
By: **Delegates Haddaway, Aumann, Bartlett, Boschert, Boteler, Bozman,
Bromwell, Cardin, Cluster, Cryor, Donoghue, Dwyer, Eckardt, Edwards,
Elliott, Elmore, Frank, Gilleland, Hogan, Impallaria, Krebs, McComas,
McConkey, McKee, Myers, O'Donnell, Ramirez, Ross, Smigiel, Sossi,
Stocksdale, Stull, Walkup, Weldon, and Wood**

Introduced and read first time: February 9, 2006

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Credit for Hydrogen Fuel Cell Research and Development**

3 FOR the purpose of allowing a credit against the State income tax for certain
4 hydrogen fuel cell research and development expenses incurred by an individual
5 or corporation; providing for applications to the Department of Business and
6 Economic Development for approval of the credit and certification by the
7 Department to taxpayers of approved credit amounts; limiting the total amount
8 of credits that the Department may approve for any calendar year to a certain
9 amount; requiring the Department to approve a prorated credit for each
10 applicant if the total amount applied for exceeds the maximum that may be
11 approved; providing that certain unused credits may be carried forward to
12 certain taxable years; requiring a certain addition modification if a certain
13 credit is claimed; requiring the Comptroller to adopt certain regulations;
14 requiring the Department of Business and Economic Development and the
15 Comptroller jointly to adopt certain regulations; defining certain terms;
16 providing for the application of this Act; and generally relating to certain credits
17 against the State income tax based on certain expenses paid or incurred for
18 certain hydrogen fuel cell research and development conducted in the State.

19 BY repealing and reenacting, without amendments,
20 Article - Tax - General
21 Section 10-205(a) and 10-306(a)
22 Annotated Code of Maryland
23 (2004 Replacement Volume and 2005 Supplement)

24 BY adding to
25 Article - Tax - General
26 Section 10-205(j), 10-306(f), and 10-726
27 Annotated Code of Maryland
28 (2004 Replacement Volume and 2005 Supplement)

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

3 **Article - Tax - General**

4 10-205.

5 (a) In addition to the modification under § 10-204 of this subtitle, the
6 amounts under this section are added to the federal adjusted gross income of a
7 resident to determine Maryland adjusted gross income.

8 (J) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE
9 AMOUNT OF A CREDIT CLAIMED UNDER § 10-726 OF THIS TITLE FOR HYDROGEN FUEL
10 CELL RESEARCH AND DEVELOPMENT EXPENSES.

11 10-306.

12 (a) In addition to the modification under § 10-305 of this subtitle, the
13 amounts under this section are added to the federal taxable income of a corporation to
14 determine Maryland modified income.

15 (F) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE
16 AMOUNT OF A CREDIT CLAIMED UNDER § 10-726 OF THIS TITLE FOR HYDROGEN FUEL
17 CELL RESEARCH AND DEVELOPMENT EXPENSES.

18 10-726.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND
22 ECONOMIC DEVELOPMENT.

23 (3) "HYDROGEN FUEL CELL" MEANS AN ELECTROCHEMICAL DEVICE
24 THAT CONTINUOUSLY CONVERTS THE CHEMICAL ENERGY OF HYDROGEN FUEL AND
25 AN OXIDANT INTO ELECTRICAL POWER.

26 (4) "QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES" MEANS
27 EXPENSES INCURRED FOR HYDROGEN FUEL CELL RESEARCH AND DEVELOPMENT
28 THAT ARE CONDUCTED IN THE STATE.

29 (B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR
30 CORPORATION MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN
31 AMOUNT EQUAL TO 10% OF THE QUALIFIED RESEARCH AND DEVELOPMENT
32 EXPENSES PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION DURING THE
33 TAXABLE YEAR.

34 (C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF
35 THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT
36 EXPENSES WERE INCURRED, AN INDIVIDUAL OR CORPORATION SHALL SUBMIT AN

1 APPLICATION TO THE DEPARTMENT FOR THE CREDITS ALLOWED UNDER
2 SUBSECTION (B) OF THIS SECTION.

3 (2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE
4 DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION MAY NOT EXCEED \$3,000,000
5 FOR ANY CALENDAR YEAR.

6 (II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
7 INDIVIDUALS AND CORPORATIONS UNDER SUBSECTION (B) OF THIS SECTION
8 EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS
9 PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER SUBSECTION (B)
10 OF THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF
11 MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

12 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED
13 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

14 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
15 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B) OF THIS
16 SECTION IN THE CALENDAR YEAR.

17 (3) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF
18 THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT
19 EXPENSES WERE INCURRED, THE DEPARTMENT SHALL CERTIFY TO THE INDIVIDUAL
20 OR CORPORATION THE AMOUNT OF THE RESEARCH AND DEVELOPMENT TAX CREDIT
21 APPROVED BY THE DEPARTMENT FOR THE INDIVIDUAL OR CORPORATION UNDER
22 SUBSECTION (B) OF THIS SECTION.

23 (4) TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS SECTION,
24 AN INDIVIDUAL OR CORPORATION SHALL:

25 (I) FILE AN AMENDED INCOME TAX RETURN FOR THE TAXABLE
26 YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE
27 INCURRED; AND

28 (II) ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF
29 THE APPROVED CREDIT AMOUNT TO THE AMENDED INCOME TAX RETURN.

30 (D) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR
31 EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, AN INDIVIDUAL OR
32 CORPORATION MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME
33 TAX FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

34 (1) THE FULL AMOUNT OF THE EXCESS IS USED; OR

35 (2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE
36 YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE
37 INCURRED.

1 (E) (1) IN DETERMINING THE AMOUNT OF THE CREDIT UNDER THIS
2 SECTION:

3 (I) ALL MEMBERS OF THE SAME CONTROLLED GROUP OF
4 CORPORATIONS, AS DEFINED UNDER § 41(F) OF THE INTERNAL REVENUE CODE,
5 SHALL BE TREATED AS A SINGLE TAXPAYER; AND

6 (II) THE CREDIT ALLOWABLE BY THIS SECTION TO EACH MEMBER
7 SHALL BE ITS PROPORTIONATE SHARES OF THE QUALIFIED RESEARCH AND
8 DEVELOPMENT EXPENSES GIVING RISE TO THE CREDIT.

9 (2) THE COMPTROLLER SHALL ADOPT REGULATIONS PROVIDING FOR:

10 (I) DETERMINATION OF THE AMOUNT OF THE CREDIT UNDER THIS
11 SECTION IN THE CASE OF TRADES OR BUSINESSES, WHETHER OR NOT
12 INCORPORATED, THAT ARE UNDER COMMON CONTROL;

13 (II) PASS-THROUGH AND ALLOCATION OF THE CREDIT IN THE
14 CASE OF ESTATES AND TRUSTS, PARTNERSHIPS, UNINCORPORATED TRADES OR
15 BUSINESSES, AND S CORPORATIONS;

16 (III) ADJUSTMENTS IN THE CASE OF ACQUISITIONS AND
17 DISPOSITIONS DESCRIBED IN § 41(F)(3) OF THE INTERNAL REVENUE CODE; AND

18 (IV) DETERMINATION OF THE CREDIT IN THE CASE OF SHORT
19 TAXABLE YEARS.

20 (F) (1) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT
21 AND THE COMPTROLLER JOINTLY SHALL ADOPT REGULATIONS TO PRESCRIBE
22 STANDARDS FOR DETERMINING WHEN RESEARCH OR DEVELOPMENT IS
23 CONSIDERED CONDUCTED IN THE STATE FOR PURPOSES OF DETERMINING THE
24 CREDIT UNDER THIS SECTION.

25 (2) IN ADOPTING REGULATIONS UNDER THIS SUBSECTION, THE
26 DEPARTMENT AND THE COMPTROLLER MAY CONSIDER:

27 (I) THE LOCATION WHERE SERVICES ARE PERFORMED;

28 (II) THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR
29 PERSONS PERFORMING SERVICES;

30 (III) THE LOCATION WHERE SUPPLIES USED IN RESEARCH AND
31 DEVELOPMENT ARE CONSUMED; AND

32 (IV) ANY OTHER FACTORS THAT THE DEPARTMENT DETERMINES
33 ARE RELEVANT FOR THE DETERMINATION.

34 (G) THE CREDIT UNDER THIS SECTION DOES NOT APPLY TO ANY QUALIFIED
35 RESEARCH AND DEVELOPMENT EXPENSES INCURRED AFTER DECEMBER 31, 2014.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,
3 2005.