

SENATE BILL 196

C8, Q3

(PRE-FILED)

11r0105
CF 11r0116

By: **Chair, Budget and Taxation Committee (By Request – Departmental – Commerce)**

Requested: October 22, 2020

Introduced and read first time: January 13, 2021

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of repealing a certain credit against the State income tax for certain
4 Maryland qualified research and development expenses not exceeding a certain base
5 amount; altering the amount of research and development tax credits that the
6 Department of Commerce may approve in certain calendar years; requiring the
7 Department to reserve a certain amount of the total amount of research and
8 development credits that the Department may approve in a calendar year to small
9 businesses; prohibiting the Department from approving a tax credit for a single
10 applicant in excess of a certain amount; defining the term “net book value assets” for
11 purposes of the program concerning small businesses; extending the termination
12 date applicable to the program; making conforming changes; providing for the
13 application of this Act; and generally relating to the Research and Development Tax
14 Credit Program.

15 BY repealing and reenacting, with amendments,
16 Article – Tax – General
17 Section 10–721
18 Annotated Code of Maryland
19 (2016 Replacement Volume and 2020 Supplement)

20 BY repealing and reenacting, with amendments,
21 Chapter 515 of the Acts of the General Assembly of 2000, as amended by Chapter 98
22 of the Acts of the General Assembly of 2005, Chapter 20 of the Acts of the
23 General Assembly of 2010, and Chapter 85 of the Acts of the General Assembly
24 of 2019
25 Section 2 and 4

26 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Chapter 516 of the Acts of the General Assembly of 2000, as amended by Chapter 98
2 of the Acts of the General Assembly of 2005, Chapter 20 of the Acts of the
3 General Assembly of 2010, and Chapter 85 of the Acts of the General Assembly
4 of 2019
5 Section 2 and 4

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

8 **Article – Tax – General**

9 10–721.

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

11 (2) “Department” means the Department of Commerce.

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

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

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

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

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

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

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

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

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

1 **(7) “NET BOOK VALUE ASSETS” MEANS THE TOTAL OF A BUSINESS’S**
2 **NET VALUE OF ASSETS, INCLUDING INTANGIBLES BUT NOT INCLUDING LIABILITIES,**
3 **MINUS DEPRECIATION AND AMORTIZATION.**

4 **[(7)] (8)** “Small business” means a for-profit corporation, limited liability
5 company, partnership, or sole proprietorship with net book value assets totaling, at the
6 beginning or the end of the taxable year for which Maryland qualified research and
7 development expenses are incurred, as reported on the balance sheet, less than \$5,000,000.

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 November 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)] (B)** of this section.

20 (2) **[(i)** Except as provided under paragraph (4) of this subsection] **FOR**
21 **EACH CALENDAR YEAR**, the total amount of credits approved by the Department under
22 subsection **[(b)(1)] (B)** of this section may not exceed[:

23 1. \$4,500,000 in calendar year 2016; and
24 2. \$5,500,000 in calendar year 2017 and each calendar year
25 thereafter] **\$12,000,000.**

26 **(3) (I) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS**
27 **SUBSECTION, EACH CALENDAR YEAR, THE DEPARTMENT SHALL RESERVE**
28 **\$3,500,000 OF THE CREDITS AUTHORIZED UNDER SUBSECTION (B) OF THIS SECTION**
29 **FOR APPLICANTS THAT ARE SMALL BUSINESSES.**

30 (ii) Subject to paragraph **[(4)] (5)** of this subsection, if the total
31 amount of credits applied for by all **[individuals and corporations] SMALL BUSINESSES**
32 under **[subsection (b)(1) of]** this section exceeds the **[maximum] AMOUNT** specified under
33 subparagraph (i) of this paragraph, the Department shall approve a credit **[under**
34 **subsection (b)(1) of this section]** for each applicant in an amount equal to the product of

1 multiplying the credit applied for by the applicant times a fraction:

2 1. the numerator of which is the [maximum] AMOUNT
3 specified under subparagraph (i) of this paragraph; and

4 2. the denominator of which is the total of all credits applied
5 for by all [applicants] SMALL BUSINESSES under [subsection (b)(1) of] this section in the
6 calendar year.

7 [(3)] (4) (i) Except as provided in paragraph [(4)] (5) of this
8 subsection, **FOR EACH CALENDAR YEAR**, the total amount of credits approved by the
9 Department under [subsection (b)(2) of] this section to applicants **THAT ARE NOT SMALL**
10 **BUSINESSES** may 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] **\$8,500,000**.

14 (ii) Subject to paragraph [(4)] (5) of this subsection, if the total
15 amount of credits applied for by all [individuals and corporations under subsection (b)(2) of
16 this section] **APPLICANTS THAT ARE NOT SMALL BUSINESSES** exceeds the maximum
17 specified under subparagraph (i) of this paragraph, the Department shall approve a credit
18 under [subsection (b)(2) of] this section for each applicant in an amount equal to the product
19 of multiplying the credit applied for by the applicant times a fraction:

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

22 2. the denominator of which is the total of all credits applied
23 for by all applicants [under subsection (b)(2) of this section] **THAT ARE NOT SMALL**
24 **BUSINESSES** in the calendar year.

25 [(4)] (5) (i) For any calendar year, if [the maximum specified under
26 paragraph (2)(i) of this subsection exceeds] the total amount of credits applied for by all
27 [individuals and corporations under subsection (b)(1) of this section] **SMALL BUSINESSES**
28 **IS LESS THAN \$3,500,000**, the [maximum] AMOUNT specified under paragraph [(3)(i)]
29 **(4)(I)** of this subsection shall be increased for that calendar year by an amount equal to the
30 [amount by which the maximum specified under paragraph (2)(i) of this subsection exceeds
31 the total amount of credits applied for by all individuals and corporations under subsection
32 (b)(1) of this section] **DIFFERENCE BETWEEN \$3,500,000 AND THE TOTAL AMOUNT OF**
33 **CREDITS APPLIED FOR BY SMALL BUSINESSES**.

34 (ii) For any calendar year, if [the maximum specified under
35 paragraph (3)(i) of this subsection exceeds] the total amount of credits applied for by all

1 [individuals and corporations under subsection (b)(2) of this section] **APPLICANTS THAT**
2 **ARE NOT SMALL BUSINESSES IS LESS THAN \$8,500,000**, the [maximum] **AMOUNT**
3 specified under paragraph [(2)(i)] **(3)(I)** of this subsection shall be increased for that
4 calendar year by an amount equal to the [amount by which the maximum specified under
5 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all
6 individuals and corporations under subsection (b)(2) of this section] **DIFFERENCE**
7 **BETWEEN \$8,500,000 AND THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY**
8 **APPLICANTS THAT ARE NOT SMALL BUSINESSES.**

9 **(6) THE DEPARTMENT MAY NOT APPROVE A TAX CREDIT FOR ANY**
10 **SINGLE APPLICANT IN AN AMOUNT EXCEEDING \$250,000.**

11 **[(5)] (7)** By February 15 of the calendar year following the end of the year
12 in which the individual or corporation submitted an application for the credit in accordance
13 with paragraph (1) of this subsection, the Department shall certify to the individual or
14 corporation the amount of the research and development tax credits approved by the
15 Department for the individual or corporation under [subsection (b)(1) and (2) of] this
16 section.

17 **[(6)] (8)** To claim the approved credits allowed under this section, an
18 individual or corporation shall:

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

21 2. attach a copy of the Department's certification of the
22 approved credit amount to the amended income tax return; or

23 (ii) subject to subsection (d) of this section, attach a copy of the
24 Department's certification of the approved credit amount to an income tax return filed for
25 any of the 7 taxable years after the taxable year in which the Maryland qualified research
26 and development expenses were incurred.

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

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

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

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

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

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

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

7 (2) The Comptroller shall adopt regulations providing for:

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

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

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

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

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

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

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

24 (i) the location where services are performed;

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

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

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

31 (g) (1) In accordance with § 2.5–109 of the Economic Development Article, the

1 Department shall report on the credits approved under this section.

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

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

6 (ii) the amount of the credit approved.

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

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

14 (i) the total number of applicants for credits under this section in
15 each calendar year;

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

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

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

25 **Chapter 515 of the Acts of 2000, as amended by Chapter 98 of the Acts of 2005,**
26 **Chapter 20 of the Acts of 2010, and Chapter 85 of the Acts of 2019**

27 SECTION 2. AND BE IT FURTHER ENACTED, That:

28 (a) Except as otherwise provided in this section, this Act shall be applicable to all
29 taxable years beginning after December 31, 1999 but before January 1, [2021] **2026**.

30 (b) If a taxpayer's taxable year for income tax purposes is not the calendar year:

31 (1) for the taxable year that ends in calendar year 2000, the taxpayer may
32 apply for a prorated credit for research and development expenses paid or incurred in the

1 taxable year for that part of the taxable year that falls in calendar year 2000; and

2 (2) for the taxable year that begins in calendar year [2020] **2025**, the
3 taxpayer may apply for only a prorated credit for research and development expenses paid
4 or incurred in the taxable year for that part of the taxable year that falls in calendar year
5 [2020] **2025**.

6 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
7 1, 2000. It shall remain effective for a period of [22] **27** years and, at the end of June 30,
8 [2022] **2027**, with no further action required by the General Assembly, this Act shall be
9 abrogated and of no further force and effect.

10 **Chapter 516 of the Acts of 2000, as amended by Chapter 98 of the Acts of 2005,**
11 **Chapter 20 of the Acts of 2010, and Chapter 85 of the Acts of 2019**

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14 taxable years beginning after December 31, 1999 but before January 1, [2021] **2026**.

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16 (1) for the taxable year that ends in calendar year 2000, the taxpayer may
17 apply for a prorated credit for research and development expenses paid or incurred in the
18 taxable year for that part of the taxable year that falls in calendar year 2000; and

19 (2) for the taxable year that begins in calendar year [2020] **2025**, the
20 taxpayer may apply for only a prorated credit for research and development expenses paid
21 or incurred in the taxable year for that part of the taxable year that falls in calendar year
22 [2020] **2025**.

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26 abrogated and of no further force and effect.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
28 1, 2021, and shall be applicable to all Maryland research and development tax credits
29 certified after February 15, 2021.