

SENATE BILL 124

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Q3

2004 Regular Session
4r1516
CF HB 57

By: **Senator Forehand**

Introduced and read first time: January 21, 2004

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Biotechnology Investment Incentive Act**

3 FOR the purpose of providing for credits against certain State taxes for certain
4 investments in certain biotechnology companies and venture capital firms;
5 providing for applications to the Department of Business and Economic
6 Development for approval of the credit and certification by the Department to
7 investors of approved credit amounts; limiting to a certain amount the total
8 amount of credits that the Department may approve for any calendar year;
9 requiring the Department to approve a prorated credit for each applicant if the
10 total amount applied for exceeds the maximum that may be approved; providing
11 for certain procedures to claim approved credits; providing that certain unused
12 credits may be carried forward to certain taxable years; providing for revocation
13 or recapture of a credit under certain circumstances; requiring the Department
14 of Business and Economic Development and the State Comptroller jointly to
15 adopt certain regulations; defining certain terms; providing for the application
16 of this Act; and generally relating to credits against certain State taxes based on
17 certain investments in certain biotechnology companies and venture capital
18 firms.

19 BY adding to
20 Article - Tax - General
21 Section 10-725
22 Annotated Code of Maryland
23 (1997 Replacement Volume and 2003 Supplement)

24 BY adding to
25 Article - Insurance
26 Section 6-121
27 Annotated Code of Maryland
28 (1997 Volume and 2003 Supplement)

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

1 **Article - Tax - General**

2 10-725.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.5 (2) "BIOTECHNOLOGY COMPANY" MEANS A COMPANY ORGANIZED FOR
6 PROFIT THAT:7 (I) IS PRIMARILY ENGAGED IN THE RESEARCH, DEVELOPMENT,
8 AND COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY THAT
9 COMPRISES, INTERACTS WITH, OR ANALYZES BIOLOGICAL MATERIAL INCLUDING
10 BIOMOLECULES (DNA, RNA, OR PROTEIN), CELLS, TISSUES, OR ORGANS;

11 (II) HAS SIGNIFICANT OPERATIONS IN THIS STATE;

12 (III) HAS FEWER THAN 100 FULL-TIME EMPLOYEES; AND

13 (IV) 1. HAS BEEN CERTIFIED AS A BIOTECHNOLOGY COMPANY
14 BY THE DIRECTOR OF THE MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION;15 2. HAS RECEIVED FUNDING IN THE PREVIOUS 24 MONTHS
16 FROM THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, THE
17 MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION, MDBIO, INC., OR THE
18 MARYLAND INDUSTRIAL PARTNERSHIPS PROGRAM; OR19 3. HAS BEEN A TENANT OF A STATE-FUNDED INCUBATOR
20 FACILITY WITHIN THE PREVIOUS 24 MONTHS.21 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND
22 ECONOMIC DEVELOPMENT.23 (4) (I) "INVESTMENT" MEANS THE CONTRIBUTION OF PROPERTY, AT A
24 RISK OF LOSS, TO A QUALIFIED COMPANY IN EXCHANGE FOR STOCK, A PARTNERSHIP
25 INTEREST, OR OTHER OWNERSHIP INTEREST IN THE QUALIFIED COMPANY.26 (II) FOR PURPOSES OF THIS SECTION, AN INVESTMENT IS AT RISK
27 OF LOSS WHEN ITS REPAYMENT ENTIRELY DEPENDS UPON THE SUCCESS OF THE
28 BUSINESS OPERATIONS OF THE QUALIFIED COMPANY.29 (5) "QUALIFIED COMPANY" MEANS A BIOTECHNOLOGY COMPANY OR
30 VENTURE CAPITAL FIRM.31 (6) (I) "QUALIFIED INVESTOR" MEANS AN INDIVIDUAL OR
32 CORPORATION THAT:

33 1. INVESTS AT LEAST \$30,000 IN A QUALIFIED COMPANY; OR

1 (3) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL QUALIFIED
2 INVESTORS UNDER SUBSECTION (B) OF THIS SECTION EXCEEDS THE MAXIMUM
3 SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL
4 APPROVE A CREDIT UNDER SUBSECTION (B) OF THIS SECTION FOR EACH APPLICANT
5 IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR
6 BY THE APPLICANT TIMES A FRACTION:

7 (I) THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED
8 UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND

9 (II) THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL CREDITS
10 APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B) OF THIS SECTION IN A
11 CALENDAR YEAR.

12 (4) (I) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE
13 END OF THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE, THE
14 DEPARTMENT SHALL CERTIFY TO THE QUALIFIED INVESTOR THE AMOUNT OF THE
15 TAX CREDITS APPROVED BY THE DEPARTMENT FOR THE QUALIFIED INVESTOR
16 UNDER SUBSECTION (B) OF THIS SECTION.

17 (II) THE CREDIT ALLOWABLE UNDER SUBSECTION (B) OF THIS
18 SECTION TO A GROUP OF QUALIFIED INVESTORS SHALL BE ALLOCATED ACCORDING
19 TO EACH INVESTOR'S PROPORTIONATE SHARE OF THE TOTAL INVESTMENT GIVING
20 RISE TO THE CREDIT.

21 (5) TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS SECTION, A
22 QUALIFIED INVESTOR SHALL:

23 (I) FILE AN AMENDED STATE INCOME TAX RETURN FOR THE
24 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE; AND

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

27 (D) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR
28 EXCEEDS THE STATE TAX LIABILITY FOR THAT TAXABLE YEAR, A QUALIFIED
29 INVESTOR MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE TAX LIABILITY
30 FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

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

32 (2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE
33 YEAR IN WHICH THE INVESTMENT WAS MADE.

34 (E) (1) THE CREDIT CLAIMED UNDER SUBSECTION (C) SHALL BE
35 RECAPTURED AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION IF, WITHIN 2
36 YEARS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT IS
37 APPROVED, THE QUALIFIED INVESTOR SELLS, TRANSFERS, OR OTHERWISE DISPOSES
38 OF THE OWNERSHIP INTEREST IN THE QUALIFIED COMPANY THAT GAVE RISE TO
39 THE CREDIT.

1 (2) THE AMOUNT REQUIRED TO BE RECAPTURED UNDER THIS
2 SUBSECTION IS THE PRODUCT OF MULTIPLYING:

3 (I) THE PORTION OF THE CREDIT ATTRIBUTABLE TO THE
4 OWNERSHIP INTEREST DISPOSED OF AS DESCRIBED IN PARAGRAPH (1) OF THIS
5 SUBSECTION; AND

6 (II) 1. 100%, IF THE DISPOSITION OCCURS DURING THE TAXABLE
7 YEAR IN WHICH THE TAX CREDIT IS APPROVED;

8 2. 67%, IF THE DISPOSITION OCCURS DURING THE FIRST
9 YEAR AFTER THE CLOSE OF THE TAXABLE YEAR FOR WHICH THE TAX CREDIT IS
10 APPROVED; OR

11 3. 33%, IF THE DISPOSITION OCCURS MORE THAN 1 YEAR
12 BUT NOT MORE THAN 2 YEARS AFTER THE CLOSE OF THE TAXABLE YEAR FOR WHICH
13 THE TAX CREDIT IS APPROVED.

14 (3) THE QUALIFIED INVESTOR THAT CLAIMED THE CREDIT SHALL PAY
15 THE AMOUNT TO BE RECAPTURED AS DETERMINED UNDER PARAGRAPH (2) OF THIS
16 SUBSECTION AS TAXES PAYABLE TO THE STATE FOR THE TAXABLE YEAR IN WHICH
17 THE DISPOSITION DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION OCCURS.

18 (F) (1) THE DEPARTMENT MAY REVOKE ITS CERTIFICATION OF AN
19 APPROVED CREDIT UNDER SUBSECTION (C) OF THIS SECTION IF ANY
20 REPRESENTATION IN CONNECTION WITH THE APPLICATION FOR THE
21 CERTIFICATION PROVES TO HAVE BEEN FALSE WHEN MADE.

22 (2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE DEPARTMENT
23 MAY DETERMINE AND, SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, SHALL BE
24 COMMUNICATED TO THE QUALIFIED INVESTOR AND THE COMPTROLLER.

25 (3) THE QUALIFIED INVESTOR SHALL HAVE AN OPPORTUNITY TO
26 APPEAL ANY REVOCATION TO THE DEPARTMENT PRIOR TO NOTIFICATION OF THE
27 COMPTROLLER.

28 (4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE
29 QUALIFIED INVESTOR TO RECAPTURE ANY AMOUNT OF TAX CREDIT THAT THE
30 QUALIFIED INVESTOR HAS ALREADY CLAIMED.

31 (G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT
32 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

33 **Article - Insurance**

34 6-121.

35 AN INSURER MAY CLAIM A CREDIT AGAINST THE PREMIUM TAX FOR
36 INVESTMENTS IN A BIOTECHNOLOGY COMPANY OR VENTURE CAPITAL FIRM AS
37 PROVIDED UNDER § 10-725 OF THE TAX - GENERAL ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2004, and shall be applicable to all taxable years beginning after December 31,
3 2003.