HB 723

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 723 (Chair, Ways and Means Committee) (By Request – Departmental – Business and Economic Development)

Ways and Means Budget and Taxation

Business and Economic Development - Biotechnology Investment Incentive Act

This departmental bill makes several changes to the existing biotechnology investment tax credit program related to eligibility, the maximum value of the credit, procedures for claiming the credit, and administration.

The bill takes effect July 1, 2008 and applies to tax year 2009 and beyond.

Fiscal Summary

State Effect: None. Altering the procedures and qualifications of the credit is not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: The Department of Business and Economic Development has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill makes several changes to the existing biotechnology investment tax credit as described below:

Alters Eligibility Standards

To be eligible, an applicant cannot, after making an investment in a biotechnology company, own more than 25% of the biotechnology company.

The bill limits qualifying investments to cash or cash equivalents, and must be an at-risk investment in exchange for an ownership interest in the equity of the biotechnology company, title to which must vest in the qualified investor. Investments from specified retirement plans, or fiduciaries or custodians under those plans or similar tax-favored plans would not qualify for the tax credit. Debt does not qualify under the bill as an investment.

Under current law, a qualifying biotechnology company cannot have been in active business longer than 10 years. The bill proposes that a qualifying company can be in existence for up to 12 years if DBED determines the company requires additional time to complete the process of regulatory approval. In addition, the bill specifies that a biotechnology company cannot be a publicly traded company.

A company is defined as any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit and is not a sole proprietorship.

In order to be eligible for the credit, an investor must be: (1) current in all State and local tax obligations; (2) not in default in any State or local contract; and (3) for companies, be in "good standing" with the jurisdiction in which its is organized and with the State and authorized or registered to do business in the State.

Alters How Credits are Claimed and Awarded

Under current law, individuals can claim a maximum credit of $50,000 and corporations and venture capital firms (subject to certain qualifications which the bill eliminates) can claim a maximum credit of $250,000. Individuals are required to invest a minimum of $25,000 and corporations are required to invest a minimum of $250,000. The bill alters these provisions and provides that any entity that is required to file an income tax return in any jurisdiction and invests at least $25,000 in a qualified biotechnology company can claim a credit equal to 50% of the investment, not to exceed $250,000.

DBED may not certify investments in a single biotechnology company that total more than 15% of the total appropriations to the reserve fund for that fiscal year.

Compliance Measures

An investor seeking a tax credit must provide proof to DBED of making the investment. If the investor does not provide this notice within 40 days of the issuance of an initial tax credit certificate, DBED would rescind the certificate. Rescinded credits would revert to the reserve fund and will be available for reallocation in the same fiscal year by DBED.

DBED and the Comptroller's Office are to jointly adopt regulations that specify the criteria and procedures related to the application and approval processes and for monitoring continuing eligibility for the tax credit.

The credit would be subject to recapture if within two years of the tax year when the credit was approved the biotechnology company in which the qualified investment was made ceases to operate as an active business with its headquarters and base of operations in the State.

Current Law: A tax credit against the State income tax is available for individuals, corporations, and venture capital firms that invest in qualified biotechnology firms. The value of the credit is equal to 50% of an eligible investment made in a qualified biotechnology company during the taxable year. The maximum amount of the credit cannot exceed (1) $50,000 for individuals; and (2) $250,000 for corporations and venture capital firms. A taxpayer claiming the credit can claim a refund in the amount by which the credit exceeds the tax liability in the year. Tax credits can be claimed beginning in tax year 2007. The credit can be recaptured by the State if the investor sells the ownership interest in the company within two years of the close of the tax year when the credit was approved. The State can recapture: (1) 100% in the same year; (2) 67% one year after; and (3) 33% from one to two years after.

Background: Chapter 99 of 2005 established the biotechnology investment tax credit program. The Department of Business and Economic Development (DBED) administers the tax credit application, approval, and certification processes and is required to submit a report to the Governor and the General Assembly detailing specified information about the tax credit by January 10 of each year.

An eligible investment is an at-risk investment in exchange for stock or ownership interest. In order to be eligible for the tax credit, an individual must invest at least $25,000 in a qualifying company and a corporation must invest at least $250,000 in a qualifying company. A qualifying company can be either a biotechnology company or a venture capital firm. A qualifying biotechnology company is defined as a for-profit entity that (1) is primarily engaged in the research, development, or commercialization of technology related to biological material; (2) has been in business less than 10 years;

(3) has less than 50 full-time employees; (4) has its headquarters and base principal place of operations in Maryland; and (5) is certified as a biotechnology company by DBED.

A qualifying venture capital firm is (1) organized for the purpose of investing in privately held technology companies; (2) has its principal place of business in Maryland; (3) has at least one year of experience investing in biotech or biopharmaceutical companies; (4) has two principals that each have at least five years of venture capital experience; and (5) has at least one principal that has invested at least $5 million in Maryland biotechnology companies.

The total amount of initial credit certificates issued by DBED in each fiscal year cannot exceed the amount appropriated to the Maryland biotechnology investment tax credit reserve fund in the State budget. The Governor is required to include an appropriation (no specific amount is required) to the reserve fund in each budget bill. The Governor may not reduce an appropriation to the reserve fund that is approved by the General Assembly. For each fiscal year, if funds are transferred from the reserve fund as a result of any law, the amount of total credits that can be approved by DBED is reduced by the amount of money transferred. If funds to the reserve fund are not expended in a fiscal year, any unexpended amount can be used in the next fiscal year.

Within 15 days of the end of each calendar quarter, DBED is required to notify the Comptroller the total number of credits that were certified during the quarter, the total amounts of the maximum credit amount stated in the initial credit certificates, and the total amounts of final certified credit amount. Upon this notification from DBED, the Comptroller is required to transfer from the reserve fund to the general fund the total amounts stated in the final credit certificates that were certified during the calendar quarter.

The proposed fiscal 2009 State budget provides $6 million to the reserve fund, which is how much the program received in each of fiscal 2007 and 2008. In fiscal 2008, DBED awarded initial credit certificates to 203 of 235 applicants. Of the successful applicants, 131 were from Maryland. Investments were made in approximately 20 qualifying biotechnology companies.

State Revenues: The bill makes several changes to the program effective tax year 2009. The bill does not alter the maximum amount of credits that can be claimed or alter the timing of when credits would be claimed. As a result, revenues would not be directly impacted.

The bill alters eligibility standards for corporations, individuals, and venture capital firms and the maximum credits that can be claimed by these entities which could impact the amount of credits that would claimed under the personal income tax relative to corporate income tax. This potential impact cannot be reliably estimated and is expected to be minimal. Any shift would not alter the total cost of the program but would only impact how the loss was distributed between the general fund, Transportation Trust Fund, and Higher Education Investment Fund.

Any impact from other changes to the tax credit program are not expected to impact State revenues.

Additional Information

Prior Introductions: SB 976 of 2007, a similar bill, was not reported from the Senate Budget and Taxation Committee.

Cross File: None.

Information Source(s): Department of Business and Economic Development, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2008
mll/hlb Revised - House Third Reader - March 24, 2008

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