Revenue Code governing the federal research and development tax credit are repealed or terminate, the provisions of this section continue to operate as if the provisions of § 41 of the Internal Revenue Code remain in effect, and the Maryland research and development tax credit under this section shall continue to be available.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2013, and shall be applicable to all Maryland research and development tax credits certified after December 15, ~~2013~~ 2012.

Approved by the Governor, April 9, 2013.