

HOUSE BILL 832

Q3, Q8

9lr0622

By: **Montgomery County Delegation**

Introduced and read first time: February 11, 2009

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Income Tax – Biotechnology Investment Credit**

3 **MC 921-09**

4 FOR the purpose of authorizing Montgomery County to allow, by law, an individual to
5 claim a credit against the county income tax for certain investments in certain
6 qualified Maryland biotechnology companies; requiring the governing body of
7 Montgomery County to specify the qualifications for eligibility, the conditions of
8 certification, and the process of application for the credit and to provide for the
9 amount of the credit; authorizing the county to limit the credit to only
10 investments in companies located in the county; authorizing the county to cap
11 the amount of credits issued for any taxable year; authorizing the county to
12 make the credit refundable; authorizing the county to provide for the recapture
13 of the credit; requiring the county to notify the Comptroller if the credit is
14 authorized; providing for the application of this Act; and generally relating to
15 the authority of Montgomery County to authorize a credit against the county
16 income tax for investments in certain biotechnology companies.

17 BY repealing and reenacting, with amendments,
18 Article – Tax – General
19 Section 10-725
20 Annotated Code of Maryland
21 (2004 Replacement Volume and 2008 Supplement)

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

24 **Article – Tax – General**

25 10-725.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(2) “Biotechnology company” means a company organized for profit that is primarily engaged in the research, development, or commercialization of innovative and proprietary technology that comprises, interacts with, or analyzes biological material including biomolecules (DNA, RNA, or protein), cells, tissues, or organs.

(3) (i) “Company” means any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit.

(ii) “Company” does not include a sole proprietorship.

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

(5) (i) “Investment” means the contribution of money in cash or cash equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland biotechnology company in exchange for stock, a partnership or membership interest, or other ownership interest in the equity of the qualified Maryland biotechnology company, title to which ownership interest shall vest in the qualified investor.

(ii) “Investment” does not include debt.

(iii) For purposes of this section, an investment is at risk of loss when its repayment entirely depends upon the success of the business operations of the qualified company.

(6) (i) “Qualified investor” means any entity that invests at least \$25,000 in a qualified Maryland biotechnology company and that is required to file an income tax return in any jurisdiction.

(ii) “Qualified investor” does not include a qualified pension plan, individual retirement account, or other qualified retirement plan under the Employee Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under such plans, or similar tax-favored plans or entities under the laws of other countries.

(7) (i) “Qualified Maryland biotechnology company” means a biotechnology company that:

1. has its headquarters and base of operations in this State;

2. has fewer than 50 full-time employees;

1 3. except as provided in subparagraph (ii) of this
2 paragraph, has been in active business no longer than 10 years;

3 4. does not have its securities publicly traded on any
4 exchange; and

5 5. has been certified as a biotechnology company by the
6 Department.

7 (ii) “Qualified Maryland biotechnology company” includes a
8 company that has been in active business for up to 12 years if the Department
9 determines that the company requires additional time to complete the process of
10 regulatory approval.

11 (b) (1) Subject to paragraphs (2) and (3) of this subsection and subsections
12 (d) and (e) of this section, a qualified investor may claim a credit against the State
13 income tax in an amount equal to the amount of tax credit stated in the final credit
14 certificate approved by the Secretary for an investment in a qualified Maryland
15 biotechnology company as provided under this section.

16 (2) To be eligible for the tax credit described in paragraph (1) of this
17 subsection, the qualified investor shall be:

18 (i) for a company, duly organized and in good standing in the
19 jurisdiction under the laws under which it is organized;

20 (ii) for a company, in good standing and authorized or registered
21 to do business in the State;

22 (iii) current in the payment of all tax obligations to the State or
23 any unit or subdivision of the State; and

24 (iv) not in default under the terms of any contract with,
25 indebtedness to, or grant from the State or any unit or subdivision of the State.

26 (3) To be eligible for the tax credit described in paragraph (1) of this
27 subsection, the qualified investor may not, after making the proposed investment, own
28 or control more than 25% of the equity interests in the qualified Maryland
29 biotechnology company in which the investment is to be made.

30 (c) (1) At least 30 days prior to making an investment in a qualified
31 Maryland biotechnology company for which a qualified investor would be eligible for
32 an initial tax credit certificate under subsection (b) of this section, the qualified
33 investor shall submit an application to the Department.

34 (2) The application shall evidence that the qualified Maryland
35 biotechnology company is:

1 (i) in good standing;

2 (ii) current in the payment of all tax obligations to the State or
3 any unit or subdivision of the State; and

4 (iii) not in default under the terms of any contract with,
5 indebtedness to, or grant from the State or any unit or subdivision of the State.

6 (3) The Department shall:

7 (i) approve all applications that qualify for credits under this
8 section on a first come first served basis; and

9 (ii) within 30 days of receipt of an application, certify the
10 amount of any approved tax credits to a qualified investor.

11 (4) (i) After the date on which the Department issues an initial tax
12 credit certificate under this section, a qualified investor shall have 30 calendar days to
13 make an investment in a qualified Maryland biotechnology company under this
14 section.

15 (ii) Within 10 calendar days after the date on which a qualified
16 investor makes the investment, the qualified investor shall provide to the Department
17 notice and proof of the making of the investment, including:

18 1. the date of the investment;

19 2. the amount invested;

20 3. proof of the receipt of the invested funds by the
21 qualified Maryland biotechnology company;

22 4. a complete description of the nature of the ownership
23 interest in the equity of the qualified Maryland biotechnology company acquired in
24 consideration of the investment; and

25 5. any reasonable supporting documentation the
26 Department may require.

27 (iii) If a qualified investor does not provide the notice and proof
28 of the making of the investment required in subparagraph (ii) of this paragraph within
29 40 calendar days after the date on which the Department issues an initial tax credit
30 certificate under this section:

31 1. the Department shall rescind the initial tax credit
32 certificate; and

1 2. the credit amount allocated to the rescinded
2 certificate shall revert to the Maryland Biotechnology Investment Tax Credit Reserve
3 Fund and shall be available in the applicable fiscal year for allocation by the
4 Department to other initial tax credit certificates in accordance with the provisions of
5 this section.

6 (d) (1) The tax credit allowed in an initial tax credit certificate issued
7 under this section is 50% of the investment in a qualified Maryland biotechnology
8 company, not to exceed \$250,000.

9 (2) During any fiscal year, the Secretary may not certify eligibility for
10 tax credits for investments in a single qualified Maryland biotechnology company that
11 in the aggregate exceed 15% of the total appropriations to the Maryland Biotechnology
12 Investment Tax Credit Reserve Fund for that fiscal year.

13 (3) If the tax credit allowed under this section in any taxable year
14 exceeds the total tax otherwise payable by the qualified investor for that taxable year,
15 the qualified investor may claim a refund in the amount of the excess.

16 (e) (1) In this subsection, "Reserve Fund" means the Maryland
17 Biotechnology Investment Tax Credit Reserve Fund established under paragraph (2)
18 of this subsection.

19 (2) (i) There is a Biotechnology Investment Tax Credit Reserve
20 Fund which is a special continuing, nonlapsing fund that is not subject to § 7-302 of
21 the State Finance and Procurement Article.

22 (ii) The money in the Fund shall be invested and reinvested by
23 the Treasurer, and interest and earnings shall be credited to the General Fund.

24 (3) (i) Subject to the provisions of this subsection, the Secretary
25 shall issue an initial tax credit certificate for each approved investment in a qualified
26 Maryland biotechnology company eligible for a tax credit.

27 (ii) An initial tax credit certificate issued under this subsection
28 shall state the maximum amount of tax credit for which the qualified investor is
29 eligible.

30 (iii) 1. Except as otherwise provided in this subparagraph,
31 for any fiscal year, the Secretary may not issue initial tax credit certificates for credit
32 amounts in the aggregate totaling more than the amount appropriated to the Reserve
33 Fund for that fiscal year in the State budget as approved by the General Assembly.

34 2. If the aggregate credit amounts under initial tax
35 credit certificates issued in a fiscal year total less than the amount appropriated to the
36 Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve
37 Fund and may be issued under initial tax credit certificates for the next fiscal year.

1 3. For any fiscal year, if funds are transferred from the
2 Reserve Fund under the authority of any provision of law other than under paragraph
3 (4) of this subsection, the maximum credit amounts in the aggregate for which the
4 Secretary may issue initial tax credit certificates shall be reduced by the amount
5 transferred.

6 (iv) For each fiscal year, the Governor shall include in the
7 budget bill an appropriation to the Reserve Fund.

8 (v) Notwithstanding the provisions of § 7-213 of the State
9 Finance and Procurement Article, the Governor may not reduce an appropriation to
10 the Reserve Fund in the State budget as approved by the General Assembly.

11 (vi) Based on the actual amount of an investment made by a
12 qualified investor, the Secretary shall issue a final tax credit certificate to the
13 qualified investor.

14 (vii) A qualified investor may redeem a final tax credit certificate
15 for a taxable year beginning after December 31, 2006.

16 (4) (i) Except as provided in this paragraph, money appropriated to
17 the Reserve Fund shall remain in the Fund.

18 (ii) 1. Within 15 days after the end of each calendar quarter,
19 the Department shall notify the Comptroller as to each final credit certificate issued
20 during the quarter:

21 A. the maximum credit amount stated in the initial tax
22 credit certificate for the investment; and

23 B. the final certified credit amount for the investment.

24 2. On notification that an investment has been certified,
25 the Comptroller shall transfer an amount equal to the credit amount stated in the
26 initial tax credit certificate for the investment from the Reserve Fund to the General
27 Fund.

28 (f) (1) The credit claimed under this section shall be recaptured as
29 provided in paragraph (2) of this subsection if within 2 years from the close of the
30 taxable year in which the credit is approved:

31 (i) the qualified investor sells, transfers, or otherwise disposes
32 of the ownership interest in the qualified Maryland biotechnology company that gave
33 rise to the credit; or

34 (ii) the qualified Maryland biotechnology company that gave
35 rise to the credit ceases operating as an active business with its headquarters and
36 base of operations in the State.

1 (2) The amount required to be recaptured under this subsection is the
2 product of multiplying:

3 (i) the total amount of the credit claimed or, in the case of an
4 event described in paragraph (1)(i) of this subsection, the portion of the credit
5 attributable to the ownership interest disposed of; and

6 (ii) 1. 100%, if the event requiring recapture of the credit
7 occurs during the taxable year in which the tax credit is approved;

8 2. 67%, if the event requiring recapture of the credit
9 occurs during the first year after the close of the taxable year for which the tax credit
10 is approved; or

11 3. 33%, if the event requiring recapture of the credit
12 occurs more than 1 year but not more than 2 years after the close of the taxable year
13 for which the tax credit is approved.

14 (3) The qualified investor that claimed the credit shall pay the amount
15 to be recaptured as determined under paragraph (2) of this subsection as taxes
16 payable to the State for the taxable year in which the event requiring recapture of the
17 credit occurs.

18 (g) (1) The Department may revoke its initial or final certification of an
19 approved credit under this section if any representation in connection with the
20 application for the certification is determined by the Department to have been false
21 when made.

22 (2) The revocation may be in full or in part as the Department may
23 determine and, subject to paragraph (3) of this subsection, shall be communicated to
24 the qualified investor and the Comptroller.

25 (3) The qualified investor shall have an opportunity to appeal any
26 revocation to the Department prior to notification of the Comptroller.

27 (4) The Comptroller may make an assessment against the qualified
28 investor to recapture any amount of tax credit that the qualified investor has already
29 claimed.

30 (h) (1) On or before January 10 of each year, the Department shall report
31 to the Governor and, subject to § 2-1246 of the State Government Article, to the
32 General Assembly, on the initial tax credit certificates awarded under this section for
33 the prior calendar year.

34 (2) The report required under paragraph (1) of this subsection shall
35 include for each initial tax credit certificate awarded:

(i) the name of the qualified investor and the amount of credit awarded or allocated to each investor;

(ii) the name and address of the qualified Maryland biotechnology company that received the investment giving rise to the credit under this section and the county where the qualified Maryland biotechnology company is located; and

(iii) the dates of receipt and approval by the Department of all applications for initial tax credit certificates.

(3) The report required under paragraph (1) of this subsection shall summarize for the category of qualified investors:

(i) the total number of applicants for initial tax credit certificates under this section in each calendar year;

(ii) the number of applications for which initial tax credit certificates were issued in each calendar year; and

(iii) the total initial tax credit certificates authorized under this section for all calendar years under this section.

(i) The Department and the Comptroller jointly shall adopt regulations to carry out the provisions of this section and to specify criteria and procedures for application for, approval of, and monitoring continuing eligibility for the tax credit under this section.

(J) (1) THE GOVERNING BODY OF MONTGOMERY COUNTY MAY, BY LAW, ALLOW AN INDIVIDUAL TO CLAIM A CREDIT AGAINST THE COUNTY INCOME TAX FOR AN INVESTMENT IN A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY AS PROVIDED UNDER THIS SUBSECTION.

(2) IN A LAW THAT AUTHORIZES A CREDIT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE GOVERNING BODY OF MONTGOMERY COUNTY SHALL:

(I) SPECIFY THE QUALIFICATIONS FOR ELIGIBILITY, CONDITIONS OF CERTIFICATION, AND PROCESS FOR APPLICATION FOR THE TAX CREDIT; AND

(II) PROVIDE FOR THE AMOUNT OF THE CREDIT.

(3) THE GOVERNING BODY OF MONTGOMERY COUNTY MAY:

1 (I) LIMIT THE QUALIFYING INVESTMENT FOR WHICH A
2 CREDIT IS ALLOWED UNDER THIS SUBSECTION TO ONLY QUALIFIED MARYLAND
3 BIOTECHNOLOGY COMPANIES LOCATED IN MONTGOMERY COUNTY;

4 (II) LIMIT THE TOTAL AMOUNT OF CREDITS THAT MAY BE
5 AUTHORIZED IN ANY TAXABLE YEAR;

6 (III) ALLOW A REFUND OF THE TAX CREDIT IF IN ANY
7 TAXABLE YEAR THE CREDIT EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE;
8 AND

9 (IV) PROVIDE FOR THE RECAPTURE OF THE CREDIT.

10 (4) THE GOVERNING BODY OF MONTGOMERY COUNTY MAY
11 IMPOSE ANY ADDITIONAL LIMITATIONS NECESSARY TO ADMINISTER THE
12 COUNTY INCOME TAX CREDIT.

13 (5) IF MONTGOMERY COUNTY PROVIDES FOR A CREDIT AGAINST
14 THE COUNTY INCOME TAX UNDER THIS SUBSECTION, ON OR BEFORE JULY 1
15 PRIOR TO THE BEGINNING OF THE FIRST TAXABLE YEAR FOR WHICH IT IS
16 APPLICABLE, THE COUNTY SHALL GIVE THE COMPTROLLER NOTICE OF THE
17 COUNTY CREDIT.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2009, and shall be applicable to all taxable years beginning after December 31,
20 2009.