
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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: April 4, 2006

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of altering a certain ~~limits~~ limit on the aggregate amount of credits
5 that the Department of Business and Economic Development may approve for
6 any 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:

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~~ \$5,000,000] 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 (III) AN INDIVIDUAL OR CORPORATION MAY NOT RECEIVE A CREDIT
19 OF MORE THAN \$500,000 FOR ANY CALENDAR YEAR UNDER SUBSECTION (B)(1) OF
20 THIS SECTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (i) the location where services are performed;

26 (ii) the residence or business location of the person or persons
27 performing services;

28 (iii) the location where supplies used in research and development
29 are consumed; and

30 (iv) any other factors that the Department determines are relevant
31 for the determination.

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

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

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

5 (ii) the amount of the credit approved.

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

10 (4) The report required under paragraph (1) of this subsection shall
11 summarize for the credits approved under subsection (b)(1) of this section and for the
12 credits approved under subsection (b)(2) of this section:

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

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

17 (iii) the total credits authorized under this section for all calendar
18 years under this section.

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