

HOUSE BILL 1197

C8

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By: **Chair, Ways and Means Committee (By Request - Departmental - Business and Economic Development)**

Introduced and read first time: February 21, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development - Maryland Research and**
3 **Development Tax Credit**

4 FOR the purpose of providing for the continuation of the Maryland research and
5 development tax credit if a certain federal credit is repealed or terminates; and
6 generally relating to the Maryland research and development tax credit.

7 BY repealing and reenacting, with amendments,
8 Article - Tax - General
9 Section 10-721
10 Annotated Code of Maryland
11 (2004 Replacement Volume and 2006 Supplement)

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

14 **Article - Tax - General**

15 10-721.

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

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

33 (4) (i) For any calendar year, if the maximum specified under
34 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by all

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

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

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

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

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

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

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

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

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

31 (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 **(H) IF THE PROVISIONS OF § 41 OF THE INTERNAL REVENUE CODE**
25 **GOVERNING THE FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT ARE**
26 **REPEALED OR TERMINATE, THE PROVISIONS OF THIS SECTION CONTINUE TO**
27 **OPERATE AS IF THE PROVISIONS OF § 41 OF THE INTERNAL REVENUE CODE**
28 **REMAIN IN EFFECT, AND THE MARYLAND RESEARCH AND DEVELOPMENT TAX**
29 **CREDIT UNDER THIS SECTION SHALL CONTINUE TO BE AVAILABLE.**

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