

SENATE BILL 91

C8, Q3

(PRE-FILED)

5lr1389
CF HB 35

By: **Senator Feldman**

Requested: October 25, 2024

Introduced and read first time: January 8, 2025

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Economic Development – Income Tax Benefit Transfer Program –**
3 **Establishment**

4 FOR the purpose of establishing the Income Tax Benefit Transfer Program within the
5 Department of Commerce to allow certain technology companies in the State with
6 certain unused income tax benefits to transfer those tax benefits to certain other
7 businesses for certain purposes and subject to certain limitations; requiring the
8 Department, in consultation with the Comptroller, to administer the Program; and
9 generally relating to the Income Tax Benefit Transfer Program for technology
10 companies.

11 BY repealing and reenacting, without amendments,
12 Article – Economic Development
13 Section 1–101(a) and (c)
14 Annotated Code of Maryland
15 (2024 Replacement Volume and 2024 Supplement)

16 BY adding to
17 Article – Economic Development
18 Section 6–1101 through 6–1106 to be under the new subtitle “Subtitle 11. Income
19 Tax Benefit Transfer Program”
20 Annotated Code of Maryland
21 (2024 Replacement Volume and 2024 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Tax – General
24 Section 10–721(b)(2)
25 Annotated Code of Maryland
26 (2022 Replacement Volume and 2024 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Tax – General
3 Section 10–721(d)
4 Annotated Code of Maryland
5 (2022 Replacement Volume and 2024 Supplement)

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

8 **Article – Economic Development**

9 1–101.

10 (a) In this division the following words have the meanings indicated.

11 (c) “Department” means the Department of Commerce.

12 **SUBTITLE 11. INCOME TAX BENEFIT TRANSFER PROGRAM.**

13 **6–1101.**

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (B) “ELIGIBLE TECHNOLOGY COMPANY” MEANS A TECHNOLOGY COMPANY
17 THAT, ON THE DATE ON WHICH THE COMPANY FILES AN APPLICATION UNDER THIS
18 SUBTITLE AND THE DATE OF THE EXCHANGE OF AN INCOME TAX BENEFIT IN
19 ACCORDANCE WITH THIS SUBTITLE:

20 (1) (i) 1. HAS AT LEAST 1 QUALIFIED EMPLOYEE IN THE STATE
21 IF THE COMPANY HAS BEEN INCORPORATED FOR LESS THAN 3 YEARS;

22 2. HAS AT LEAST 5 QUALIFIED EMPLOYEES IN THE
23 STATE IF THE COMPANY HAS BEEN INCORPORATED FOR AT LEAST 3 YEARS BUT LESS
24 THAN 5 YEARS; OR

25 3. HAS AT LEAST 10 QUALIFIED EMPLOYEES IN THE
26 STATE IF THE COMPANY HAS BEEN INCORPORATED FOR AT LEAST 5 YEARS; AND

27 (ii) HAS FEWER THAN 225 EMPLOYEES IN THE UNITED STATES;

28 (2) IS IN GOOD STANDING;

29 (3) IS CURRENT IN THE PAYMENT OF ALL TAX OBLIGATIONS TO THE
30 STATE OR ANY UNIT OR SUBDIVISION OF THE STATE;

1 **(4) IS NOT IN DEFAULT UNDER THE TERMS OF ANY CONTRACT WITH,**
2 **INDEBTEDNESS TO, OR GRANT FROM THE STATE OR ANY SUBDIVISION OF THE**
3 **STATE; AND**

4 **(5) IS ENGAGED IN THE RESEARCH, DEVELOPMENT, OR**
5 **COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY IN AN**
6 **ELIGIBLE TECHNOLOGY SECTOR.**

7 **(C) “ELIGIBLE TECHNOLOGY SECTOR” MEANS A TECHNOLOGY SECTOR**
8 **IDENTIFIED IN ACCORDANCE WITH § 6–1102 OF THIS SUBTITLE.**

9 **(D) (1) “QUALIFIED EMPLOYEE” MEANS AN INDIVIDUAL WHO:**

10 **(I) 1. IS EMPLOYED BY A TECHNOLOGY COMPANY FOR**
11 **CONSIDERATION FOR AT LEAST 35 HOURS EACH WEEK OR RENDERS ANY OTHER**
12 **STANDARD OF SERVICE GENERALLY ACCEPTED BY CUSTOM OR PRACTICE AS**
13 **FULL–TIME EMPLOYMENT AND WHOSE WAGES ARE SUBJECT TO WITHHOLDING**
14 **UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE; OR**

15 **2. IS A PARTNER OF A TECHNOLOGY COMPANY FOR AT**
16 **LEAST 35 HOURS EACH WEEK OR RENDERS ANY OTHER STANDARD OF SERVICE**
17 **GENERALLY ACCEPTED BY CUSTOM OR PRACTICE AS FULL–TIME EMPLOYMENT AND**
18 **WHOSE DISTRIBUTIVE SHARE OF INCOME, GAIN, LOSS, OR DEDUCTION OR**
19 **GUARANTEED PAYMENTS ARE SUBJECT TO THE PAYMENT OF ESTIMATED TAXES**
20 **UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE; AND**

21 **(II) RECEIVES FROM THE TECHNOLOGY COMPANY HEALTH**
22 **BENEFITS UNDER A GROUP HEALTH PLAN, A HEALTH BENEFITS PLAN, OR A POLICY**
23 **OR CONTRACT OF HEALTH INSURANCE COVERING MORE THAN ONE INDIVIDUAL.**

24 **(2) “QUALIFIED EMPLOYEE” DOES NOT INCLUDE AN INDIVIDUAL**
25 **WHO WORKS AS AN INDEPENDENT CONTRACTOR OR ON A CONSULTING BASIS FOR**
26 **THE TECHNOLOGY COMPANY.**

27 **(E) “TECHNOLOGY COMPANY” MEANS A CORPORATION THAT:**

28 **(1) IS ORGANIZED FOR PROFIT;**

29 **(2) HAS THE CORPORATION’S HEADQUARTERS OR BASE OF**
30 **OPERATIONS IN THE STATE; AND**

1 **(3) IS ENGAGED IN THE RESEARCH, DEVELOPMENT, OR**
2 **COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY.**

3 **6-1102.**

4 **(A) THERE IS AN INCOME TAX BENEFIT TRANSFER PROGRAM IN THE**
5 **DEPARTMENT.**

6 **(B) THE PURPOSE OF THE PROGRAM IS TO ALLOW, SUBJECT TO THE**
7 **LIMITATIONS OF THIS SUBTITLE, ELIGIBLE TECHNOLOGY COMPANIES IN THE STATE**
8 **WITH UNUSED AMOUNTS OF NET OPERATING LOSS SUBTRACTION MODIFICATIONS**
9 **ALLOWED UNDER § 10-310 OF THE TAX – GENERAL ARTICLE OR INCOME TAX**
10 **CREDITS ALLOWED UNDER § 10-721 OF THE TAX – GENERAL ARTICLE TO TRANSFER**
11 **THOSE TAX BENEFITS FOR USE BY OTHER BUSINESS TAXPAYERS IN THE STATE TO**
12 **ASSIST IN FUNDING EXPENSES INCURRED BY THE ELIGIBLE TECHNOLOGY**
13 **COMPANIES IN CONNECTION WITH OPERATIONS IN THE STATE.**

14 **(C) THE DEPARTMENT, IN CONSULTATION WITH THE COMPTROLLER,**
15 **SHALL ADMINISTER THE PROGRAM.**

16 **(D) (1) AFTER CONSULTING WITH THE DEPARTMENT AND THE**
17 **MARYLAND DEPARTMENT OF LABOR, EACH YEAR THE MARYLAND ECONOMIC**
18 **DEVELOPMENT COMMISSION SHALL:**

19 **(I) EVALUATE THE POTENTIAL ECONOMIC GROWTH OF**
20 **MARYLAND’S TECHNOLOGY SECTORS; AND**

21 **(II) RECOMMEND ELIGIBLE TECHNOLOGY SECTORS TO THE**
22 **DEPARTMENT.**

23 **(2) EACH YEAR THE DEPARTMENT SHALL:**

24 **(I) CONSIDER THE RECOMMENDATION OF THE MARYLAND**
25 **ECONOMIC DEVELOPMENT COMMISSION; AND**

26 **(II) ESTABLISH A LIST OF TECHNOLOGY SECTORS THAT WILL BE**
27 **ELIGIBLE FOR THE INCOME TAX BENEFIT TRANSFERS UNDER THIS SUBTITLE.**

28 **6-1103.**

29 **(A) (1) AN ELIGIBLE TECHNOLOGY COMPANY MAY APPLY TO THE**
30 **DEPARTMENT FOR THE TRANSFER OF UNUSED AMOUNTS OF NET OPERATING LOSS**
31 **SUBTRACTION MODIFICATIONS ALLOWED UNDER § 10-310 OF THE TAX – GENERAL**

1 ARTICLE OR INCOME TAX CREDITS ALLOWED UNDER § 10-721 OF THE TAX -
2 GENERAL ARTICLE TO ANOTHER TAXPAYER IN THE STATE THAT IS NOT AFFILIATED
3 WITH THE ELIGIBLE TECHNOLOGY COMPANY IN EXCHANGE FOR CONSIDERATION
4 EQUAL TO AT LEAST 80% OF THE AMOUNT OF THE TRANSFERRED TAX BENEFIT.

5 (2) AN ENTITY SHALL BE DEEMED TO BE AFFILIATED WITH AN
6 ELIGIBLE TECHNOLOGY COMPANY IF THE ENTITY DIRECTLY OR INDIRECTLY OWNS
7 OR CONTROLS AT LEAST 5% OF THE VOTING RIGHTS OR VALUE OF ALL CLASSES OF
8 STOCK OF BOTH THE ELIGIBLE TECHNOLOGY COMPANY AND THE TAXPAYER TO
9 WHICH THE INCOME TAX BENEFITS ARE SURRENDERED.

10 (B) IN ORDER TO RECEIVE APPROVAL FOR A TRANSFER OF INCOME TAX
11 BENEFITS IN ACCORDANCE WITH THIS SECTION, A TECHNOLOGY COMPANY SHALL
12 SUBMIT TO THE DEPARTMENT AN APPLICATION THAT:

13 (1) DEMONSTRATES THAT THE APPLICANT IS AN ELIGIBLE
14 TECHNOLOGY COMPANY;

15 (2) SPECIFIES THE AMOUNT OF THE UNUSED AMOUNTS OF NET
16 OPERATING LOSS SUBTRACTION MODIFICATIONS ALLOWED UNDER § 10-310 OF THE
17 TAX - GENERAL ARTICLE OR INCOME TAX CREDITS ALLOWED UNDER § 10-721 OF
18 THE TAX - GENERAL ARTICLE THAT THE ELIGIBLE TECHNOLOGY COMPANY IS
19 OTHERWISE ALLOWED; AND

20 (3) INCLUDES ANY OTHER INFORMATION THAT THE DEPARTMENT
21 REQUIRES.

22 (C) THE AMOUNT OF THE TRANSFERABLE TAX BENEFITS SHALL BE
23 DETERMINED AS FOLLOWS:

24 (1) THE TRANSFERABLE TAX BENEFIT FOR A NET OPERATING LOSS
25 SUBTRACTION MODIFICATION IS THE UNUSED AMOUNT OF THE LOSS MULTIPLIED
26 BY THE ELIGIBLE TECHNOLOGY COMPANY'S ANTICIPATED APPORTIONMENT
27 FACTOR UNDER § 10-402 OF THE TAX - GENERAL ARTICLE FOR THE TAXABLE YEAR
28 IN WHICH THE BENEFIT IS TRANSFERRED, AND SUBSEQUENTLY MULTIPLIED BY THE
29 CORPORATE INCOME TAX RATE UNDER § 10-105 OF THE TAX - GENERAL ARTICLE;
30 AND

31 (2) THE TRANSFERABLE TAX BENEFIT FOR A RESEARCH AND
32 DEVELOPMENT TAX CREDIT IS THE UNUSED AMOUNT OF THE CREDIT.

1 (D) (1) SUBJECT TO THE LIMITATIONS OF THIS SECTION, THE
2 DEPARTMENT, IN COOPERATION WITH THE COMPTROLLER, SHALL REVIEW AND
3 APPROVE APPLICATIONS BY ELIGIBLE TECHNOLOGY COMPANIES.

4 (2) THE DEPARTMENT SHALL PRIORITIZE APPROVING
5 APPLICATIONS SUBMITTED BY ELIGIBLE TECHNOLOGY COMPANIES ENGAGED IN
6 CLEAN ENERGY INNOVATION, AS DEFINED UNDER § 10-801 OF THIS ARTICLE.

7 (E) (1) FOR EACH CALENDAR YEAR, THE TOTAL AMOUNT OF TRANSFERS
8 OF INCOME TAX BENEFITS APPROVED BY THE DEPARTMENT UNDER THIS SECTION
9 MAY NOT EXCEED \$35,000,000.

10 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, IF
11 THE TOTAL AMOUNT OF TRANSFERS OF INCOME TAX BENEFITS APPLIED FOR BY ALL
12 APPLICANTS EXCEEDS THE MAXIMUM AGGREGATE AMOUNT UNDER PARAGRAPH (1)
13 OF THIS SUBSECTION, THE DEPARTMENT SHALL APPROVE THE TRANSFERS IN THE
14 FOLLOWING MANNER:

15 (I) AN ELIGIBLE TECHNOLOGY COMPANY WITH \$250,000 OR
16 LESS OF TRANSFERABLE TAX BENEFITS SHALL BE AUTHORIZED TO TRANSFER THE
17 ENTIRE AMOUNT OF THE APPLICANT'S TRANSFERABLE TAX BENEFITS; AND

18 (II) AN ELIGIBLE TECHNOLOGY COMPANY WITH MORE THAN
19 \$250,000 OF TRANSFERABLE TAX BENEFITS SHALL:

20 1. BE AUTHORIZED TO TRANSFER A MINIMUM OF
21 \$250,000 OF ITS TRANSFERABLE TAX BENEFITS; AND

22 2. BE AUTHORIZED TO TRANSFER ADDITIONAL
23 TRANSFERABLE TAX BENEFITS DETERMINED BY MULTIPLYING THE APPLICANT'S
24 REQUESTED TRANSFERABLE TAX BENEFITS, LESS THE MINIMUM AMOUNT
25 AUTHORIZED UNDER ITEM 1 OF THIS ITEM, BY A FRACTION:

26 A. THE NUMERATOR OF WHICH IS THE TOTAL AMOUNT
27 OF TAX BENEFITS THAT THE DEPARTMENT IS AUTHORIZED TO APPROVE LESS THE
28 TOTAL AMOUNT OF TRANSFERABLE BENEFITS APPROVED UNDER ITEM (I) OF THIS
29 PARAGRAPH AND ITEM 1 OF THIS ITEM; AND

30 B. THE DENOMINATOR OF WHICH IS THE TOTAL AMOUNT
31 OF TRANSFERABLE BENEFITS REQUESTED TO BE TRANSFERRED BY ALL ELIGIBLE
32 APPLICANTS LESS THE TOTAL AMOUNT OF TRANSFERABLE BENEFITS APPROVED
33 UNDER ITEM (I) OF THIS PARAGRAPH AND ITEM 1 OF THIS ITEM.

1 **(3) IF THE TOTAL AMOUNT OF TRANSFERABLE TAX BENEFITS THAT**
2 **WOULD BE AUTHORIZED USING THE METHOD UNDER PARAGRAPH (2) OF THIS**
3 **SUBSECTION EXCEEDS THE MAXIMUM AGGREGATE AMOUNT SPECIFIED UNDER**
4 **PARAGRAPH (1) OF THIS SUBSECTION FOR A CALENDAR YEAR, THE DEPARTMENT,**
5 **IN COOPERATION WITH THE COMPTROLLER, SHALL LIMIT THE TOTAL AMOUNT OF**
6 **TAX BENEFITS AUTHORIZED TO BE TRANSFERRED TO THE MAXIMUM AGGREGATE**
7 **AMOUNT BY APPLYING THE METHOD UNDER PARAGRAPH (2) ON AN APPORTIONED**
8 **BASIS.**

9 **(F) THE MAXIMUM LIFETIME VALUE OF TAX BENEFITS THAT AN ELIGIBLE**
10 **TECHNOLOGY COMPANY MAY TRANSFER UNDER THIS SUBTITLE IS \$15,000,000.**

11 **6-1104.**

12 **(A) ON APPROVAL OF AN APPLICATION SUBMITTED IN ACCORDANCE WITH**
13 **§ 6-1103 OF THIS SUBTITLE, THE DEPARTMENT SHALL ISSUE A TAX BENEFIT**
14 **TRANSFER CERTIFICATE TO THE APPLICANT IF THE APPLICANT CERTIFIES THAT, AS**
15 **OF THE DATE OF THE EXCHANGE OF THE TAX BENEFIT CERTIFICATE, THE**
16 **APPLICANT IS OPERATING AS AN ELIGIBLE TECHNOLOGY COMPANY AND HAS NO**
17 **CURRENT INTENTION TO CEASE OPERATING AS AN ELIGIBLE TECHNOLOGY**
18 **COMPANY.**

19 **(B) CONSIDERATION RECEIVED BY AN ELIGIBLE TECHNOLOGY COMPANY IN**
20 **EXCHANGE FOR A TAX BENEFIT TRANSFER CERTIFICATE SHALL BE USED BY THE**
21 **ELIGIBLE TECHNOLOGY COMPANY TO FUND EXPENSES INCURRED IN CONNECTION**
22 **WITH OPERATING THE ELIGIBLE TECHNOLOGY COMPANY IN THE STATE,**
23 **INCLUDING:**

24 **(1) EXPENSES FOR FIXED ASSETS, INCLUDING THE CONSTRUCTION,**
25 **ACQUISITION, AND DEVELOPMENT OF REAL ESTATE;**

26 **(2) MATERIAL COSTS;**

27 **(3) START-UP COSTS;**

28 **(4) EXPENSES FOR TENANT FIT-OUT;**

29 **(5) WORKING CAPITAL;**

30 **(6) SALARIES;**

31 **(7) RESEARCH AND DEVELOPMENT EXPENSES; AND**

1 **(8) ANY OTHER EXPENSES DETERMINED BY THE DEPARTMENT TO BE**
2 **NECESSARY TO CARRY OUT THE PURPOSES OF THIS SUBTITLE.**

3 **(C) (1) THE DEPARTMENT SHALL REQUIRE AN UNAFFILIATED TAXPAYER**
4 **THAT ACQUIRES A TAX BENEFIT TRANSFER CERTIFICATE ISSUED UNDER THIS**
5 **SECTION TO ENTER INTO A WRITTEN AGREEMENT WITH THE ELIGIBLE TECHNOLOGY**
6 **COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE CONSIDERATION PAID**
7 **IN EXCHANGE FOR THE CERTIFICATE.**

8 **(2) THE WRITTEN AGREEMENT REQUIRED UNDER PARAGRAPH (1) OF**
9 **THIS SUBSECTION MAY CONTAIN TERMS CONCERNING THE MAINTENANCE BY THE**
10 **ELIGIBLE TECHNOLOGY COMPANY OF A HEADQUARTERS OR A BASE OF OPERATIONS**
11 **IN THE STATE.**

12 **6-1105.**

13 **THE DEPARTMENT, IN CONSULTATION WITH THE COMPTROLLER, MAY**
14 **RECAPTURE, IN WHOLE OR IN PART, THE AMOUNT OF THE TAX BENEFIT TRANSFER**
15 **CERTIFICATE FROM THE ELIGIBLE TECHNOLOGY COMPANY THAT TRANSFERRED**
16 **TAX BENEFITS IN ACCORDANCE WITH THIS SUBTITLE IN THE EVENT THAT THE**
17 **ELIGIBLE TECHNOLOGY COMPANY:**

18 **(1) FAILS TO USE THE CONSIDERATION RECEIVED FOR THE**
19 **TRANSFER OF TAX BENEFITS AS REQUIRED UNDER THIS SUBTITLE; OR**

20 **(2) FAILS TO MAINTAIN A HEADQUARTERS OR A BASE OF OPERATION**
21 **IN THE STATE DURING THE 5 YEARS FOLLOWING THE RECEIPT OF THE**
22 **CONSIDERATION, UNLESS THE FAILURE TO MAINTAIN A HEADQUARTERS OR A BASE**
23 **OF OPERATION IN THE STATE IS DUE TO THE LIQUIDATION OF THE ELIGIBLE**
24 **TECHNOLOGY COMPANY.**

25 **6-1106.**

26 **THE DEPARTMENT, IN CONSULTATION WITH THE COMPTROLLER, SHALL**
27 **ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.**

28 **Article – Tax – General**

29 **10-721.**

30 **(b) (2) 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 10% of the amount**
32 **by which the Maryland qualified research and development expenses paid or incurred by**

1 the individual or corporation during the taxable year exceed the Maryland base amount for
2 the individual or corporation.

3 (d) (1) Except as provided in paragraph (2) of this subsection, if the credit
4 allowed under this section in any taxable year exceeds the State income tax for that taxable
5 year, an individual or corporation may apply the excess as a credit against the State income
6 tax for succeeding taxable years until the earlier of:

7 (i) the full amount of the excess is used; or

8 (ii) the expiration of the 7th taxable year after the taxable year in
9 which the Maryland qualified research and development expense was incurred.

10 (2) If the credit allowed under this section in any taxable year exceeds the
11 State income tax for that taxable year, a small business may claim a refund in the amount
12 of the excess.

13 **(3) THE CREDIT ALLOWED UNDER THIS SECTION MAY BE**
14 **TRANSFERRED TO ANOTHER TAXPAYER IN ACCORDANCE WITH TITLE 6, SUBTITLE**
15 **11 OF THE ECONOMIC DEVELOPMENT ARTICLE.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2025, and shall be applicable to all taxable years beginning after December 31, 2024.