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By: **The Speaker (By Request - Administration) and Delegates Aumann, Bartlett, Bates, Bohanan, Boschert, Cluster, Costa, Cryor, DeBoy, Donoghue, Edwards, Elliott, Frank, Fulton, Gilleland, Hammen, Impallaria, Jameson, Kach, Krebs, Leopold, McKee, Minnick, O'Donnell, Parrott, Shank, Shewell, Taylor, Trueschler, and Walkup**

Introduced and read first time: January 25, 2005

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Research and Development Tax Credit**

3 FOR the purpose of altering the maximum amount of credits that the Department of  
4 Business and Economic Development may approve for any calendar year for  
5 each component of the Maryland Research and Development Tax Credit;  
6 decreasing the number of succeeding years during which an individual or  
7 corporation may apply the excess as a credit against the State income tax;  
8 extending the time period during which the research and development tax credit  
9 may be taken by qualified business entities; and generally relating to the  
10 research and development tax credit program.

11 BY repealing and reenacting, with amendments,  
12 Article - Tax - General  
13 Section 10-721  
14 Annotated Code of Maryland  
15 (2004 Replacement Volume)

16 BY repealing and reenacting, with amendments,  
17 Chapter 515 of the Acts of the General Assembly of 2000  
18 Section 2 and 4

19 BY repealing and reenacting, with amendments,  
20 Chapter 516 of the Acts of the General Assembly of 2000  
21 Section 2 and 4

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

1 **Article - Tax - General**

2 10-721.

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

4 (2) "Department" means the Department of Business and Economic  
5 Development.6 (3) "Maryland base amount" means the base amount as defined in § 41(c)  
7 of the Internal Revenue Code that is attributable to Maryland, determined by:8 (i) substituting "Maryland qualified research and development  
9 expense" for "qualified research expense";10 (ii) substituting "Maryland qualified research and development" for  
11 "qualified research"; and

12 (iii) using, instead of the "fixed base percentage":

13 1. the percentage that the Maryland qualified research and  
14 development expense for the 4 taxable years immediately preceding the taxable year  
15 in which the expense is incurred is of the gross receipts for those years; or16 2. for a taxpayer who has fewer than 4 but at least 1 prior  
17 taxable year, the percentage as determined under item 1 of this item, determined  
18 using the number of immediately preceding taxable years that the taxpayer has.19 (4) "Maryland gross receipts" means gross receipts that are reasonably  
20 attributable to the conduct of a trade or business in this State, determined under  
21 methods prescribed by the Comptroller based on standards similar to the standards  
22 under § 10-402 of this title.23 (5) "Maryland qualified research and development" means qualified  
24 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this  
25 State.26 (6) "Maryland qualified research and development expenses" means  
27 qualified research expenses as defined in § 41(b) of the Internal Revenue Code  
28 incurred for Maryland qualified research and development.29 (b) Subject to the limitations of this section, an individual or a corporation  
30 may claim credits against the State income tax in an amount equal to:31 (1) 3% of the Maryland qualified research and development expenses,  
32 not exceeding the Maryland base amount for the individual or corporation, paid or  
33 incurred by the individual or corporation during the taxable year; and34 (2) 10% of the amount by which the Maryland qualified research and  
35 development expenses paid or incurred by the individual or corporation during the  
36 taxable year exceed the Maryland base amount for the individual or corporation.

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

5 (2) (i) Except as provided under paragraph (4) of this subsection, the  
6 total amount of credits approved by the Department under subsection (b)(1) of this  
7 section may not exceed [\$3,000,000] \$6,000,000 for any calendar year.

8 (ii) Subject to paragraph (4) of this subsection, if the total amount  
9 of credits applied for by all individuals and corporations under subsection (b)(1) of this  
10 section exceeds the maximum specified under subparagraph (i) of this paragraph, the  
11 Department shall approve a credit under subsection (b)(1) of this section for each  
12 applicant in an amount equal to the product of multiplying the credit applied for by  
13 the applicant times a fraction:

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

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

18 (3) (i) Except as provided in paragraph (4) of this subsection, the total  
19 amount of credits approved by the Department under subsection (b)(2) of this section  
20 may not exceed [\$3,000,000] \$6,000,000 for any calendar year.

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

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

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

31 (4) (i) For any calendar year, if the maximum specified under  
32 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by  
33 all individuals and corporations under subsection (b)(1) of this section, the maximum  
34 specified under paragraph (3)(i) of this subsection shall be increased for that calendar  
35 year by an amount equal to the amount by which the maximum specified under  
36 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by  
37 all individuals and corporations under subsection (b)(1) of this section.

38 (ii) For any calendar year, if the maximum specified under  
39 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by  
40 all individuals and corporations under subsection (b)(2) of this section, the maximum

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

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

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

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

14 (ii) attach a copy of the Department's certification of the approved  
15 credit amount to the amended income tax return.

16 (d) If the credit allowed under this section in any taxable year exceeds the  
17 State income tax for that taxable year, an individual or corporation may apply the  
18 excess as a credit against the State income tax for succeeding taxable years until the  
19 earlier of:

20 (1) the full amount of the excess is used; or

21 (2) the expiration of the [15th] 7TH taxable year after the taxable year  
22 in which the Maryland qualified research and development expense was incurred.

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

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

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

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

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

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

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

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

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

5 (f) (1) The Department of Business and Economic Development and the  
6 Comptroller jointly shall adopt regulations to prescribe standards for determining  
7 when research or development is considered conducted in the State for purposes of  
8 determining the credit under this section.

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

11 (i) the location where services are performed;

12 (ii) the residence or business location of the person or persons  
13 performing services;

14 (iii) the location where supplies used in research and development  
15 are consumed; and

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

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#### Chapter 515 of the Acts of 2000

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

20 (a) Except as otherwise provided in this section, this Act shall be applicable to  
21 all taxable years beginning after December 31, 1999 but before January 1, [2005]  
22 2011.

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

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

29 (2) for the taxable year that begins in calendar year [2004] 2010, the  
30 taxpayer may apply for only a prorated credit for research and development expenses  
31 paid or incurred in the taxable year for that part of the taxable year that falls in  
32 calendar year [2004] 2010.

33 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take  
34 effect July 1, 2000. It shall remain effective for a period of [6] 12 years and, at the end  
35 of June 30, [2006] 2012, with no further action required by the General Assembly, this  
36 Act shall be abrogated and of no further force and effect.

**Chapter 516 of the Acts of 2000**

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Except as otherwise provided in this section, this Act shall be applicable to all taxable years beginning after December 31, 1999 but before January 1, [2005] 2011.

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

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

(2) for the taxable year that begins in calendar year [2004] 2010, the taxpayer may apply for only a prorated credit for research and development expenses paid or incurred in the taxable year for that part of the taxable year that falls in calendar year [2004] 2010.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2000. It shall remain effective for a period of [6] 12 years and, at the end of June 30, [2006] 2012, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2005.