SB 563

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 563 (Senator Serafini)
Budget and Taxation Ways and Means

Income Tax Credit - Qualified Research and Development Expenses - Application for and Procedure to Claim Credit

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This bill alters the date by which an individual or corporation is required to submit a research and development (R&D) income tax credit and the date by which the Department of Commerce (Commerce) must certify R&D tax credits. The bill alters the method by which an individual or corporation may claim the R&D income tax credit by allowing a taxpayer to attach a copy of the tax credit certification to an income tax return filed for any of the seven taxable years after the taxable year in which the R&D expenses were incurred. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: State income tax revenues are not materially affected, as discussed below. The Comptroller's Office can implement the bill with existing resources.

Local Effect: Local highway user revenues are not materially affected. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: An individual or corporation must submit a R&D income tax credit by November 15, instead of September 15, of the calendar year following the end of the taxable year in which qualified R&D expenses were incurred. Commerce must certify R&D tax credits by February 15 of the following year in which an individual or corporation submitted an application, instead of December 15 of the calendar year following the end of the taxable year in which qualified R&D expenses were incurred.

Current Law: Chapters 515 and 516 of 2000 established the State R&D Tax Credit Program. There are two types of credits available: (1) a basic credit equal to 3% of the Maryland qualified R&D expenses paid during the tax year, up to the Maryland base amount; and (2) a growth credit equal to 10% of the Maryland qualified R&D expenses paid during the year that exceed the Maryland base amount.

Commerce administers the tax credit application, approval, and certification process and is required to submit an annual report to the Governor and the General Assembly detailing specified information about the tax credit. To claim the R&D income tax credit, an individual or corporation must file an amended income tax return for the taxable year in which the costs were incurred and attach a copy of the tax credit certification to the amended income tax return.

Commerce may not approve annual credits that in the aggregate exceed $12 million. If the amount of credits earned during any year exceeds the aggregate limit, the amount approved for each credit is reduced by a proportional amount of the excess. The program terminates June 30, 2021.

Chapter 109 of 2013 made the R&D credit refundable if the business meets the qualifications of a small business beginning in tax year 2012. Chapter 109 of 2013 defined a small business as a for-profit corporation, limited liability company, partnership, or sole proprietorship that, at the beginning or end of the taxable year in which the eligible R&D expenses are incurred, has net book value assets totaling less than $5 million.

Background: In response to concerns about the impacts of tax credits, Chapters 568 and 569 of 2012 established the Tax Credit Evaluation Act, a legislative process for evaluating certain tax credits. The evaluation process is conducted by a legislative evaluation committee. The committee is required to review and evaluate the R&D tax credit by July 1, 2018. The draft report on the credit was completed in November 2017 and can be found on the Department of Legislative Services (DLS) website.

State Fiscal Effect: Since the bill only shifts the timing of receiving tax credits, State revenues are not materially impacted over the long term. Taxpayers still have the option to file an amended tax return to claim the tax credit. DLS assumes taxpayers will choose to file an amended tax return to claim the credit for the taxable year in which the R&D expenses were incurred if those taxpayers have sufficient tax liability in that year to use the credit or if the taxpayer is a small business entitled to a refund.

Generally, if taxpayers who earned the tax credit do not have a tax liability in the tax year that expenses were incurred, they receive no immediate benefit from filing an amended tax return. The credit is carried forward for up to seven years until they have sufficient tax liability to use the credit. DLS assumes these taxpayers will choose to claim the tax credit in a tax year after the taxable year in which expenses were incurred. In this scenario, allowing a taxpayer the option of claiming the credit in a later year instead of filing an amended tax return does not impact tax revenues since the taxpayer did not receive an immediate benefit from filing an amended return and claiming the credit in the tax year that the expenses were incurred.

To the extent that a taxpayer has a tax liability in the year that expenses were incurred and opts to claim the tax credit in a future tax year instead of filing an amended tax return, general fund, Transportation Trust Fund (TTF), and Higher Education Investment Fund (HEIF) revenues may increase in the first year and decrease by a corresponding amount in later years. Since the bill only shifts the timing of receiving tax credits, State revenues are not impacted over the long term.

However, some taxpayers never claim tax credits that they have earned. To the extent that the bill encourages taxpayers who have not claimed the credit to now do so, general fund, TTF, and HEIF revenues may decrease.

The Comptroller's Office can implement the bill with existing resources. The bill may result in the Comptroller's Office not having to process as many amended tax returns, but any operational efficiencies are offset from the Comptroller's Office having to take additional steps to ensure that tax credits were not already claimed in an earlier tax year. Generally, taxpayers have three years from the date the original return was due to file an amended State tax return, but the bill allows the R&D income tax credit to be claimed in up to seven of the years following the year in which expenses were incurred. Thus, the Comptroller's Office may have to check the seven prior tax returns to see if a taxpayer has previously claimed the credit.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Commerce; Comptroller's Office; Department of Legislative Services

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