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By: **Delegates King, Barkley, Boschert, Bozman, G. Clagett, Cryor, Dumais,  
Feldman, Gordon, Gutierrez, Kaiser, Lawton, Mandel, Montgomery,  
Murray, Patterson, Petzold, Stern, and Weir**

Introduced and read first time: February 9, 2006

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Research and Development Tax Credit - Modifications**

3 FOR the purpose of increasing the aggregate amount of income tax credits for certain  
4 research and development expenses that may be approved by the Department of  
5 Business and Economic Development each year; providing for the application of  
6 this Act; and generally relating to an income tax credit for certain research and  
7 development expenses.

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

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

15 **Article - Tax - General**

16 10-721.

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

18 (2) "Department" means the Department of Business and Economic  
19 Development.

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

22 (i) substituting "Maryland qualified research and development  
23 expense" for "qualified research expense";

24 (ii) substituting "Maryland qualified research and development" for  
25 "qualified research"; and

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

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

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

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

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

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

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

20 (1) 3% of the Maryland qualified research and development expenses,  
21 not exceeding the Maryland base amount for the individual or corporation, paid or  
22 incurred by the individual or corporation during the taxable year; and

23 (2) 10% of the amount by which the Maryland qualified research and  
24 development expenses paid or incurred by the individual or corporation during the  
25 taxable year exceed the Maryland base amount for the individual or corporation.

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

30 (2) (i) Except as provided under paragraph (4) of this subsection, the  
31 total amount of credits approved by the Department under subsection (b)(1) of this  
32 section may not exceed [\$3,000,000] \$5,000,000 for any calendar year.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) the location where services are performed;

- 1 (ii) the residence or business location of the person or persons  
2 performing services;
- 3 (iii) the location where supplies used in research and development  
4 are consumed; and
- 5 (iv) any other factors that the Department determines are relevant  
6 for the determination.

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

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

- 13 (i) the individual's or corporation's name and address; and
- 14 (ii) the amount of the credit approved.

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

19 (4) The report required under paragraph (1) of this subsection shall  
20 summarize for the credits approved under subsection (b)(1) of this section and for the  
21 credits approved under subsection (b)(2) of this section:

- 22 (i) the total number of applicants for credits under this section in  
23 each calendar year;
- 24 (ii) the number of applications for which a tax credit was approved  
25 in each calendar year; and
- 26 (iii) the total credits authorized under this section for all calendar  
27 years under this section.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,  
30 2005.