

# HOUSE BILL 46

Q3  
HB 984/06 – W&M

71r0755

---

By: **Delegates N. King, Barkley, Bronrott, G. Clagett, Dumais, Feldman,  
Gilchrist, Hixson, Kaiser, Kramer, Manno, and Rice**

Introduced and read first time: January 19, 2007

Assigned to: Ways and Means

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Research and Development Tax Credits – 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 2006 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.

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) “Maryland base amount” means the base amount as defined in §  
2 41(c) 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”  
6 for “qualified research”; and

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

8 1. the percentage that the Maryland qualified research  
9 and development expense for the 4 taxable years immediately preceding the taxable  
10 year 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  
12 prior 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.

1 (c) (1) By September 15 of the calendar year following the end of the  
2 taxable year in which the Maryland qualified research and development expenses  
3 were incurred, an individual or corporation shall submit an application to the  
4 Department 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,  
6 the total amount of credits approved by the Department under subsection (b)(1) of this  
7 section may not exceed [\$3,000,000] **\$5,000,000** for any calendar year.

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

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

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

19 (3) (i) Except as provided in paragraph (4) of this subsection, the  
20 total amount of credits approved by the Department under subsection (b)(2) of this  
21 section may not exceed [\$3,000,000] **\$7,000,000** for any calendar year.

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

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

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

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

8           (ii) For any calendar year, if the maximum specified under  
9 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all  
10 individuals and corporations under subsection (b)(2) of this section, the maximum  
11 specified under paragraph (2)(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 (3)(i) of this subsection exceeds the total amount of credits applied for by all  
14 individuals and corporations under subsection (b)(2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

10 (ii) pass-through and allocation of the credit in the case of  
11 estates and trusts, partnerships, unincorporated trades or businesses, and S  
12 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  
17 shall be based on principles similar to the principles applicable under § 41 of the  
18 Internal 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  
29 development are consumed; and

1                   (iv) any other factors that the Department determines are  
2 relevant for the determination.

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

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

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

10                           (ii) the amount of the credit approved.

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

15                   (4) The report required under paragraph (1) of this subsection shall  
16 summarize for the credits approved under subsection (b)(1) of this section and for the  
17 credits approved under subsection (b)(2) of this section:

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

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

22                           (iii) the total credits authorized under this section for all  
23 calendar years under this section.

24           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 July 1, 2007, and shall be applicable to all taxable years beginning after December 31,  
26 2006.