

HOUSE BILL 1007

Q7, C8

7lr1991

By: **Delegate Feldman**

Introduced and read first time: February 9, 2007

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Biotechnology Investment Tax Credits**

3 FOR the purpose of authorizing certain investors and venture capital firms to claim a
4 certain tax credit against the State premium tax in a certain manner;
5 authorizing certain venture capital firms to allocate certain tax credits to
6 certain persons in a certain manner; requiring the Department of Business and
7 Economic Development to issue and send a certain certificate to certain
8 investors or venture capital firms; altering the limits on the maximum tax
9 credit that may be claimed; making certain excess credits refundable under
10 certain circumstances; making certain excess credits eligible for use in any
11 future taxable year; prohibiting certain insurers from being required to pay any
12 additional retaliatory tax under certain circumstances; prohibiting certain
13 insurers from being required to reduce the amount of premium tax liability
14 under certain circumstances; altering the definition of investment to mean the
15 contribution of cash, as opposed to property, in exchange for certain ownership
16 interests and to include the issuance of a certain debt instrument; altering the
17 definition of qualified investor to exclude certain persons; making certain
18 technical changes; and generally relating to credits against certain State taxes
19 based on certain investments in certain biotechnology companies.

20 BY adding to

21 Article – Insurance

22 Section 6–122

23 Annotated Code of Maryland

24 (2003 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

8 **Article – Insurance**

9 **6–122.**

10 (A) AN INSURER MAY CLAIM A CREDIT AGAINST THE PREMIUM TAX FOR
11 AN INVESTMENT IN A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY AS
12 PROVIDED UNDER § 10–725 OF THE TAX – GENERAL ARTICLE.

13 (B) AN INSURER MAY NOT BE REQUIRED TO REDUCE THE AMOUNT OF
14 PREMIUM TAX LIABILITY INCLUDED BY THE INSURER IN CONNECTION WITH
15 RATEMAKING FOR ANY INSURANCE CONTRACT WRITTEN IN MARYLAND
16 BECAUSE OF A REDUCTION IN THE INSURER’S TAX LIABILITY BASED ON THE TAX
17 CREDIT ALLOWED UNDER § 10–725 OF THE TAX – GENERAL ARTICLE.

18 **Article – Tax – General**

19 10–725.

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

21 (2) “Biotechnology company” means a company organized for profit
22 that is primarily engaged in the research, development, or commercialization of
23 innovative and proprietary technology that comprises, interacts with, or analyzes
24 biological material including biomolecules (DNA, RNA, or protein), cells, tissues, or
25 organs.

26 (3) “Department” means the Department of Business and Economic
27 Development.

28 (4) (i) “Investment” means:

1 **1.** the contribution of [property] **CASH**, at a risk of loss,
2 to a qualified **MARYLAND BIOTECHNOLOGY** company in exchange for stock, a
3 partnership interest, or other ownership interest in the qualified **MARYLAND**
4 **BIOTECHNOLOGY** company; **OR**

5 **2.** **THE ISSUANCE OF A DEBT INSTRUMENT BY A**
6 **QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY THAT IS CONVERTIBLE INTO**
7 **STOCK, A PARTNERSHIP INTEREST, OR OTHER OWNERSHIP INTEREST IN THE**
8 **QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY.**

9 (ii) For purposes of this section, an investment is at risk of loss
10 when its repayment entirely depends upon the success of the business operations of
11 the qualified company.

12 (5) **(I)** “Qualified investor” means an investor that is:

13 [(i)] **1.** an individual that invests at least \$25,000 in a
14 qualified Maryland biotechnology company; or

15 [(ii)] **2.** a corporation that invests at least \$250,000 in a
16 qualified Maryland biotechnology company.

17 **(II) “QUALIFIED INVESTOR” DOES NOT INCLUDE:**

18 **1.** **A PERSON, OFFICER, DIRECTOR, MANAGER, OR**
19 **GENERAL PARTNER OF A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY;**
20 **OR**

21 **2.** **A PERSON THAT OWNS MORE THAN 25% OF THE**
22 **QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY PRIOR TO THE ISSUANCE OF**
23 **A TAX CREDIT CERTIFICATE TO THAT COMPANY IN ACCORDANCE WITH**
24 **SUBSECTION (C) OF THIS SECTION.**

25 (6) “Qualified Maryland biotechnology company” means a
26 biotechnology company that:

27 (i) has its headquarters and base of operations in this State;

28 (ii) has fewer than 50 full-time employees;

29 (iii) has been in active business no longer than 10 years; and

(iv) has been certified as a biotechnology company by the Department.

(7) “Qualified Maryland venture capital firm” OR “FIRM” means an entity that:

(i) is organized for the purpose of investing funds in privately held companies engaged in the research, development, or commercialization of innovative and proprietary technology;

(ii) has at least two principals that each have at least 5 years of [venture capital] experience **MANAGING VENTURE CAPITAL INVESTMENTS MADE WITH MONEY RAISED FROM INVESTORS NOT AFFILIATED WITH THOSE PRINCIPALS;**

(iii) has at least 1 year of experience investing in biotechnology or biopharmaceutical companies; and

(iv) has its principal place of operations in this State.

(b) **(1)** Subject to **PARAGRAPHS (2) AND (3) OF THIS SUBSECTION AND** subsections (d) and (e) of this section, a qualified investor or a qualified Maryland venture capital firm may claim a **TAX** credit [against the State income tax] in an amount equal to the final credit certificate approved by the Secretary for an investment in a qualified Maryland biotechnology company as provided under this section.

(2) THE TAX CREDITS AUTHORIZED BY THIS SUBSECTION ARE EARNED AND VESTED AT THE TIME OF THE INVESTMENT INTO THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY BY A QUALIFIED INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM.

(3) IF A QUALIFIED MARYLAND VENTURE CAPITAL FIRM IS A PARTNERSHIP OR LIMITED LIABILITY COMPANY, ANY CREDITS THAT MAY BE CLAIMED BY THE QUALIFIED MARYLAND VENTURE CAPITAL FIRM UNDER THIS SUBSECTION MAY BE ALLOCATED TO THE PARTNERS OR MEMBERS OF THE FIRM IN ACCORDANCE WITH THE ORGANIZATIONAL DOCUMENTS OF THAT FIRM AND CLAIMED DIRECTLY BY THE PARTNERS OR MEMBERS OF THE FIRM.

1 (c) (1) At least 30 days prior to making an investment in a qualified
2 Maryland biotechnology company for which a qualified investor or qualified Maryland
3 venture capital firm would be eligible for an initial tax credit certificate under
4 subsection (b) of this section, the qualified investor or qualified Maryland venture
5 capital firm shall submit an application to the Department.

6 (2) The Department shall:

7 (i) approve all applications that qualify for credits under this
8 section on a first come first served basis; and

9 (ii) within 30 days of receipt of an application, certify the
10 amount of any approved tax credits to a qualified investor or qualified Maryland
11 venture capital firm.

12 (3) (i) After the Department has issued an initial tax credit
13 certificate under this section, a qualified investor or qualified Maryland venture
14 capital firm shall have 30 days to make an investment in a qualified Maryland
15 biotechnology company under this section.

16 (ii) Within 10 days of making an investment in a qualified
17 Maryland biotechnology company, a qualified investor or qualified Maryland venture
18 capital firm shall provide notice to the Department.

19 **(III) ON RECEIPT OF NOTICE UNDER SUBPARAGRAPH (II) OF**
20 **THIS PARAGRAPH, THE DEPARTMENT SHALL ISSUE AND SEND A FINAL TAX**
21 **CREDIT CERTIFICATE CERTIFYING THE AMOUNT OF THE APPROVED TAX CREDIT**
22 **TO THE APPLICABLE QUALIFIED INVESTOR OR QUALIFIED MARYLAND VENTURE**
23 **CAPITAL FIRM.**

24 [(iii)] **(IV)** If a qualified investor or qualified Maryland venture
25 capital firm does not provide the notice required in subparagraph (ii) of this paragraph
26 within 30 days after the issuance of an initial tax credit certificate under this section,
27 the Department shall rescind the certificate.

28 (d) (1) **[The] SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS**
29 **SUBPARAGRAPH, THE** tax credit allowed in an initial tax credit certificate issued
30 under this section is 50% of the investment in a qualified Maryland biotechnology
31 company[,].

1 (2) **THE MAXIMUM TAX CREDITS ALLOWED WITH RESPECT TO**
2 **INVESTMENTS IN A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY MAY** not
3 **[to] exceed:**

4 (I) **\$2,000,000 IN THE AGGREGATE; OR**

5 [(i)] (II) **1. \$50,000 for a qualified investor that is an**
6 **individual;**

7 [(ii)] **2. \$250,000 for a qualified investor that is a corporation;**
8 **or**

9 [(iii)] **3. [\$250,000] \$1,000,000 for a qualified Maryland**
10 **venture capital firm.**

11 [(2)] **(3) (I) If the tax credit allowed under this section [in any**
12 **taxable year] FOR INVESTMENTS MADE PRIOR TO JANUARY 1, 2007, exceeds the**
13 **total tax otherwise payable by the qualified investor or qualified Maryland venture**
14 **capital firm for [that] THE taxable year IN WHICH THE INVESTMENT WAS MADE, the**
15 **qualified investor or qualified Maryland venture capital firm may claim a refund in**
16 **the amount of the excess.**

17 (II) **IF THE TAX CREDIT ALLOWED UNDER THIS SECTION**
18 **FOR INVESTMENTS MADE ON OR AFTER JANUARY 1, 2007, EXCEEDS THE TOTAL**
19 **TAX OTHERWISE PAYABLE BY THE QUALIFIED INVESTOR OR QUALIFIED**
20 **MARYLAND VENTURE CAPITAL FIRM, FOR THE TAXABLE YEAR IN WHICH THE**
21 **INVESTMENT WAS MADE, THE QUALIFIED INVESTOR OR QUALIFIED MARYLAND**
22 **VENTURE CAPITAL FIRM, MAY CARRY FORWARD THE EXCESS TAX CREDITS FOR**
23 **USE IN ANY FUTURE TAXABLE YEAR.**

24 (III) **A TAX CREDIT ALLOWED UNDER THIS SECTION FOR A**
25 **QUALIFIED MARYLAND VENTURE CAPITAL FIRM MAY BE ALLOCATED AMONG**
26 **THE PARTNERS OR MEMBERS OF THE FIRM IN ACCORDANCE WITH SUBSECTION**
27 **(B)(3) OF THIS SECTION.**

28 (e) (1) In this subsection, "Reserve Fund" means the Maryland
29 Biotechnology Investment Tax Credit Reserve Fund established under paragraph (2)
30 of this subsection.

1 (2) (i) There is a Biotechnology Investment Tax Credit Reserve
2 Fund which is a special continuing, nonlapsing fund that is not subject to § 7-302 of
3 the State Finance and Procurement Article.

4 (ii) The money in the Fund shall be invested and reinvested by
5 the Treasurer, and interest and earnings shall be credited to the General Fund.

6 (3) (i) Subject to the provisions of this subsection, the Secretary
7 shall issue an initial tax credit certificate for each approved investment in a qualified
8 Maryland biotechnology company eligible for a tax credit.

9 (ii) An initial tax credit certificate issued under this subsection
10 shall state the maximum amount of tax credit for which the qualified investor or
11 qualified Maryland venture capital firm is eligible.

12 (iii) 1. Except as otherwise provided in this subparagraph,
13 for any fiscal year, the Secretary may not issue initial tax credit certificates for credit
14 amounts in the aggregate totaling more than the amount appropriated to the Reserve
15 Fund for that fiscal year in the State budget as approved by the General Assembly.

16 2. If the aggregate credit amounts under initial tax
17 credit certificates issued in a fiscal year total less than the amount appropriated to the
18 Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve
19 Fund and may be issued under initial tax credit certificates for the next fiscal year.

20 3. For any fiscal year, if funds are transferred from the
21 Reserve Fund under the authority of any provision of law other than under paragraph
22 (4) of this subsection, the maximum credit amounts in the aggregate for which the
23 Secretary may issue initial tax credit certificates shall be reduced by the amount
24 transferred.

25 (iv) For each fiscal year, the Governor shall include in the
26 budget bill an appropriation to the Reserve Fund.

27 (v) Notwithstanding the provisions of § 7-213 of the State
28 Finance and Procurement Article, the Governor may not reduce an appropriation to
29 the Reserve Fund in the State budget as approved by the General Assembly.

30 (vi) Based on the actual amount of an investment made by a
31 qualified investor or a qualified Maryland venture capital firm, the Secretary shall
32 issue a final tax credit certificate to the qualified investor or qualified Maryland
33 venture capital firm.

1 (vii) A qualified investor or a qualified Maryland venture capital
2 firm may redeem a final tax credit certificate for a taxable year beginning after
3 December 31, 2006.

4 (4) (i) Except as provided in this paragraph, money appropriated to
5 the Reserve Fund shall remain in the Fund.

6 (ii) 1. Within 15 days after the end of each calendar quarter,
7 the Department shall notify the Comptroller as to each final credit certificate issued
8 during the quarter:

9 A. the maximum credit amount stated in the initial tax
10 credit certificate for the investment; and

11 B. the final certified credit amount for the investment.

12 2. On notification that an investment has been certified,
13 the Comptroller shall transfer an amount equal to the credit amount stated in the
14 initial tax credit certificate for the investment from the Reserve Fund to the General
15 Fund.

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

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

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

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

27 2. 67%, if the disposition occurs during the first year
28 after the close of the taxable year for which the tax credit is approved; or

29 3. 33%, if the disposition occurs more than 1 year but
30 not more than 2 years after the close of the taxable year for which the tax credit is
31 approved.

1 (3) The qualified investor or a qualified Maryland venture capital
2 firm, **OR IF APPLICABLE THE FIRM'S PARTNERS OR MEMBERS**, that claimed the
3 credit shall pay the amount to be recaptured as determined under paragraph (2) of
4 this subsection as taxes payable to the State for the taxable year in which the
5 disposition described under paragraph (1) of this subsection occurs.

6 (g) (1) The Department may revoke its certification of an approved credit
7 under this section if any representation in connection with the application for the
8 certification proves to have been false when made.

9 (2) The revocation may be in full or in part as the Department may
10 determine and, subject to paragraph (3) of this subsection, shall be communicated to
11 the qualified investor, the qualified Maryland venture capital firm, and the
12 Comptroller.

13 (3) The qualified investor or a qualified Maryland venture capital firm
14 shall have an opportunity to appeal any revocation to the Department prior to
15 notification of the Comptroller.

16 (4) The Comptroller may make an assessment against the qualified
17 investor or a qualified Maryland venture capital firm to recapture any amount of tax
18 credit that the qualified investor or a qualified Maryland venture capital firm has
19 already claimed.

20 (h) (1) On or before January 10 of each year, the Department shall report
21 to the Governor and, subject to § 2-1246 of the State Government Article, to the
22 General Assembly, on the initial tax credit certificates awarded under this section for
23 the prior calendar year.

24 (2) The report required under paragraph (1) of this subsection shall
25 include for each initial tax credit certificate awarded:

26 (i) the name of the qualified investor or the name of the
27 qualified Maryland venture capital firm and the amount of credit awarded or allocated
28 to each investor or firm;

29 (ii) the name and address of the qualified Maryland
30 biotechnology company that received the investment giving rise to the credit under
31 this section and the county where the qualified Maryland biotechnology company is
32 located; and

1 (iii) the dates of receipt and approval by the Department of all
2 applications for initial tax credit certificates.

3 (3) The report required under paragraph (1) of this subsection shall
4 summarize for the category of qualified investors and qualified Maryland venture
5 capital firms:

6 (i) the total number of applicants for initial tax credit
7 certificates under this section in each calendar year;

8 (ii) the number of applications for which initial tax credit
9 certificates were issued in each calendar year; and

10 (iii) the total initial tax credit certificates authorized under this
11 section for all calendar years under this section.

12 **(I) AN INSURER CLAIMING A CREDIT UNDER THIS SECTION MAY NOT BE**
13 **REQUIRED TO PAY ANY ADDITIONAL TAX IMPOSED UNDER SUBTITLE 3 OF THIS**
14 **TITLE AS A RESULT OF CLAIMING THAT TAX CREDIT.**

15 **(J) AN INSURER MAY NOT BE REQUIRED TO REDUCE THE AMOUNT OF**
16 **PREMIUM TAX LIABILITY INCLUDED BY THE INSURER IN CONNECTION WITH**
17 **RATEMAKING FOR ANY INSURANCE CONTRACT WRITTEN IN MARYLAND**
18 **BECAUSE OF A REDUCTION IN THE INSURER'S TAX LIABILITY BASED ON THE TAX**
19 **CREDIT ALLOWED UNDER THIS SECTION.**

20 **[(i)] (K)** The Department and the Comptroller jointly shall adopt
21 regulations to carry out the provisions of this section.

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