

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1125
Ways and Means

(Delegate Lee, *et al.*)

Income Tax Credit - Nanobiotechnology Investment Incentives

This bill creates a tax credit against the State income tax for individuals and corporations that invest in qualified nanobiotechnology firms. The value of the credit is equal to 50% of an eligible investment made in a qualified biotechnology company during the taxable year, not to exceed \$250,000.

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

Fiscal Summary

State Effect: Potential significant general fund expenditure increase in FY 2010 and beyond. The amount of the expenditure increase depends on the amount of money appropriated to the reserve fund in each year. Based on similar programs, general fund expenditures could increase by \$6.0 million annually beginning in FY 2010. Administrative costs increase by \$95,500 in FY 2010 and by \$83,900 in FY 2014.

Local Effect: Local highway user revenues may decrease minimally beginning in FY 2010 as a result of credits claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A taxpayer claiming the credit can claim a refund in the amount by which the credit exceeds the tax liability in the year. The bill establishes an application and certification procedure and creates a reserve fund to which the Governor may appropriate funds. The amount of credits that the Department of Business and Economic Development (DBED) can award in each fiscal year cannot exceed the amount of money in the fund.

The bill provides for DBED to administer the tax credit application, approval, and certification processes. In addition, DBED and the Comptroller's Office must adopt regulations to implement the bill. DBED 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 defined as an at-risk investment in cash or cash equivalents in exchange for stock or ownership interest. In order to be eligible for the tax credit, an individual or corporation must invest at least \$25,000 in a qualifying company and must be required to file an income tax return in any jurisdiction.

A qualifying biotechnology company is defined as a for-profit entity that (1) is primarily engaged in the application of nanotechnology to the life sciences including research relating to the characterization of nanomaterials for health and environmental safety implications; (2) has been in active business less than 10 years; (3) has less than 50 full-time employees; (4) has its headquarters and base of operations in Maryland; (5) is certified as a biotechnology company by DBED; and (6) is not a publicly traded company. Companies that have been in active business for up to 12 years can qualify if DBED determines that the company requires additional time to complete the process of regulatory approval.

The credit must be recaptured by the State if within two years of the close of the tax year when the credit was approved: (1) the investor sells the ownership interest in the company; or (2) the company in which the qualifying investment was made ceases operating as an active business with its headquarters and base of operations in the State. The State can recapture: (1) 100% in the same year; (2) 67% one year after; and (3) 33% from one to two years after.

The bill creates a Maryland nanobiotechnology investment tax credit reserve fund. The total amount of initial credit certificates issued by DBED in each fiscal year cannot exceed the amount appropriated to the reserve fund in the State budget. The Governor may include an appropriation to the reserve fund in each budget bill. The bill does not require or specify a recommended amount that is to be appropriated to the fund. 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.

The bill requires DBED to approve applications based on the order in which they were received. Individuals or businesses must submit an application to DBED at least 30 days

before making an investment. DBED may not certify investments in a single nanobiotechnology company that total more than 15% of the total appropriations to the reserve fund for that fiscal year. Within 30 days of receiving the application, DBED would issue an initial credit certificate based on the estimated investment in a biotechnology company. The business or investor must invest in the biotechnology company within 30 days after receiving an initial credit certificate and notify DBED of the investment within 10 days of investing in a biotechnology company. DBED would then issue a final credit certificate based on the actual amount of the qualifying investment.

Within 15 days of each calendar quarter, DBED is required to notify the Comptroller of 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.

Tax credits can be claimed beginning in tax year 2009.

Current Law/Background: No State tax credit exists for investments made in nanobiotechnology companies. The criteria of the proposed nanobiotechnology investment tax credit program are very similar to the biotechnology investment tax credit program, which was established by Chapter 99 of 2005 and amended by subsequent legislation. The program received \$6.0 million in funding in fiscal 2009 and the proposed State budget includes \$6.0 million in funding in fiscal 2010.

The nanobiotechnology research and industry development program is structured to encourage joint nanotechnology and biotechnology business development in Maryland. Nanotechnology is the science of manipulating extremely small particles and biotechnology is the science of manipulating organisms. The goal of the program is to develop nano-bio science in specific medical areas such as drug delivery, gene therapy, medical devices and coatings, and other medical areas where nanotechnology has a direct application. The program received \$3.0 million in one-time funding during fiscal 2009. DBED and the Maryland Development Corporation are currently accepting applications for the competitive grant program.

State Expenditures:

Appropriations to the Reserve Fund

The bill provides that the Governor may appropriate funds to the reserve fund in the budget bill. The bill does not require or suggest an amount that should be appropriated.

DBED advises that, based on the biotechnology investment tax credit, the proposed tax credit program will be fully subscribed with as many as 75 to 100 investor applications annually for investments in as many as a dozen qualifying companies. Assuming a fully funded and viable program, State expenditures will increase by \$6.0 million annually beginning in fiscal 2010.

Administrative Expenses

The Comptroller's Office reports that it would incur a one-time expenditure increase of \$37,400 in fiscal 2010 to add the credit to the personal income tax form. This amount includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

In addition, general fund expenditures increase by \$58,100 in fiscal 2010, assuming a 90-day implementation delay, for DBED to hire one additional program administrator to process applications and select credit recipients. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$51,873
Operating expenses	1,958
Start-up Costs	4,295
Total FY 2010 Expenditures	\$58,126

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover and 1% increases in ongoing operating expenses. Future year administration cost at DBED total \$73,000 in fiscal 2011, \$76,500 in fiscal 2012, \$80,100 in fiscal 2013, and \$83,900 in fiscal 2014.

Small Business Effect: Small businesses that meet the bill's requirements and qualify for tax credits will benefit from the bill. To the extent that this tax credit attracts additional investments in the biotechnology industry, qualifying biotechnology companies that are small businesses may benefit under the bill. Many of Maryland's biotech companies and venture capital companies would not be considered small businesses. Small businesses in other industries may be at a competitive disadvantage in attracting investments to the extent that the tax credit causes investments to shift to the biotech industry.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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