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By: **The Speaker (By Request - Administration) and Delegates Aumann, Bartlett, Bates, Boschert, Boteler, Cluster, Cryor, Donoghue, Dwyer, Eckardt, Edwards, Elliott, Elmore, Frank, Gilleland, Glassman, Haddaway, Hogan, Impallaria, Jennings, Kach, Kelly, Kohl, Krebs, Leopold, Mayer, McComas, McConkey, McDonough, McKee, Miller, Myers, O'Donnell, Parrott, Petzold, Quinter, Ross, Shank, Shewell, Smigiel, Sossi, Stocksdale, Stull, Taylor, Trueschler, Weir, Weldon, and Zirkin**

Introduced and read first time: January 25, 2006  
Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development - Research and Development Tax**  
3 **Credit**

4 FOR the purpose of altering certain limits on the aggregate amount of credits that the  
5 Department of Business and Economic Development may approve for any  
6 calendar year under the Maryland research and development tax credit;  
7 imposing a certain limit on the amount of credit that an individual or  
8 corporation may obtain in a calendar year; providing for certain reallocation of  
9 the credit under certain circumstances; providing for the application of this Act;  
10 and generally relating to the Research and Development Tax Credit.

11 BY repealing and reenacting, with amendments,  
12 Article - Tax - General  
13 Section 10-721  
14 Annotated Code of Maryland  
15 (2004 Replacement Volume and 2005 Supplement)

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

18 **Article - Tax - General**

19 10-721.

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

21 (2) "Department" means the Department of Business and Economic  
22 Development.

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

3 (i) substituting "Maryland qualified research and development  
4 expense" for "qualified research expense";

5 (ii) substituting "Maryland qualified research and development" for  
6 "qualified research"; and

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

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

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

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

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

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

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

26 (1) 3% of the Maryland qualified research and development expenses,  
27 not exceeding the Maryland base amount for the individual or corporation, paid or  
28 incurred by the individual or corporation during the taxable year; and

29 (2) 10% of the amount by which the Maryland qualified research and  
30 development expenses paid or incurred by the individual or corporation during the  
31 taxable year exceed the Maryland base amount for the individual or corporation.

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

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

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

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

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

14 (III) AN INDIVIDUAL OR CORPORATION MAY NOT RECEIVE A CREDIT  
15 OF MORE THAN \$500,000 FOR ANY CALENDAR YEAR UNDER SUBSECTION (B)(1) OF  
16 THIS SECTION.

17 (IV) IF THE CALCULATION IN SUBPARAGRAPH (II) OF THIS  
18 PARAGRAPH WOULD RESULT IN AN INDIVIDUAL OR CORPORATION RECEIVING A  
19 CREDIT OF MORE THAN \$500,000, THE EXCESS SHALL BE ALLOCATED TO THE  
20 REMAINING ELIGIBLE APPLICANTS.

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

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

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

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

34 (III) AN INDIVIDUAL OR CORPORATION MAY NOT RECEIVE A CREDIT  
35 OF MORE THAN \$500,000 FOR ANY CALENDAR YEAR UNDER SUBSECTION (B)(2) OF  
36 THIS SECTION.

37 (IV) IF THE CALCULATION IN SUBPARAGRAPH (II) OF THIS  
38 PARAGRAPH WOULD RESULT IN AN INDIVIDUAL OR CORPORATION RECEIVING A

1 CREDIT OF MORE THAN \$500,000, THE EXCESS SHALL BE ALLOCATED TO THE  
2 REMAINING ELIGIBLE APPLICANTS.

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

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

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

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

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

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

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

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

33           (2)       the expiration of the 7th taxable year after the taxable year in which  
34 the Maryland qualified research and development expense was incurred.

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

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

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

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

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

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

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

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

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

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

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

21 (i) the location where services are performed;

22 (ii) the residence or business location of the person or persons  
23 performing services;

24 (iii) the location where supplies used in research and development  
25 are consumed; and

26 (iv) any other factors that the Department determines are relevant  
27 for the determination.

28 (g) (1) On or before January 10 of each year, the Department shall report to  
29 the Governor and, subject to § 2-1246 of the State Government Article, to the General  
30 Assembly, on the credits approved under this section.

31 (2) The report required under paragraph (1) of this subsection shall  
32 include for each individual or corporation approved to receive a credit under  
33 subsection (b)(1) and (2) of this section in the prior calendar year:

34 (i) the individual's or corporation's name and address; and

35 (ii) the amount of the credit approved.

1                   (3)       The report required under paragraph (1) of this subsection shall  
2 include the name of the individual or corporation and the aggregate amount of credits  
3 approved in all calendar years for each individual or corporation under subsection  
4 (b)(1) and (2) of this section.

5                   (4)       The report required under paragraph (1) of this subsection shall  
6 summarize for the credits approved under subsection (b)(1) of this section and for the  
7 credits approved under subsection (b)(2) of this section:

8                               (i)       the total number of applicants for credits under this section in  
9 each calendar year;

10                              (ii)       the number of applications for which a tax credit was approved  
11 in each calendar year; and

12                              (iii)       the total credits authorized under this section for all calendar  
13 years under this section.

14       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
15 effect July 1, 2006, and shall be applicable to all credits under § 10-721 of the Tax -  
16 General Article approved by the Department of Business and Economic Development  
17 for taxable years ending after December 31, 2005.