

CHAPTER 139

(House Bill 140)

AN ACT concerning

Income Tax – Credit for Cellulosic Ethanol Technology Research and Development

FOR the purpose of allowing a credit against the State income tax for certain cellulosic ethanol technology research and development expenses paid or incurred by an individual or corporation; providing for applications to the Department of Business and Economic Development for approval of the credit and certification by the Department to taxpayers of approved credit amounts; limiting the total amount of credits that the Department may approve for any calendar year to a certain amount; requiring the Department to approve a prorated credit for each applicant if the total amount applied for exceeds the maximum that may be approved; providing that certain unused credits may be carried forward to certain taxable years; requiring a certain addition modification if a certain credit is claimed; requiring the Comptroller to adopt certain regulations; requiring the Department and the Comptroller jointly to adopt certain regulations; defining certain terms; providing for the application of this Act; and generally relating to certain credits against the State income tax based on certain expenses paid or incurred for certain cellulosic ethanol technology research and development conducted in the State.

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 10–205(a) and 10–306(a)
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

BY adding to
Article – Tax – General
Section 10–205(j), 10–306(f), and 10–726
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

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

Article – Tax – General

10–205.

(a) In addition to the modification under § 10–204 of this subtitle, the amounts under this section are added to the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

(J) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE AMOUNT OF A CREDIT CLAIMED UNDER § 10–726 OF THIS TITLE FOR RESEARCH AND DEVELOPMENT EXPENSES FOR CELLULOSIC ETHANOL TECHNOLOGY.

10–306.

(a) In addition to the modification under § 10–305 of this subtitle, the amounts under this section are added to the federal taxable income of a corporation to determine Maryland modified income.

(F) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE AMOUNT OF A CREDIT CLAIMED UNDER § 10–726 OF THIS TITLE FOR RESEARCH AND DEVELOPMENT EXPENSES FOR CELLULOSIC ETHANOL TECHNOLOGY.

10–726.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CELLULOSIC ETHANOL TECHNOLOGY” MEANS TECHNOLOGY THAT IS USED TO DEVELOP CELLULOSIC BIOMASS FOR CONVERSION TO ETHANOL FUEL.

(3) “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

(4) “QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES” MEANS EXPENSES PAID OR INCURRED FOR CELLULOSIC ETHANOL TECHNOLOGY RESEARCH AND DEVELOPMENT THAT IS CONDUCTED IN THE STATE.

(B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL OR CORPORATION MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT EQUAL TO 10% OF THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES PAID OR INCURRED BY THE INDIVIDUAL OR CORPORATION DURING THE TAXABLE YEAR.

(C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE PAID OR INCURRED, AN INDIVIDUAL OR CORPORATION SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT FOR THE CREDIT ALLOWED UNDER THIS SECTION.

(2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER THIS SECTION MAY NOT EXCEED ~~\$3,000,000~~ \$250,000 FOR ANY CALENDAR YEAR.

(II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL INDIVIDUALS AND CORPORATIONS UNDER THIS SECTION EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS SECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL CREDITS APPLIED FOR BY ALL APPLICANTS IN THE CALENDAR YEAR.

(3) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE END OF THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE PAID OR INCURRED, THE DEPARTMENT SHALL CERTIFY TO THE INDIVIDUAL OR CORPORATION THE AMOUNT OF THE RESEARCH AND DEVELOPMENT TAX CREDIT APPROVED BY THE DEPARTMENT FOR THE INDIVIDUAL OR CORPORATION UNDER THIS SECTION.

(4) TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS SECTION, AN INDIVIDUAL OR CORPORATION SHALL:

(I) FILE AN AMENDED INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE PAID OR INCURRED; AND

(II) ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF THE APPROVED CREDIT AMOUNT TO THE AMENDED INCOME TAX RETURN.

(D) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, AN

INDIVIDUAL OR CORPORATION MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME TAX FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

(1) THE FULL AMOUNT OF THE EXCESS IS USED; OR

(2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE YEAR IN WHICH THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES WERE PAID OR INCURRED.

(E) (1) IN DETERMINING THE AMOUNT OF THE CREDIT UNDER THIS SECTION:

(I) ALL MEMBERS OF THE SAME CONTROLLED GROUP OF CORPORATIONS, AS DEFINED UNDER § 41(F) OF THE INTERNAL REVENUE CODE, SHALL BE TREATED AS A SINGLE TAXPAYER; AND

(II) THE CREDIT ALLOWABLE BY THIS SECTION TO EACH MEMBER SHALL BE ITS PROPORTIONATE SHARE OF THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES GIVING RISE TO THE CREDIT.

(2) THE COMPTROLLER SHALL ADOPT REGULATIONS PROVIDING FOR:

(I) DETERMINATION OF THE AMOUNT OF THE CREDIT UNDER THIS SECTION IN THE CASE OF TRADES OR BUSINESSES, WHETHER OR NOT INCORPORATED, THAT ARE UNDER COMMON CONTROL;

(II) PASS-THROUGH AND ALLOCATION OF THE CREDIT IN THE CASE OF ESTATES AND TRUSTS, PARTNERSHIPS, UNINCORPORATED TRADES OR BUSINESSES, AND S CORPORATIONS;

(III) ADJUSTMENTS IN THE CASE OF ACQUISITIONS AND DISPOSITIONS DESCRIBED IN § 41(F)(3) OF THE INTERNAL REVENUE CODE; AND

(IV) DETERMINATION OF THE CREDIT IN THE CASE OF SHORT TAXABLE YEARS.

(F) (1) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT REGULATIONS TO PRESCRIBE STANDARDS FOR DETERMINING WHEN

RESEARCH OR DEVELOPMENT IS CONSIDERED CONDUCTED IN THE STATE FOR PURPOSES OF DETERMINING THE CREDIT UNDER THIS SECTION.

(2) IN ADOPTING REGULATIONS UNDER THIS SUBSECTION, THE DEPARTMENT AND THE COMPTROLLER MAY CONSIDER:

(I) THE LOCATION WHERE SERVICES ARE PERFORMED;

(II) THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR PERSONS PERFORMING SERVICES;

(III) THE LOCATION WHERE SUPPLIES USED IN RESEARCH AND DEVELOPMENT ARE CONSUMED; AND

(IV) ANY OTHER FACTORS THAT THE DEPARTMENT DETERMINES ARE RELEVANT FOR THE DETERMINATION.

(G) THE CREDIT UNDER THIS SECTION DOES NOT APPLY TO ANY QUALIFIED RESEARCH AND DEVELOPMENT EXPENSES PAID OR INCURRED AFTER DECEMBER 31, 2016.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008, and shall be applicable to all taxable years beginning after December 31, 2007.

Approved by the Governor, April 24, 2008.