

HOUSE BILL 1450

Q3

8lr1912

By: **Delegates Kaiser and D. Barnes**

Introduced and read first time: February 9, 2018

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Research and Development Tax Credit – Alterations**

3 FOR the purpose of increasing the total amount of research and development tax credits
4 that the Department of Commerce may approve in a calendar year; requiring the
5 Department to make available a certain percent of the total amount of credits that
6 the Department may approve in a calendar year to small businesses; providing for
7 the use of certain unused credits; providing for the calculation of the credit under
8 certain circumstances; altering the definition of “small business”; providing for the
9 application of this Act; and generally relating to certain credits against the State
10 income tax based on certain expenses paid or incurred for certain research and
11 development conducted in the State.

12 BY repealing and reenacting, without amendments,
13 Article – Tax – General
14 Section 10–721(a)(1), (b), (c)(1), (4), and (5), and (d)
15 Annotated Code of Maryland
16 (2016 Replacement Volume and 2017 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Tax – General
19 Section 10–721(a)(7) and (c)(2) and (3)
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2017 Supplement)

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

24 **Article – Tax – General**

25 10–721.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (7) "Small business" means a for-profit corporation, limited liability
3 company, partnership, or sole proprietorship with:

4 (I) net book value assets totaling, at the beginning or the end of the
5 taxable year for which Maryland qualified research and development expenses are
6 incurred, as reported on the balance sheet, less than \$5,000,000; AND

7 (2) **50 OR FEWER EMPLOYEES IN THE STATE.**

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

10 (1) 3% of the Maryland qualified research and development expenses, not
11 exceeding the Maryland base amount for the individual or corporation, paid or incurred by
12 the individual or corporation during the taxable year; and

13 (2) 10% of the amount by which the Maryland qualified research and
14 development expenses paid or incurred by the individual or corporation during the taxable
15 year exceed the Maryland base amount for the individual or corporation.

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

20 (2) (i) **[Except] SUBJECT TO SUBPARAGRAPH (II) OF THIS**
21 **PARAGRAPH AND EXCEPT** as provided under paragraph (4) of this subsection, the total
22 amount of credits approved by the Department under subsection (b)(1) of this section may
23 not exceed:

24 1. \$4,500,000 in calendar year 2016; [and]

25 2. \$5,500,000 in calendar year 2017; AND

26 3. **\$6,500,000 IN CALENDAR YEAR 2018** and each calendar
27 year thereafter.

28 (II) **THE DEPARTMENT SHALL MAKE AVAILABLE 25% OF THE**
29 **MAXIMUM AMOUNT OF CREDITS AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**
30 **PARAGRAPH FOR APPLICANTS THAT ARE SMALL BUSINESSES.**

31 (III) **IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL**
32 **BUSINESSES UNDER SUBSECTION (B)(1) OF THIS SECTION IS LESS THAN THE**
33 **AMOUNT MADE AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**

1 **DEPARTMENT SHALL MAKE AVAILABLE THE UNUSED AMOUNT OF CREDITS FOR USE**
2 **BY INDIVIDUALS AND CORPORATIONS THAT ARE NOT SMALL BUSINESSES.**

3 **[(ii)] (IV)** Subject to paragraph (4) of this subsection, if the total
4 amount of credits applied for by all individuals and corporations **EXCLUDING SMALL**
5 **BUSINESSES** under subsection (b)(1) of this section exceeds the maximum specified under
6 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**
7 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**, the Department shall approve a credit under
8 subsection (b)(1) of this section for each applicant in an amount equal to the product of
9 multiplying the credit applied for by the applicant times a fraction:

10 1. the numerator of which is the maximum specified under
11 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**
12 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**; and

13 2. the denominator of which is the total of all credits applied
14 for by all applicants **EXCLUDING SMALL BUSINESSES** under subsection (b)(1) of this
15 section in the calendar year.

16 **(V) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF THE**
17 **TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL BUSINESSES UNDER**
18 **SUBSECTION (B)(1) OF THIS SECTION EXCEEDS THE AMOUNT MADE AVAILABLE**
19 **UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT SHALL**
20 **APPROVE A CREDIT UNDER SUBSECTION (B)(1) OF THIS SECTION FOR EACH**
21 **APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT**
22 **APPLIED FOR BY THE APPLICANT TIMES A FRACTION:**

23 1. **THE NUMERATOR OF WHICH IS THE AMOUNT MADE**
24 **AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH; AND**

25 2. **THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL**
26 **CREDITS APPLIED FOR BY ALL SMALL BUSINESS APPLICANTS UNDER SUBSECTION**
27 **(B)(1) OF THIS SECTION IN THE CALENDAR YEAR.**

28 (3) (i) **[Except] SUBJECT TO SUBPARAGRAPH (II) OF THIS**
29 **PARAGRAPH AND EXCEPT** as provided in paragraph (4) of this subsection, the total
30 amount of credits approved by the Department under subsection (b)(2) of this section may
31 not exceed:

32 1. \$4,500,000 in calendar year 2016; **[and]**

33 2. \$6,500,000 in calendar year 2017; **AND**

34 3. **\$7,500,000 IN CALENDAR YEAR 2018** and each calendar
35 year thereafter.

1 **(II) THE DEPARTMENT SHALL MAKE AVAILABLE 25% OF THE**
2 **MAXIMUM AMOUNT OF CREDITS AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**
3 **PARAGRAPH FOR APPLICANTS THAT ARE SMALL BUSINESSES.**

4 **(III) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL**
5 **BUSINESSES UNDER SUBSECTION (B)(2) OF THIS SECTION IS LESS THAN THE**
6 **AMOUNT MADE AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**
7 **DEPARTMENT SHALL MAKE AVAILABLE THE UNUSED AMOUNT OF CREDITS FOR USE**
8 **BY INDIVIDUALS AND CORPORATIONS THAT ARE NOT SMALL BUSINESSES.**

9 **[(ii)] (IV)** Subject to paragraph (4) of this subsection, if the total
10 amount of credits applied for by all individuals and corporations **EXCLUDING SMALL**
11 **BUSINESSES** under subsection (b)(2) of this section exceeds the maximum specified under
12 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**
13 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**, the Department shall approve a credit under
14 subsection (b)(2) of this section for each applicant in an amount equal to the product of
15 multiplying the credit applied for by the applicant times a fraction:

16 1. the numerator of which is the maximum specified under
17 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**
18 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**; and

19 2. the denominator of which is the total of all credits applied
20 for by all applicants **EXCLUDING SMALL BUSINESSES** under subsection (b)(2) of this
21 section in the calendar year.

22 **(V) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF THE**
23 **TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL BUSINESSES UNDER**
24 **SUBSECTION (B)(2) OF THIS SECTION EXCEEDS THE AMOUNT MADE AVAILABLE**
25 **UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT SHALL**
26 **APPROVE A CREDIT UNDER SUBSECTION (B)(2) OF THIS SECTION FOR EACH**
27 **APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT**
28 **APPLIED FOR BY THE APPLICANT TIMES A FRACTION:**

29 1. **THE NUMERATOR OF WHICH IS THE AMOUNT MADE**
30 **AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH; AND**

31 2. **THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL**
32 **CREDITS APPLIED FOR BY ALL SMALL BUSINESS APPLICANTS UNDER SUBSECTION**
33 **(B)(2) OF THIS SECTION IN THE CALENDAR YEAR.**

34 (4) (i) For any calendar year, if the maximum specified under
35 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by all
36 individuals and corporations under subsection (b)(1) of this section, the maximum specified

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

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

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

17 (d) (1) Except as provided in paragraph (2) of this subsection, if the credit
18 allowed under this section in any taxable year exceeds the State income tax for that taxable
19 year, an individual or corporation may apply the excess as a credit against the State income
20 tax for succeeding taxable years until the earlier of:

21 (i) the full amount of the excess is used; or

22 (ii) the expiration of the 7th taxable year after the taxable year in
23 which the Maryland qualified research and development expense was incurred.

24 (2) If the credit allowed under this section in any taxable year exceeds the
25 State income tax for that taxable year, a small business may claim a refund in the amount
26 of the excess.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
28 1, 2018, and shall be applicable to all Maryland research and development credits certified
29 after December 15, 2017.