
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~~ Stoltzfus, Currie, DeGrange, Jones, Kasemeyer, Kramer, Munson, and Ruben**

Introduced and read first time: January 21, 2005

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2005

CHAPTER _____

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 carry forward the Maryland Research and Development Tax
 8 Credit and apply the excess as a credit against the State income tax; extending
 9 the time period during which the research and development tax credit may be
 10 taken by qualified business entities; requiring the Department to make a
 11 certain report by a certain date each year; providing for the application of
 12 certain provisions of this Act; and generally relating to the research and
 13 development tax credit program.

14 BY repealing and reenacting, with amendments,
 15 Article - Tax - General
 16 Section 10-721
 17 Annotated Code of Maryland
 18 (2004 Replacement Volume)

19 BY repealing and reenacting, with amendments,
 20 Chapter 515 of the Acts of the General Assembly of 2000
 21 Section 2 and 4

1 BY repealing and reenacting, with amendments,
2 Chapter 516 of the Acts of the General Assembly of 2000
3 Section 2 and 4

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

6 **Article - Tax - General**

7 10-721.

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

9 (2) "Department" means the Department of Business and Economic
10 Development.

11 (3) "Maryland base amount" means the base amount as defined in § 41(c)
12 of the Internal Revenue Code that is attributable to Maryland, determined by:

13 (i) substituting "Maryland qualified research and development
14 expense" for "qualified research expense";

15 (ii) substituting "Maryland qualified research and development" for
16 "qualified research"; and

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

18 1. the percentage that the Maryland qualified research and
19 development expense for the 4 taxable years immediately preceding the taxable year
20 in which the expense is incurred is of the gross receipts for those years; or

21 2. for a taxpayer who has fewer than 4 but at least 1 prior
22 taxable year, the percentage as determined under item 1 of this item, determined
23 using the number of immediately preceding taxable years that the taxpayer has.

24 (4) "Maryland gross receipts" means gross receipts that are reasonably
25 attributable to the conduct of a trade or business in this State, determined under
26 methods prescribed by the Comptroller based on standards similar to the standards
27 under § 10-402 of this title.

28 (5) "Maryland qualified research and development" means qualified
29 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this
30 State.

31 (6) "Maryland qualified research and development expenses" means
32 qualified research expenses as defined in § 41(b) of the Internal Revenue Code
33 incurred for Maryland qualified research and development.

34 (b) Subject to the limitations of this section, an individual or a corporation
35 may claim credits against the State income tax in an amount equal to:

1 (1) 3% of the Maryland qualified research and development expenses,
2 not exceeding the Maryland base amount for the individual or corporation, paid or
3 incurred by the individual or corporation during the taxable year; and

4 (2) 10% of the amount by which the Maryland qualified research and
5 development expenses paid or incurred by the individual or corporation during the
6 taxable year exceed the Maryland base amount for the individual or corporation.

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

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

14 (ii) Subject to paragraph (4) of this subsection, if the total amount
15 of credits applied for by all individuals and corporations under subsection (b)(1) of this
16 section exceeds the maximum specified under subparagraph (i) of this paragraph, the
17 Department shall approve a credit under subsection (b)(1) of this section for each
18 applicant in an amount equal to the product of multiplying the credit applied for by
19 the applicant times a fraction:

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

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

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

27 (ii) Subject to paragraph (4) of this subsection, if the total amount
28 of credits applied for by all individuals and corporations under subsection (b)(2) of this
29 section exceeds the maximum specified under subparagraph (i) of this paragraph, the
30 Department shall approve a credit under subsection (b)(2) of this section for each
31 applicant in an amount equal to the product of multiplying the credit applied for by
32 the applicant times a fraction:

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

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

37 (4) (i) For any calendar year, if the maximum specified under
38 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by
39 all individuals and corporations under subsection (b)(1) of this section, the maximum

1 specified under paragraph (3)(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 (2)(i) of this subsection exceeds the total amount of credits applied for by
4 all individuals and corporations under subsection (b)(1) of this section.

5 (ii) For any calendar year, if the maximum specified under
6 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by
7 all individuals and corporations under subsection (b)(2) of this section, the maximum
8 specified under paragraph (2)(i) of this subsection shall be increased for that calendar
9 year by an amount equal to the amount by which the maximum specified under
10 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by
11 all individuals and corporations under subsection (b)(2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (i) the location where services are performed;

19 (ii) the residence or business location of the person or persons
20 performing services;

21 (iii) the location where supplies used in research and development
22 are consumed; and

23 (iv) any other factors that the Department determines are relevant
24 for the determination.

25 (G) (1) ON OR BEFORE JANUARY 10 OF EACH YEAR, THE DEPARTMENT
26 SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE
27 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY, ON THE CREDITS APPROVED
28 UNDER THIS SECTION.

29 (2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
30 SUBSECTION SHALL INCLUDE FOR EACH INDIVIDUAL OR CORPORATION APPROVED
31 TO RECEIVE A CREDIT UNDER SUBSECTION (B)(1) AND (2) OF THIS SECTION IN THE
32 PRIOR CALENDAR YEAR:

33 (I) THE INDIVIDUAL'S OR CORPORATION'S NAME AND ADDRESS;
34 AND

35 (II) THE AMOUNT OF THE CREDIT APPROVED.

1 (3) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
 2 SUBSECTION SHALL INCLUDE THE NAME OF THE INDIVIDUAL OR CORPORATION AND
 3 THE AGGREGATE AMOUNT OF CREDITS APPROVED IN ALL CALENDAR YEARS FOR
 4 EACH INDIVIDUAL OR CORPORATION UNDER SUBSECTION (B)(1) AND (2) OF THIS
 5 SECTION.

6 (4) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
 7 SUBSECTION SHALL SUMMARIZE FOR THE CREDITS APPROVED UNDER SUBSECTION
 8 (B)(1) OF THIS SECTION AND FOR THE CREDITS APPROVED UNDER SUBSECTION (B)(2)
 9 OF THIS SECTION:

10 (I) THE TOTAL NUMBER OF APPLICANTS FOR CREDITS UNDER
 11 THIS SECTION IN EACH CALENDAR YEAR;

12 (II) THE NUMBER OF APPLICATIONS FOR WHICH A TAX CREDIT WAS
 13 APPROVED IN EACH CALENDAR YEAR; AND

14 (III) THE TOTAL CREDITS AUTHORIZED UNDER THIS SECTION FOR
 15 ALL CALENDAR YEARS UNDER THIS SECTION.

16 **Chapter 515 of the Acts of 2000**

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

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

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

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

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

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

1

Chapter 516 of the Acts of 2000

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

3 (a) Except as otherwise provided in this section, this Act shall be applicable to
4 all taxable years beginning after December 31, 1999 but before January 1, [2005]
5 2011.6 (b) If a taxpayer's taxable year for income tax purposes is not the calendar
7 year:8 (1) for the taxable year that ends in calendar year 2000, the taxpayer
9 may apply for a prorated credit for research and development expenses paid or
10 incurred in the taxable year for that part of the taxable year that falls in calendar
11 year 2000; and12 (2) for the taxable year that begins in calendar year [2004] 2010, the
13 taxpayer may apply for only a prorated credit for research and development expenses
14 paid or incurred in the taxable year for that part of the taxable year that falls in
15 calendar year [2004] 2010.16 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 July 1, 2000. It shall remain effective for a period of [6] 12 years and, at the end of
18 June 30, [2006] 2012, with no further action required by the General Assembly, this
19 Act shall be abrogated and of no further force and effect.20 SECTION 2. AND BE IT FURTHER ENACTED, That the changes to §
21 10-721(d) of the Tax - General Article as enacted by Section 1 of this Act shall be
22 applicable to tax credits approved for all taxable years beginning after December 31,
23 2004.24 ~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
25 effect July 1, 2005.