

SENATE BILL 232

Q3
HB 984/06 – W&M

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CF HB 46

By: **Senators Hogan, Astle, Colburn, DeGrange, Della, Dyson, Forehand, Garagiola, Jacobs, Jones, Kasemeyer, Klausmeier, Kramer, Lenett, Madaleno, Middleton, Munson, and Stone**

Introduced and read first time: January 29, 2007

Assigned to: Budget and Taxation

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

28 (1) 3% of the Maryland qualified research and development expenses,
29 not exceeding the Maryland base amount for the individual or corporation, paid or
30 incurred by the individual or corporation during the taxable year; and

1 (2) 10% of the amount by which the Maryland qualified research and
2 development expenses paid or incurred by the individual or corporation during the
3 taxable year exceed the Maryland base amount for the individual or corporation.

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

8 (2) (i) Except as provided under paragraph (4) of this subsection,
9 the total amount of credits approved by the Department under subsection (b)(1) of this
10 section may not exceed [~~\$3,000,000~~] **\$5,000,000** for any calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (i) the location where services are performed;

29 (ii) the residence or business location of the person or persons
30 performing services;

1 (iii) the location where supplies used in research and
2 development are consumed; and

3 (iv) any other factors that the Department determines are
4 relevant for the determination.

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

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

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

12 (ii) the amount of the credit approved.

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

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

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

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

24 (iii) the total credits authorized under this section for all
25 calendar years under this section.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 July 1, 2007, and shall be applicable to all taxable years beginning after December 31,
28 2006.