

SENATE BILL 309

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2000 Regular Session
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By: **Senators Hogan, Neall, Lawlah, Hooper, Stoltzfus, DeGrange, Mooney,
Currie, Roesser, Middleton, Hoffman, Kasemeyer, Madden, McFadden,
Munson, Ruben, and Stone**

Introduced and read first time: February 1, 2000
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Research and Development Tax Credit**

3 FOR the purpose of allowing a credit against the State income tax for certain research
4 or development expenses incurred by an individual or corporation; allowing a
5 credit against the State income tax based on certain increases in expenses paid
6 or incurred for certain research and development conducted in the State;
7 providing for calculation of the credit based on the amount by which certain
8 research and development expenses for a taxable year exceed a certain base
9 amount; providing for applications to the Department of Business and Economic
10 Development for approval of the credit and certification by the Department to
11 taxpayers of approved credit amounts; limiting the total amount of credits that
12 the Department may approve for any calendar year to a certain amount;
13 requiring the Department to approve a prorated credit for each applicant if the
14 total amount applied for exceeds the maximum that may be approved; providing
15 that certain unused credits may be carried forward to certain taxable years;
16 requiring the Comptroller to adopt certain regulations; requiring the
17 Department of Business and Economic Development to adopt certain
18 regulations; defining certain terms; providing for the application and
19 termination of this Act; and generally relating to certain credits against the
20 State income tax based on certain expenses paid or incurred for certain research
21 and development conducted in the State.

22 BY adding to

23 Article - Tax - General
24 Section 10-718
25 Annotated Code of Maryland
26 (1997 Replacement Volume and 1999 Supplement)

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

1 **Article - Tax - General**

2 10-718.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.5 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND
6 ECONOMIC DEVELOPMENT.7 (3) "MARYLAND BASE AMOUNT" MEANS THE BASE AMOUNT AS DEFINED
8 IN § 41(C) OF THE INTERNAL REVENUE CODE THAT IS ATTRIBUTABLE TO MARYLAND,
9 DETERMINED BY:10 (I) SUBSTITUTING "MARYLAND QUALIFIED RESEARCH AND
11 DEVELOPMENT EXPENSE" FOR "QUALIFIED RESEARCH EXPENSE";12 (II) SUBSTITUTING "MARYLAND QUALIFIED RESEARCH AND
13 DEVELOPMENT" FOR "QUALIFIED RESEARCH"; AND

14 (III) USING, INSTEAD OF THE "FIXED BASE PERCENTAGE":

15 1. THE PERCENTAGE THAT THE MARYLAND QUALIFIED
16 RESEARCH AND DEVELOPMENT EXPENSE FOR THE 4 TAXABLE YEARS IMMEDIATELY
17 PRECEDING THE TAXABLE YEAR IN WHICH THE EXPENSE IS INCURRED IS OF THE
18 GROSS RECEIPTS FOR THOSE YEARS; OR19 2. FOR A TAXPAYER WHO HAS FEWER THAN 4 BUT AT LEAST
20 1 PRIOR TAXABLE YEAR, THE PERCENTAGE AS DETERMINED UNDER ITEM 1 OF THIS
21 ITEM, DETERMINED USING THE NUMBER OF IMMEDIATELY PRECEDING TAXABLE
22 YEARS THAT THE TAXPAYER HAS.23 (4) "MARYLAND GROSS RECEIPTS" MEANS GROSS RECEIPTS THAT ARE
24 REASONABLY ATTRIBUTABLE TO THE CONDUCT OF A TRADE OR BUSINESS IN THIS
25 STATE, DETERMINED UNDER METHODS PRESCRIBED BY THE COMPTROLLER BASED
26 ON STANDARDS SIMILAR TO THE STANDARDS UNDER § 10-402 OF THIS TITLE.27 (5) "MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT" MEANS
28 QUALIFIED RESEARCH AS DEFINED IN § 41(D) OF THE INTERNAL REVENUE CODE
29 THAT IS CONDUCTED IN THIS STATE.30 (6) "MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES"
31 MEANS QUALIFIED RESEARCH EXPENSES AS DEFINED IN § 41(B) OF THE INTERNAL
32 REVENUE CODE INCURRED FOR MARYLAND QUALIFIED RESEARCH AND
33 DEVELOPMENT.34 (B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR A
35 CORPORATION MAY CLAIM CREDITS AGAINST THE STATE INCOME TAX IN AN
36 AMOUNT EQUAL TO:

1 (1) 3% OF THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT
2 EXPENSES, NOT EXCEEDING THE MARYLAND BASE AMOUNT FOR THE INDIVIDUAL
3 OR CORPORATION, PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION
4 DURING THE TAXABLE YEAR; AND

5 (2) 10% OF THE AMOUNT BY WHICH THE MARYLAND QUALIFIED
6 RESEARCH AND DEVELOPMENT EXPENSES PAID OR INCURRED BY THE INDIVIDUAL
7 OR CORPORATION DURING THE TAXABLE YEAR EXCEED THE MARYLAND BASE
8 AMOUNT FOR THE INDIVIDUAL OR CORPORATION.

9 (C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF
10 THE TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND
11 DEVELOPMENT EXPENSES WERE INCURRED, AN INDIVIDUAL OR CORPORATION
12 SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT FOR THE CREDITS ALLOWED
13 UNDER SUBSECTION (B)(1) AND (2) OF THIS SECTION.

14 (2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE
15 DEPARTMENT UNDER SUBSECTION (B)(1) OF THIS SECTION MAY NOT EXCEED
16 \$10,000,000 FOR ANY CALENDAR YEAR.

17 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
18 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B)(1) OF THIS SECTION
19 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS
20 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION
21 (B)(1) OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE
22 PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A
23 FRACTION:

24 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED
25 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

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

29 (3) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE
30 DEPARTMENT UNDER SUBSECTION (B)(2) OF THIS SECTION MAY NOT EXCEED
31 \$10,000,000 FOR ANY CALENDAR YEAR.

32 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
33 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B)(2) OF THIS SECTION
34 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS
35 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION
36 (B)(2) OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE
37 PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A
38 FRACTION:

39 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED
40 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

1 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
2 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B)(2) OF THIS
3 SECTION IN THE CALENDAR YEAR.

4 (4) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF
5 THE TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND
6 DEVELOPMENT EXPENSES WERE INCURRED, THE DEPARTMENT SHALL CERTIFY TO
7 THE INDIVIDUAL OR CORPORATION THE AMOUNT OF THE RESEARCH AND
8 DEVELOPMENT TAX CREDITS APPROVED BY THE DEPARTMENT FOR THE INDIVIDUAL
9 OR CORPORATION UNDER SUBSECTION (B)(1) AND (2) OF THIS SECTION.

10 (5) TO CLAIM THE APPROVED CREDITS ALLOWED UNDER THIS SECTION,
11 AN INDIVIDUAL OR CORPORATION SHALL:

12 (I) FILE AN AMENDED INCOME TAX RETURN FOR THE TAXABLE
13 YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT
14 EXPENSE WAS INCURRED; AND

15 (II) ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF
16 THE APPROVED CREDIT AMOUNT TO THE AMENDED INCOME TAX RETURN.

17 (D) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR
18 EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, AN INDIVIDUAL OR
19 CORPORATION MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME
20 TAX FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

21 (1) THE FULL AMOUNT OF THE EXCESS IS USED; OR

22 (2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE
23 YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT
24 EXPENSE WAS INCURRED.

25 (E) (1) IN DETERMINING THE AMOUNT OF THE CREDIT UNDER THIS
26 SECTION:

27 (I) ALL MEMBERS OF THE SAME CONTROLLED GROUP OF
28 CORPORATIONS, AS DEFINED UNDER § 41(F) OF THE INTERNAL REVENUE CODE,
29 SHALL BE TREATED AS A SINGLE TAXPAYER; AND

30 (II) THE CREDIT ALLOWABLE BY THIS SECTION TO EACH MEMBER
31 SHALL BE ITS PROPORTIONATE SHARES OF THE QUALIFIED RESEARCH EXPENSES
32 GIVING RISE TO THE CREDIT.

33 (2) THE COMPTROLLER SHALL ADOPT REGULATIONS PROVIDING FOR:

34 (I) DETERMINATION OF THE AMOUNT OF THE CREDIT UNDER THIS
35 SECTION IN THE CASE OF TRADES OR BUSINESSES, WHETHER OR NOT
36 INCORPORATED, THAT ARE UNDER COMMON CONTROL;

1 (II) PASS-THROUGH AND ALLOCATION OF THE CREDIT IN THE
2 CASE OF ESTATES AND TRUSTS, PARTNERSHIPS, UNINCORPORATED TRADES OR
3 BUSINESSES, AND S CORPORATIONS;

4 (III) ADJUSTMENTS IN THE CASE OF ACQUISITIONS AND
5 DISPOSITIONS DESCRIBED IN § 41(F)(3) OF THE INTERNAL REVENUE CODE; AND

6 (IV) DETERMINATION OF THE CREDIT IN THE CASE OF SHORT
7 TAXABLE YEARS.

8 (3) THE REGULATIONS ADOPTED UNDER PARAGRAPH (2) OF THIS
9 SUBSECTION SHALL BE BASED ON PRINCIPLES SIMILAR TO THE PRINCIPLES
10 APPLICABLE UNDER § 41 OF THE INTERNAL REVENUE CODE AND REGULATIONS
11 ADOPTED THEREUNDER.

12 (F) (1) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT
13 SHALL ADOPT REGULATIONS TO PRESCRIBE STANDARDS FOR DETERMINING WHEN
14 RESEARCH OR DEVELOPMENT IS CONSIDERED CONDUCTED IN THE STATE FOR
15 PURPOSES OF DETERMINING THE CREDIT UNDER THIS SECTION.

16 (2) IN ADOPTING REGULATIONS UNDER THIS SUBSECTION, THE
17 DEPARTMENT MAY CONSIDER:

18 (I) THE LOCATION WHERE SERVICES ARE PERFORMED;

19 (II) THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR
20 PERSONS PERFORMING SERVICES;

21 (III) THE LOCATION WHERE SUPPLIES USED IN RESEARCH AND
22 DEVELOPMENT ARE CONSUMED; AND

23 (IV) ANY OTHER FACTORS THAT THE DEPARTMENT DETERMINES
24 ARE RELEVANT FOR THE DETERMINATION.

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

26 (a) Except as otherwise provided in this section, this Act shall be applicable to
27 all taxable years beginning after December 31, 1999 but before January 1, 2005.

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

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

34 (2) for the taxable year that begins in calendar year 2004, the taxpayer
35 may apply for only a prorated credit for research and development expenses paid or

1 incurred in the taxable year for that part of the taxable year that falls in calendar
2 year 2004.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 2000. It shall remain effective for a period of 6 years and, at the end of June
5 30, 2006, with no further action required by the General Assembly, this Act shall be
6 abrogated and of no further force and effect.