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By: Delegates Haddaway, Aumann, Bartlett, Boschert, Boteler, Boutin,  
Bromwell, V. Clagett, Cluster, Costa, Cryor, Dumais, Dwyer, Eckardt,  
Edwards, Elliott, Elmore, Frank, Gilleland, Glassman, Hogan, Hubbard,  
Impallaria, Jameson, Jennings, Kach, Krebs, Leopold, Mayer, McComas,  
McConkey, McHale, Miller, Moe, Myers, O'Donnell, Shank, Shewell,  
Smigiel, Sophocleus, Sossi, Stocksdales, Stull, Taylor, Walkup, and  
Weldon

Introduced and read first time: February 14, 2005

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Credit for Hydrogen Fuel Cell Research and Development**

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

19 BY repealing and reenacting, without amendments,  
20 Article - Tax - General  
21 Section 10-205(a) and 10-306(a)  
22 Annotated Code of Maryland  
23 (2004 Replacement Volume)

24 BY adding to  
25 Article - Tax - General  
26 Section 10-205(j), 10-306(f), and 10-725

1 Annotated Code of Maryland  
2 (2004 Replacement Volume)

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

5 **Article - Tax - General**

6 10-205.

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

10 (J) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
11 AMOUNT OF A CREDIT CLAIMED UNDER § 10-725 OF THIS TITLE FOR HYDROGEN FUEL  
12 CELL RESEARCH AND DEVELOPMENT EXPENSES.

13 10-306.

14 (a) In addition to the modification under § 10-305 of this subtitle, the  
15 amounts under this section are added to the federal taxable income of a corporation to  
16 determine Maryland modified income.

17 (F) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
18 AMOUNT OF A CREDIT CLAIMED UNDER § 10-725 OF THIS TITLE FOR HYDROGEN FUEL  
19 CELL RESEARCH AND DEVELOPMENT EXPENSES.

20 10-725.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
22 INDICATED.

23 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND  
24 ECONOMIC DEVELOPMENT.

25 (3) "HYDROGEN FUEL CELL" MEANS AN ELECTROCHEMICAL DEVICE  
26 THAT CONTINUOUSLY CONVERTS THE CHEMICAL ENERGY OF HYDROGEN FUEL AND  
27 AN OXIDANT INTO ELECTRICAL POWER.

28 (4) "QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES" MEANS  
29 EXPENSES INCURRED FOR HYDROGEN FUEL CELL RESEARCH AND DEVELOPMENT  
30 THAT ARE CONDUCTED IN THE STATE.

31 (B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR  
32 CORPORATION MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN  
33 AMOUNT EQUAL TO 10% OF THE QUALIFIED RESEARCH AND DEVELOPMENT  
34 EXPENSES PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION DURING THE  
35 TAXABLE YEAR.

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

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

9 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL  
10 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B) OF THIS SECTION  
11 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS  
12 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION (B)  
13 OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF  
14 MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

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

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

20 (3) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF  
21 THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT  
22 EXPENSES WERE INCURRED, THE DEPARTMENT SHALL CERTIFY TO THE INDIVIDUAL  
23 OR CORPORATION THE AMOUNT OF THE RESEARCH AND DEVELOPMENT TAX CREDIT  
24 APPROVED BY THE DEPARTMENT FOR THE INDIVIDUAL OR CORPORATION UNDER  
25 SUBSECTION (B) OF THIS SECTION.

26 (4) TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS SECTION,  
27 AN INDIVIDUAL OR CORPORATION SHALL:

28 (I) FILE AN AMENDED INCOME TAX RETURN FOR THE TAXABLE  
29 YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE  
30 INCURRED; AND

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

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

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

1                   (2)     THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE  
2 YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE  
3 INCURRED.

4       (E)     (1)     IN DETERMINING THE AMOUNT OF THE CREDIT UNDER THIS  
5 SECTION:

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

9                   (II)    THE CREDIT ALLOWABLE BY THIS SECTION TO EACH MEMBER  
10 SHALL BE ITS PROPORTIONATE SHARES OF THE QUALIFIED RESEARCH AND  
11 DEVELOPMENT EXPENSES GIVING RISE TO THE CREDIT.

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

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

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

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

21                   (IV)    DETERMINATION OF THE CREDIT IN THE CASE OF SHORT  
22 TAXABLE YEARS.

23       (F)     (1)     THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT  
24 AND THE COMPTROLLER JOINTLY SHALL ADOPT REGULATIONS TO PRESCRIBE  
25 STANDARDS FOR DETERMINING WHEN RESEARCH OR DEVELOPMENT IS  
26 CONSIDERED CONDUCTED IN THE STATE FOR PURPOSES OF DETERMINING THE  
27 CREDIT UNDER THIS SECTION.

28               (2)     IN ADOPTING REGULATIONS UNDER THIS SUBSECTION, THE  
29 DEPARTMENT AND THE COMPTROLLER MAY CONSIDER:

30                   (I)     THE LOCATION WHERE SERVICES ARE PERFORMED;

31                   (II)    THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR  
32 PERSONS PERFORMING SERVICES;

33                   (III)   THE LOCATION WHERE SUPPLIES USED IN RESEARCH AND  
34 DEVELOPMENT ARE CONSUMED; AND

35                   (IV)    ANY OTHER FACTORS THAT THE DEPARTMENT DETERMINES  
36 ARE RELEVANT FOR THE DETERMINATION.

1 (G) THE CREDIT UNDER THIS SECTION DOES NOT APPLY TO ANY QUALIFIED  
2 RESEARCH AND DEVELOPMENT EXPENSES INCURRED AFTER DECEMBER 31, 2013.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,  
5 2004.