

HOUSE BILL 142

C8, Q7
HB 321/06 – W&M

71r1588

By: **Delegates Morhaim, Anderson, Cardin, and Feldman**

Introduced and read first time: January 25, 2007

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development – Biotechnology Investment Incentive**
3 **Act**

4 FOR the purpose of altering a certain credit allowed against the State income tax for
5 certain investments in certain technology businesses; imposing certain
6 eligibility restrictions for the credit; altering certain limits on the amount of
7 credits that may be claimed by certain persons; repealing a provision making
8 the credit refundable under certain circumstances; imposing certain limits on
9 the amount of credits the Secretary of Business and Economic Development
10 may certify for investments in a single business; providing that the credit may
11 be claimed over a certain period; providing that certain unused credits may be
12 carried forward to certain taxable years; repealing certain provisions providing
13 for the recapture of the credit under certain circumstances; requiring certain
14 persons to submit certain documentation, notices, and tax returns to the
15 Department of Business and Economic Development to remain eligible to claim
16 the credit; providing for the forfeiture of certain unclaimed credit under certain
17 circumstances; requiring certain regulations to provide for allocation of certain
18 available credit under certain circumstances; and generally relating to a certain
19 tax credit for certain investments in certain technology businesses in the State.

20 BY repealing and reenacting, with amendments,
21 Article – Tax – General
22 Section 10–725(b), (d), and (i)
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing
 2 Article – Tax – General
 3 Section 10–725(f)
 4 Annotated Code of Maryland
 5 (2004 Replacement Volume and 2006 Supplement)

6 BY adding to
 7 Article – Tax – General
 8 Section 10–725(f)
 9 Annotated Code of Maryland
 10 (2004 Replacement Volume and 2006 Supplement)

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

13 **Article – Tax – General**

14 10–725.

15 (b) (1) Subject to **PARAGRAPH (2) OF THIS SUBSECTION AND**
 16 subsections (d) and (e) of this section, a qualified investor or a qualified Maryland
 17 venture capital firm may claim a credit against the State income tax in an amount
 18 equal to the final credit certificate approved by the Secretary for an investment in a
 19 qualified Maryland biotechnology company as provided under this section.

20 (2) **TO BE ELIGIBLE FOR THE TAX CREDIT DESCRIBED IN**
 21 **PARAGRAPH (1) OF THIS SUBSECTION, THE PROSPECTIVE INVESTOR MAY NOT:**

22 (I) **AFTER MAKING THE PROPOSED INVESTMENT, OWN OR**
 23 **CONTROL MORE THAN 20% OF THE QUALIFIED MARYLAND BIOTECHNOLOGY**
 24 **COMPANY INTO WHICH THE INVESTMENT IS TO BE MADE; OR**

25 (II) **BE A FOUNDER, PRINCIPAL, DIRECTOR, OFFICER,**
 26 **MEMBER OF, OR GENERAL PARTNER IN, THE QUALIFIED MARYLAND**
 27 **BIOTECHNOLOGY COMPANY.**

28 (d) (1) The tax credit allowed in an initial tax credit certificate issued
 29 under this section is 50% of the investment in a qualified Maryland biotechnology
 30 company, not to exceed:

1 (i) **[\$50,000] 10% OF THE TOTAL APPROPRIATIONS TO THE**
2 **RESERVE FUND FOR THAT FISCAL YEAR,** for a qualified investor that is an
3 individual;

4 (ii) **[\$250,000] 20% OF THE TOTAL APPROPRIATIONS TO THE**
5 **RESERVE FUND FOR THAT FISCAL YEAR,** for a qualified investor that is a
6 corporation; or

7 (iii) **[\$250,000] 20% OF THE TOTAL APPROPRIATIONS TO THE**
8 **RESERVE FUND FOR THAT FISCAL YEAR,** for a qualified Maryland venture capital
9 firm.

10 (2) [If the tax credit allowed under this section in any taxable year
11 exceeds the total tax otherwise payable by the qualified investor or qualified Maryland
12 venture capital firm for that taxable year, the qualified investor or qualified Maryland
13 venture capital firm may claim a refund in the amount of the excess] **DURING ANY**
14 **FISCAL YEAR, THE SECRETARY MAY NOT CERTIFY ELIGIBILITY FOR TAX**
15 **CREDITS FOR INVESTMENTS IN A SINGLE QUALIFIED MARYLAND**
16 **BIOTECHNOLOGY COMPANY THAT IN THE AGGREGATE EXCEED THE LESSER OF:**

17 (I) **\$2,000,000; OR**

18 (II) **20% OF THE TOTAL APPROPRIATIONS TO THE RESERVE**
19 **FUND FOR THAT FISCAL YEAR.**

20 (3) **THE TAX CREDIT MAY BE CLAIMED:**

21 (I) **AT THE RATE OF ONE-THIRD OF THE TOTAL AMOUNT OF**
22 **THE TAX CREDIT PER TAXABLE YEAR;**

23 (II) **FOR A PERIOD OF 3 YEARS; AND**

24 (III) **BEGINNING IN THE THIRD TAXABLE YEAR AFTER THE**
25 **TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.**

26 (4) **IF THE TAX CREDIT ALLOWED FOR ANY TAXABLE YEAR**
27 **EXCEEDS THE TOTAL TAX OTHERWISE DUE FROM THE QUALIFIED INVESTOR OR**
28 **QUALIFIED MARYLAND VENTURE CAPITAL FIRM FOR THAT TAXABLE YEAR, THE**
29 **QUALIFIED INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM MAY**

1 **APPLY THE EXCESS AS A TAX CREDIT FOR SUCCEEDING TAXABLE YEARS UNTIL**
2 **THE EARLIER OF:**

3 (I) **THE FULL AMOUNT OF THE EXCESS TAX CREDIT BEING**
4 **USED; OR**

5 (II) **THE EXPIRATION OF THE EIGHTH TAXABLE YEAR AFTER**
6 **THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.**

7 [(f) (1) The credit claimed under this section shall be recaptured as
8 provided in paragraph (2) of this subsection if, within 2 years from the close of the
9 taxable year in which the credit is approved, the qualified investor sells, transfers, or
10 otherwise disposes of the ownership interest in the qualified Maryland biotechnology
11 company that gave rise to the credit.

12 (2) The amount required to be recaptured under this subsection is the
13 product of multiplying:

14 (i) the portion of the credit attributable to the ownership
15 interest disposed of as described in paragraph (1) of this subsection; and

16 (ii) 1. 100%, if the disposition occurs during the taxable year
17 in which the tax credit is approved;

18 2. 67%, if the disposition occurs during the first year
19 after the close of the taxable year for which the tax credit is approved; or

20 3. 33%, if the disposition occurs more than 1 year but
21 not more than 2 years after the close of the taxable year for which the tax credit is
22 approved.

23 (3) The qualified investor or a qualified Maryland venture capital firm
24 that claimed the credit shall pay the amount to be recaptured as determined under
25 paragraph (2) of this subsection as taxes payable to the State for the taxable year in
26 which the disposition described under paragraph (1) of this subsection occurs.]

27 (F) (1) **TO REMAIN ELIGIBLE TO CLAIM THE TAX CREDIT, THE**
28 **QUALIFIED INVESTOR OR A QUALIFIED MARYLAND VENTURE CAPITAL FIRM**
29 **MUST SUBMIT TO THE DEPARTMENT, UNTIL THE TAXABLE YEAR AFTER THE**
30 **ENTIRE AMOUNT OF THE CREDIT THAT IS ELIGIBLE TO BE CLAIMED HAS BEEN**
31 **CLAIMED:**

1 **(I) BEGINNING IN THE TAXABLE YEAR IN WHICH THE**
2 **INVESTMENT IS MADE, ANNUAL DOCUMENTATION SATISFACTORY TO THE**
3 **DEPARTMENT THAT THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY IS**
4 **STILL OPERATING AS AN ACTIVE BUSINESS, TO BE RECEIVED BY THE**
5 **DEPARTMENT ON OR BEFORE JUNE 30 OF EACH YEAR;**

6 **(II) IMMEDIATE NOTICE OF ANY INFORMATION RECEIVED**
7 **BY THE QUALIFIED INVESTOR OR THE QUALIFIED MARYLAND VENTURE**
8 **CAPITAL FIRM INDICATING THAT THE QUALIFIED MARYLAND BIOTECHNOLOGY**
9 **COMPANY HAS CEASED OPERATING AS AN ACTIVE BUSINESS; AND**

10 **(III) A COPY OF ANY TAX RETURN ON WHICH ANY PORTION**
11 **OF THE TAX CREDIT IS CLAIMED.**

12 **(2) IF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY**
13 **CEASES OPERATING AS AN ACTIVE BUSINESS, THE QUALIFIED INVESTOR OR THE**
14 **QUALIFIED MARYLAND VENTURE CAPITAL FIRM SHALL FORFEIT ALL**
15 **UNCLAIMED PORTIONS OF THE TAX CREDIT.**

16 (i) **(1)** The Department and the Comptroller jointly shall adopt
17 regulations to carry out the provisions of this section.

18 **(2) THE REGULATIONS SHALL PROVIDE FOR A PROCESS TO**
19 **ALLOCATE THE AVAILABLE TAX CREDIT IN A FISCAL YEAR WHEN:**

20 **(I) QUALIFIED INVESTORS AND QUALIFIED MARYLAND**
21 **VENTURE CAPITAL FIRMS WHO APPLY AT THE SAME TIME, FOR EXAMPLE IN A**
22 **SYNDICATION, AND ARE TOGETHER ELIGIBLE FOR AN AMOUNT OF TAX CREDIT**
23 **THAT EXCEEDS THE AMOUNT OF THE APPROPRIATIONS TO THE RESERVE FUND**
24 **FOR THAT FISCAL YEAR; AND**

25 **(II) TAX CREDITS BECOME AVAILABLE BECAUSE AN**
26 **APPLICANT IS NO LONGER ELIGIBLE FOR THE CREDITS FOR WHICH THE**
27 **APPLICANT WAS CERTIFIED.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 July 1, 2007.