

Chapter 476

(Senate Bill 226)

AN ACT concerning

Biotechnology Investment Tax Credit – Qualified Maryland Biotechnology Company – Definition

FOR the purpose of altering the definition of “qualified Maryland biotechnology company” to extend a certain period of time from a certain date that an active business may claim the biotechnology tax credit; altering the definition of “biotechnology company” to include a company that will be primarily engaged in certain activities within a certain time period; providing for the revocation of a certain tax credit certificate and the recapture of the tax credit under certain circumstances; altering the definition of “company” to include an entity that becomes duly organized and existing under certain laws and for a certain purpose within a certain time period; providing for the recapture of the credit under certain circumstances; providing for the application of this Act; and generally relating to credits against certain State taxes based on certain investments in biotechnology companies.

BY repealing and reenacting, without amendments,

Article – Tax – General
 Section 10–725(a)(1)
 Annotated Code of Maryland
 (2016 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Tax – General
~~Section 10–725(a)(7) 10–725(a)(3) and (7) and (f)~~
Section 10–725(a)(7) 10–725(a)(2) and (7)
 Annotated Code of Maryland
 (2016 Replacement Volume)

BY adding to

Article – Tax – General
Section 10–725(j)
Annotated Code of Maryland
(2016 Replacement Volume)

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

Article – Tax – General

10–725.

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

(2) *“Biotechnology company” means a company organized for profit that is primarily engaged in, OR WITHIN 2 MONTHS WILL BE PRIMARILY ENGAGED IN, the research, development, or commercialization of innovative and proprietary technology that comprises, interacts with, or analyzes biological material including biomolecules (DNA, RNA, or protein), cells, tissues, or organs.*

~~(3) (i) 1. “Company” means any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit.~~

~~2. “COMPANY” INCLUDES AN ENTITY THAT BECOMES DULY ORGANIZED AND EXISTING UNDER THE LAWS OF ANY JURISDICTION FOR THE PURPOSE OF CONDUCTING BUSINESS FOR PROFIT WITHIN 4 MONTHS OF RECEIVING A QUALIFIED INVESTMENT.~~

~~(ii) “Company” does not include a sole proprietorship.~~

(7) (i) “Qualified Maryland biotechnology company” means a biotechnology company that:

1. has its headquarters and base of operations in this State;
2. has fewer than 50 full-time employees;
3. except as provided in subparagraph (ii) of this paragraph, has been in active business no longer than [10] 12 years;
4. does not have its securities publicly traded on any exchange; and
5. has been certified as a biotechnology company by the Department.

(ii) “Qualified Maryland biotechnology company” includes:

1. a company that has been in active business for up to [12] 15 years if the Department determines that the company requires additional time to complete the process of regulatory approval; ~~OR~~
2. [for fiscal years 2012 and 2013 only, a company that has been in active business for up to 15 years; or

3.] a company that has been in active business no longer than [10] 12 years from the date the company first received a qualified investment under this section; OR

3. A COMPANY THAT, WITHIN 2 MONTHS OF THE RECEIPT OF THE INVESTMENT, HAS MET THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(J) IF A COMPANY RECEIVES AN INVESTMENT UNDER SUBSECTION (A)(7)(II)3 OF THIS SECTION AND FAILS TO SATISFY THE REQUIREMENTS FOR A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY WITHIN 2 MONTHS, THE DEPARTMENT SHALL REVOKE ANY FINAL TAX CREDIT CERTIFICATES THAT HAVE BEEN ISSUED AND RECAPTURE ANY TAX CREDITS ALREADY CLAIMED BY THE QUALIFIED INVESTOR.

~~(f) (1) The credit claimed under this section shall be recaptured as provided in paragraph (2)(3) of this subsection if within 2 years from the close of the taxable year for which the credit is claimed:~~

~~(i) the qualified investor sells, transfers, or otherwise disposes of the ownership interest in the qualified Maryland biotechnology company that gave rise to the credit; or~~

~~(ii) the qualified Maryland biotechnology company that gave rise to the credit ceases operating as an active business with its headquarters and base of operations in the State.~~

~~(2) THE CREDIT CLAIMED UNDER THIS SECTION SHALL BE RECAPTURED AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION IF, WITHIN 4 MONTHS OF RECEIVING A QUALIFIED INVESTMENT, A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY IS NOT DULY ORGANIZED AND EXISTING UNDER THE LAWS OF ANY JURISDICTION FOR THE PURPOSE OF CONDUCTING BUSINESS FOR PROFIT.~~

~~(2)(3) The amount required to be recaptured under this subsection is the product of multiplying:~~

~~(i) the total amount of the credit claimed or, in the case of an event described in paragraph (1)(i) of this subsection, the portion of the credit attributable to the ownership interest disposed of; and~~

~~(ii) 1. 100%, if the event requiring recapture of the credit occurs during the taxable year for which the tax credit is claimed;~~

~~2. 67%, if the event requiring recapture of the credit occurs during the first year after the close of the taxable year for which the tax credit is claimed.~~

~~3. 33%, if the event requiring recapture of the credit occurs more than 1 year but not more than 2 years after the close of the taxable year for which the tax credit is claimed.~~

~~(3)(4) The qualified investor that claimed the credit shall pay the amount to be recaptured as determined under paragraph (2)(3) of this subsection as taxes payable to the State for the taxable year in which the event requiring recapture of the credit occurs.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2017, and shall be applicable to all initial credit certificates issued after June 30, 2017.

Approved by the Governor, May 4, 2017.