
By: **The President (By Request - Administration) and Senators Astle, Brinkley, Colburn, Greenip, Haines, Harris, Hogan, Hooper, Jacobs, Kittleman, Klausmeier, Lawlah, McFadden, Mooney, Schrader, and Stoltzfus**

Introduced and read first time: January 21, 2005

Assigned to: Budget and Taxation

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; or

16 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; and

34 (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.

18

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.