

# SENATE BILL 563

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8lr1815

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By: Senator Serafini

Introduced and read first time: January 31, 2018

Assigned to: Budget and Taxation

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 6, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2           **Income Tax Credit – Qualified Research and Development Expenses –**  
3           **Application for and Procedure to Claim Credit**

4 FOR the purpose of altering the date by which an individual or a corporation is required to  
5 submit a certain application for a certain credit against the State income tax for  
6 certain research and development expenses incurred by the individual or  
7 corporation; altering the date by which the Department of Commerce shall certify  
8 the credits approved for the individual or corporation; altering the method by which  
9 the individual or corporation may claim the credit; and generally relating to certain  
10 credits against the State income tax based on certain expenses paid or incurred for  
11 certain research and development conducted in the State.

12 BY repealing and reenacting, without amendments,  
13       Article – Tax – General  
14       Section 10–205(a) and (i) and 10–306(a) and (b)(5)  
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  
20       Annotated Code of Maryland  
21       (2016 Replacement Volume and 2017 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 That the Laws of Maryland read as follows:

## **Article – Tax – General**

3 10-205.

4           (a) In addition to the modification under § 10-204 of this subtitle, the amounts  
5 under this section are added to the federal adjusted gross income of a resident to determine  
6 Maryland adjusted gross income.

(i) The addition under subsection (a) of this section includes the amount of a credit claimed under § 10-721 of this title for Maryland qualified research and development expenses.

10 10-306.

11               (a) In addition to the modification under § 10–305 of this subtitle, the amounts  
12 under this section are added to the federal taxable income of a corporation to determine  
13 Maryland modified income.

14               (b) The addition under subsection (a) of this section includes the additions  
15 required for an individual under:

(5) § 10-205(i) of this title (Maryland research and development tax credit).

17 10-721.

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

19 (2) "Department" means the Department of Commerce.

(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”:

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

30 2. for a taxpayer who has fewer than 4 but at least 1 prior

1 taxable year, the percentage as determined under item 1 of this item, determined using the  
2 number of immediately preceding taxable years that the taxpayer has.

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

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

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

12 (7) "Small business" means a for-profit corporation, limited liability  
13 company, partnership, or sole proprietorship with net book value assets totaling, at the  
14 beginning or the end of the taxable year for which Maryland qualified research and  
15 development expenses are incurred, as reported on the balance sheet, less than \$5,000,000.

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

18 (1) 3% of the Maryland qualified research and development expenses, not  
19 exceeding the Maryland base amount for the individual or corporation, paid or incurred by  
20 the individual or corporation during the taxable year; and

21 (2) 10% of the amount by which the Maryland qualified research and  
22 development expenses paid or incurred by the individual or corporation during the taxable  
23 year exceed the Maryland base amount for the individual or corporation.

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

28 (2) (i) Except as provided under paragraph (4) of this subsection, the  
29 total amount of credits approved by the Department under subsection (b)(1) of this section  
30 may not exceed:

31 1. \$4,500,000 in calendar year 2016; and

32 2. \$5,500,000 in calendar year 2017 and each calendar year  
33 thereafter.

34 (ii) Subject to paragraph (4) of this subsection, if the total amount of  
35 credits applied for by all individuals and corporations under subsection (b)(1) of this section

1 exceeds the maximum specified under subparagraph (i) of this paragraph, the Department  
2 shall approve a credit under subsection (b)(1) of this section for each applicant in an amount  
3 equal to the product of multiplying the credit applied for by the applicant times a fraction:

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

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

8                   (3) (i) Except as provided in paragraph (4) of this subsection, the total  
9 amount of credits approved by the Department under subsection (b)(2) of this section may  
10 not exceed:

11                  1. \$4,500,000 in calendar year 2016; and

12                  2. \$6,500,000 in calendar year 2017 and each calendar year  
13 thereafter.

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

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

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

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

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

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

(i) 1. file an amended income tax return for the taxable year in which the Maryland qualified research and development expense was incurred; and

12                           [(ii)] 2. attach a copy of the Department's certification of the  
13 approved credit amount to the amended income tax return; OR

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

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

(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.

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

(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

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

13               (f)     (1)     The Department of Commerce and the Comptroller jointly shall adopt  
14 regulations to prescribe standards for determining when research or development is  
15 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;

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

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

(g) (1) In accordance with § 2.5–109 of the Economic Development Article, the Department shall report 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:

30 (i) the individual's or corporation's name and address; and

31 (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:

10 (ii) the number of applications for which a tax credit was approved  
11 in each calendar year; and

(iii) the total credits authorized under this section for all calendar years under this section.

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
20 1, 2018.

Approved:

## Governor.

## President of the Senate.

## Speaker of the House of Delegates.