

# HOUSE BILL 386

Q3  
HB 943/12 – W&M

3lr2122  
CF SB 203

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By: **Delegates Barve, Branch, Bromwell, Cardin, Hixson, Ivey, Luedtke,  
A. Miller, Mitchell, Serafini, and F. Turner**

Introduced and read first time: January 25, 2013

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credit – Qualified Research and Development Expenses – Credit**  
3 **Amounts and Small Business Refund**

4 FOR the purpose of defining “small business” as it relates to a certain refund in  
5 connection with a certain credit against the State income tax for certain  
6 research and development expenses incurred by an individual or corporation;  
7 altering the total amount of research and development credits that the  
8 Department of Business and Economic Development may approve in a calendar  
9 year; providing that certain unused credits by a small business may be claimed  
10 as a refund; providing for the application of this Act; and generally relating to  
11 certain credits against the State income tax based on certain expenses paid or  
12 incurred for certain research and development conducted in the State.

13 BY repealing and reenacting, with amendments,  
14 Article – Tax – General  
15 Section 10–721  
16 Annotated Code of Maryland  
17 (2010 Replacement Volume and 2012 Supplement)

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

20 **Article – Tax – General**

21 10–721.

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

23 (2) “Department” means the Department of Business and Economic  
24 Development.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) “Maryland base amount” means the base amount as defined in §  
2 41(c) of the Internal Revenue Code that is attributable to Maryland, determined by:

3 (i) substituting “Maryland qualified research and development  
4 expense” for “qualified research expense”;

5 (ii) substituting “Maryland qualified research and development”  
6 for “qualified research”; and

7 (iii) using, instead of the “fixed base percentage”:

8 1. the percentage that the Maryland qualified research  
9 and development expense for the 4 taxable years immediately preceding the taxable  
10 year in which the expense is incurred is of the gross receipts for those years; or

11 2. for a taxpayer who has fewer than 4 but at least 1  
12 prior taxable year, the percentage as determined under item 1 of this item, determined  
13 using the number of immediately preceding taxable years that the taxpayer has.

14 (4) “Maryland gross receipts” means gross receipts that are reasonably  
15 attributable to the conduct of a trade or business in this State, determined under  
16 methods prescribed by the Comptroller based on standards similar to the standards  
17 under § 10–402 of this title.

18 (5) “Maryland qualified research and development” means qualified  
19 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this  
20 State.

21 (6) “Maryland qualified research and development expenses” means  
22 qualified research expenses as defined in § 41(b) of the Internal Revenue Code  
23 incurred for Maryland qualified research and development.

24 **(7) “SMALL BUSINESS” MEANS A FOR–PROFIT CORPORATION,**  
25 **LIMITED LIABILITY COMPANY, PARTNERSHIP, OR SOLE PROPRIETORSHIP WITH**  
26 **NET BOOK VALUE ASSETS TOTALING, AT THE BEGINNING OR THE END OF THE**  
27 **TAXABLE YEAR FOR WHICH MARYLAND QUALIFIED RESEARCH AND**  
28 **DEVELOPMENT EXPENSES ARE INCURRED, AS REPORTED ON THE BALANCE**  
29 **SHEET, LESS THAN \$5,000,000.**

30 (b) Subject to the limitations of this section, an individual or a corporation  
31 may claim credits against the State income tax in an amount equal to:

32 (1) 3% of the Maryland qualified research and development expenses,  
33 not exceeding the Maryland base amount for the individual or corporation, paid or  
34 incurred by the individual or corporation during the taxable year; and

1           (2)    10% of the amount by which the Maryland qualified research and  
2 development expenses paid or incurred by the individual or corporation during the  
3 taxable year exceed the Maryland base amount for the individual or corporation.

4           (c)    (1)    By September 15 of the calendar year following the end of the  
5 taxable year in which the Maryland qualified research and development expenses  
6 were incurred, an individual or corporation shall submit an application to the  
7 Department for the credits allowed under subsection (b)(1) and (2) of this section.

8           (2)    (i)    Except as provided under paragraph (4) of this subsection,  
9 the total amount of credits approved by the Department under subsection (b)(1) of this  
10 section may not exceed [~~\$3,000,000~~] **\$9,000,000** for any calendar year.

11           (ii)   Subject to paragraph (4) of this subsection, if the total  
12 amount of credits applied for by all individuals and corporations under subsection  
13 (b)(1) of this section exceeds the maximum specified under subparagraph (i) of this  
14 paragraph, the Department shall approve a credit under subsection (b)(1) of this  
15 section for each applicant in an amount equal to the product of multiplying the credit  
16 applied for by the applicant times a fraction:

17                           1.    the numerator of which is the maximum specified  
18 under subparagraph (i) of this paragraph; and

19                           2.    the denominator of which is the total of all credits  
20 applied for by all applicants under subsection (b)(1) of this section in the calendar  
21 year.

22           (3)    (i)    Except as provided in paragraph (4) of this subsection, the  
23 total amount of credits approved by the Department under subsection (b)(2) of this  
24 section may not exceed [~~\$3,000,000~~] **\$9,000,000** for any calendar year.

25           (ii)   Subject to paragraph (4) of this subsection, if the total  
26 amount of credits applied for by all individuals and corporations under subsection  
27 (b)(2) of this section exceeds the maximum specified under subparagraph (i) of this  
28 paragraph, the Department shall approve a credit under subsection (b)(2) of this  
29 section for each applicant in an amount equal to the product of multiplying the credit  
30 applied for by the applicant times a fraction:

31                           1.    the numerator of which is the maximum specified  
32 under subparagraph (i) of this paragraph; and

33                           2.    the denominator of which is the total of all credits  
34 applied for by all applicants under subsection (b)(2) of this section in the calendar  
35 year.

1           (4) (i) For any calendar year, if the maximum specified under  
2 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by all  
3 individuals and corporations under subsection (b)(1) of this section, the maximum  
4 specified under paragraph (3)(i) of this subsection shall be increased for that calendar  
5 year by an amount equal to the amount by which the maximum specified under  
6 paragraph (2)(i) of this subsection exceeds the total amount of credits applied for by all  
7 individuals and corporations under subsection (b)(1) of this section.

8           (ii) For any calendar year, if the maximum specified under  
9 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all  
10 individuals and corporations under subsection (b)(2) of this section, the maximum  
11 specified under paragraph (2)(i) of this subsection shall be increased for that calendar  
12 year by an amount equal to the amount by which the maximum specified under  
13 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all  
14 individuals and corporations under subsection (b)(2) of this section.

15           (5) By December 15 of the calendar year following the end of the  
16 taxable year in which the Maryland qualified research and development expenses  
17 were incurred, the Department shall certify to the individual or corporation the  
18 amount of the research and development tax credits approved by the Department for  
19 the individual or corporation under subsection (b)(1) and (2) of this section.

20           (6) To claim the approved credits allowed under this section, an  
21 individual or corporation shall:

22           (i) file an amended income tax return for the taxable year in  
23 which the Maryland qualified research and development expense was incurred; and

24           (ii) attach a copy of the Department's certification of the  
25 approved credit amount to the amended income tax return.

26           (d) **(1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
27 **SUBSECTION, IF** the credit allowed under this section in any taxable year exceeds the  
28 State income tax for that taxable year, an individual or corporation may apply the  
29 excess as a credit against the State income tax for succeeding taxable years until the  
30 earlier of:

31           **[(1)] (I)** the full amount of the excess is used; or

32           **[(2)] (II)** the expiration of the 7th taxable year after the taxable year  
33 in which the Maryland qualified research and development expense was incurred.

34           **(2) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY**  
35 **TAXABLE YEAR EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, A**  
36 **SMALL BUSINESS MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.**

1           (e)   (1)   In determining the amount of the credit under this section:

2                           (i)   all members of the same controlled group of corporations, as  
3 defined under § 41(f) of the Internal Revenue Code, shall be treated as a single  
4 taxpayer; and

5                           (ii)   the credit allowable by this section to each member shall be  
6 its proportionate shares of the qualified research expenses giving rise to the credit.

7           (2)   The Comptroller shall adopt regulations providing for:

8                           (i)   determination of the amount of the credit under this section  
9 in the case of trades or businesses, whether or not incorporated, that are under  
10 common control;

11                          (ii)   pass-through and allocation of the credit in the case of  
12 estates and trusts, partnerships, unincorporated trades or businesses, and S  
13 corporations;

14                          (iii)   adjustments in the case of acquisitions and dispositions  
15 described in § 41(f)(3) of the Internal Revenue Code; and

16                          (iv)   determination of the credit in the case of short taxable years.

17           (3)   The regulations adopted under paragraph (2) of this subsection  
18 shall be based on principles similar to the principles applicable under § 41 of the  
19 Internal Revenue Code and regulations adopted thereunder.

20           (f)   (1)   The Department of Business and Economic Development and the  
21 Comptroller jointly shall adopt regulations to prescribe standards for determining  
22 when research or development is considered conducted in the State for purposes of  
23 determining the credit under this section.

24           (2)   In adopting regulations under this subsection, the Department and  
25 the Comptroller may consider:

26                          (i)   the location where services are performed;

27                          (ii)   the residence or business location of the person or persons  
28 performing services;

29                          (iii)   the location where supplies used in research and  
30 development are consumed; and

31                          (iv)   any other factors that the Department determines are  
32 relevant for the determination.

1 (g) (1) On or before January 10 of each year, the Department shall report  
2 to the Governor and, subject to § 2-1246 of the State Government Article, to the  
3 General Assembly, on the credits approved under this section.

4 (2) The report required under paragraph (1) of this subsection shall  
5 include for each individual or corporation approved to receive a credit under  
6 subsection (b)(1) and (2) of this section in the prior calendar year:

7 (i) the individual's or corporation's name and address; and

8 (ii) the amount of the credit approved.

9 (3) The report required under paragraph (1) of this subsection shall  
10 include the name of the individual or corporation and the aggregate amount of credits  
11 approved in all calendar years for each individual or corporation under subsection  
12 (b)(1) and (2) of this section.

13 (4) The report required under paragraph (1) of this subsection shall  
14 summarize for the credits approved under subsection (b)(1) of this section and for the  
15 credits approved under subsection (b)(2) of this section:

16 (i) the total number of applicants for credits under this section  
17 in each calendar year;

18 (ii) the number of applications for which a tax credit was  
19 approved in each calendar year; and

20 (iii) the total credits authorized under this section for all  
21 calendar years under this section.

22 (h) If the provisions of § 41 of the Internal Revenue Code governing the  
23 federal research and development tax credit are repealed or terminate, the provisions  
24 of this section continue to operate as if the provisions of § 41 of the Internal Revenue  
25 Code remain in effect, and the Maryland research and development tax credit under  
26 this section shall continue to be available.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 June 1, 2013, and shall be applicable to all Maryland research and development tax  
29 credits certified after December 15, 2013.