

# 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

Re-referred to: Ways and Means, February 26, 2007

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Committee Report: Favorable

House action: Adopted

Read second time: March 21, 2007

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## CHAPTER \_\_\_\_\_

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5 development tax credit if a certain federal credit is repealed or terminates; and  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.

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

4 (3) “Maryland base amount” means the base amount as defined in §  
5 41(c) of the Internal Revenue Code that is attributable to Maryland, determined by:

6 (i) substituting “Maryland qualified research and development  
7 expense” for “qualified research expense”;

8 (ii) substituting “Maryland qualified research and development”  
9 for “qualified research”; and

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

11 1. the percentage that the Maryland qualified research  
12 and development expense for the 4 taxable years immediately preceding the taxable  
13 year in which the expense is incurred is of the gross receipts for those years; or

14 2. for a taxpayer who has fewer than 4 but at least 1  
15 prior taxable year, the percentage as determined under item 1 of this item, determined  
16 using the number of immediately preceding taxable years that the taxpayer has.

17 (4) “Maryland gross receipts” means gross receipts that are reasonably  
18 attributable to the conduct of a trade or business in this State, determined under  
19 methods prescribed by the Comptroller based on standards similar to the standards  
20 under § 10–402 of this title.

21 (5) “Maryland qualified research and development” means qualified  
22 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this  
23 State.

24 (6) “Maryland qualified research and development expenses” means  
25 qualified research expenses as defined in § 41(b) of the Internal Revenue Code  
26 incurred for Maryland qualified research and development.

27 (b) Subject to the limitations of this section, an individual or a corporation  
28 may claim credits against the State income tax in an amount equal to:

1           (1)    3% of the Maryland qualified research and development expenses,  
2 not exceeding the Maryland base amount for the individual or corporation, paid or  
3 incurred by the individual or corporation during the taxable year; and

4           (2)    10% of the amount by which the Maryland qualified research and  
5 development expenses paid or incurred by the individual or corporation during the  
6 taxable year exceed the Maryland base amount for the individual or corporation.

7           (c)    (1)    By September 15 of the calendar year following the end of the  
8 taxable year in which the Maryland qualified research and development expenses  
9 were incurred, an individual or corporation shall submit an application to the  
10 Department for the credits allowed under subsection (b)(1) and (2) of this section.

11           (2)    (i)    Except as provided under paragraph (4) of this subsection,  
12 the total amount of credits approved by the Department under subsection (b)(1) of this  
13 section may not exceed \$3,000,000 for any calendar year.

14                   (ii)   Subject to paragraph (4) of this subsection, if the total  
15 amount of credits applied for by all individuals and corporations under subsection  
16 (b)(1) of this section exceeds the maximum specified under subparagraph (i) of this  
17 paragraph, the Department shall approve a credit under subsection (b)(1) of this  
18 section for each applicant in an amount equal to the product of multiplying the credit  
19 applied for by the applicant times a fraction:

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

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

25           (3)    (i)    Except as provided in paragraph (4) of this subsection, the  
26 total amount of credits approved by the Department under subsection (b)(2) of this  
27 section may not exceed \$3,000,000 for any calendar year.

28                   (ii)   Subject to paragraph (4) of this subsection, if the total  
29 amount of credits applied for by all individuals and corporations under subsection  
30 (b)(2) of this section exceeds the maximum specified under subparagraph (i) of this  
31 paragraph, the Department shall approve a credit under subsection (b)(2) of this  
32 section for each applicant in an amount equal to the product of multiplying the credit  
33 applied for by the applicant times a fraction:

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

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

6                   (4)    (i)     For any calendar year, if the maximum specified under  
7 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by all  
8 individuals and corporations under subsection (b)(1) of this section, the maximum  
9 specified under paragraph (3)(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 (2)(i) of this subsection exceeds the total amount of credits applied for by all  
12 individuals and corporations under subsection (b)(1) of this section.

13                   (ii)    For any calendar year, if the maximum specified under  
14 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all  
15 individuals and corporations under subsection (b)(2) of this section, the maximum  
16 specified under paragraph (2)(i) of this subsection shall be increased for that calendar  
17 year by an amount equal to the amount by which the maximum specified under  
18 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all  
19 individuals and corporations under subsection (b)(2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

14 (ii) pass-through and allocation of the credit in the case of  
15 estates and trusts, partnerships, unincorporated trades or businesses, and S  
16 corporations;

17 (iii) adjustments in the case of acquisitions and dispositions  
18 described in § 41(f)(3) of the Internal Revenue Code; and

19 (iv) determination of the credit in the case of short taxable years.

20 (3) The regulations adopted under paragraph (2) of this subsection  
21 shall be based on principles similar to the principles applicable under § 41 of the  
22 Internal Revenue Code and regulations adopted thereunder.

23 (f) (1) The Department of Business and Economic Development and the  
24 Comptroller jointly shall adopt regulations to prescribe standards for determining  
25 when research or development is considered conducted in the State for purposes of  
26 determining the credit under this section.

27 (2) In adopting regulations under this subsection, the Department and  
28 the Comptroller may consider:

29 (i) the location where services are performed;

1 (ii) the residence or business location of the person or persons  
2 performing services;

3 (iii) the location where supplies used in research and  
4 development are consumed; and

5 (iv) any other factors that the Department determines are  
6 relevant for the determination.

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

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

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

14 (ii) the amount of the credit approved.

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

19 (4) The report required under paragraph (1) of this subsection shall  
20 summarize for the credits approved under subsection (b)(1) of this section and for the  
21 credits approved under subsection (b)(2) of this section:

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

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

26 (iii) the total credits authorized under this section for all  
27 calendar years under this section.

28 **(H) IF THE PROVISIONS OF § 41 OF THE INTERNAL REVENUE CODE**  
29 **GOVERNING THE FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT ARE**  
30 **REPEALED OR TERMINATE, THE PROVISIONS OF THIS SECTION CONTINUE TO**

1 **OPERATE AS IF THE PROVISIONS OF § 41 OF THE INTERNAL REVENUE CODE**  
2 **REMAIN IN EFFECT, AND THE MARYLAND RESEARCH AND DEVELOPMENT TAX**  
3 **CREDIT UNDER THIS SECTION SHALL CONTINUE TO BE AVAILABLE.**

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.