SB 800

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 800 (Senators King and Jones)
Budget and Taxation Ways and Means

Biotechnology Investment Incentive Tax Credit

This bill clarifies several provisions related to the existing biotechnology investment tax credit program, accelerates applicability of recently enacted changes to the program, and alters the time period in which the credit can be recaptured as provided in current law.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: None. The changes to the tax credit program are not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill alters the biotechnology investment tax credit as follows:

Alters Recapture Provision: Under current law, the credit can be recaptured if specified circumstances occur within two years from the close of the tax year in which the credit was approved. The bill changes the time period when the credit can be recaptured to two years from the close of the tax year for which the credit is claimed.

Qualified Investor: The bill clarifies that a qualified investor includes an individual.

Accelerates Recently Enacted Changes: Chapter 518 of 2008 made several changes to the program, as described below, effective July 1, 2008. These changes would apply in tax year 2009 and beyond. This bill makes the provisions of Chapter 518 effective July 1, 2008 and clarifies the credit can be claimed in the tax year in which a qualifying investment is made.

Current Law: 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.

Chapter 518 of 2008 made several changes to the existing biotechnology investment tax credit, including provisions described below:

Eligibility Standards

Chapter 518 altered the definition of qualified investor to mean any entity that invests at least $25,000 in a qualified company. Chapter 518 limits qualifying investments to cash or cash equivalents. The investment 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 do not qualify for the tax credit. Debt does not qualify as an investment and an applicant cannot, after making an investment in a biotechnology company, own more than 25% of the biotechnology company.

Chapter 518 allowed a qualifying company to be in existence for up to 12 years if DBED determines the company requires additional time to complete the process of regulatory approval. Investments in publicly traded companies do not qualify for the tax credit. 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.

Altered How Credits are Claimed and Awarded

Prior to Chapter 518, individuals could claim a maximum credit of $50,000 and corporations and venture capital firms (subject to certain qualifications which the bill eliminates) could claim a maximum credit of $250,000. Individuals were required to invest a minimum of $25,000 and corporations were required to invest a minimum of $250,000. Chapter 518 altered these provisions and provided 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.

Chapter 518 required DBED and the Comptroller's Office 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.

Chapter 518 also made the credit subject to recapture. The credit will 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.

Chapter 518 of 2008 was effective July 1, 2008 and applied to tax year 2009 and beyond.

Background: In calendar 2008, DBED received a total of 170 tax credit applications. Maryland residents accounted for 70 applications with the remaining 100 from nonresidents. DBED issued a total of $6.3 million in initial credit certificates. Investments were made in a total of 18 companies located in Baltimore City and Baltimore, Frederick, Howard, Montgomery, and Prince George's counties. The proposed State budget includes $6.0 million in funding for the program in fiscal 2010.

State Fiscal Effect: The bill clarifies several provisions related to the tax credit program and alters the applicability of recent changes to the program enacted by Chapter 518 of 2008. DBED advises that it implemented changes to the program for credits awarded in 2008 and under current law, eligible taxpayers will not be able to claim credits until tax year 2009. The bill does not alter the maximum amount of credits that can be claimed in a year. To the extent the bill accelerates when tax credits are claimed revenues will not be materially impacted. This will only accelerate the timing of transfers from the reserve fund that will offset tax credit revenue losses. Altering the time period in which the credit can be recaptured is not expected to significantly impact State revenues.

Additional Information

Prior Introductions: None.

Cross File: HB 493 (Delegate Doory, *et al.*) - Ways and Means.

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

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Analysis by: Robert J. Rehrmann

Direct Inquiries to:
(410) 946-5510
(301) 970-5510