

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 91 (Senator Feldman)
Budget and Taxation

Economic Development - Income Tax Benefit Transfer Program - Establishment

This bill establishes the Income Tax Benefit Transfer Program in the Department of Commerce to allow eligible technology companies in the State with unused amounts of net operating loss (NOL) subtraction modifications or research and development (R&D) tax credits to transfer those tax benefits for use by other business taxpayers in the State, subject to specified limitations. **The bill takes effect July 1, 2025, and applies to tax year 2025 and beyond.**

Fiscal Summary

State Effect: The potential overall impacts of the program are unclear, as discussed below. Nonetheless, general fund, Transportation Trust Fund (TTF), and Higher Education Investment Fund (HEIF) revenues may be affected beginning as early as FY 2026, as discussed below. Similarly, TTF expenditures for local highway user revenue grants may be affected beginning as early as FY 2026. General fund expenditures increase by *at least* \$600,000 in FY 2026 and may also increase in future years, as discussed below.

Local Effect: Local highway user revenues are potentially affected beginning as early as FY 2026, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Eligible technology company” is a technology company that is engaged in the research, development, or commercialization of innovative and proprietary technology in an eligible technology sector (as specified) and:

- has a specified number of qualified employees in the State (at least 1 if the company has been incorporated for less than 3 years; at least 5 if the company has been incorporated for at least 3 years but less than 5 years; or at least 10 if the company has been incorporated for at least 5 years) and has fewer than 225 employees in the United States;
- is in good standing;
- is current in the payment of all tax obligations to the State or any unit or subdivision of the State; and
- is not in default under the terms of any contract with, indebtedness to, or grant from the State or any subdivision of the State.

“Technology company” means a corporation that is organized for profit; has the corporation’s headquarters or base of operations in the State; and is engaged in the research, development, or commercialization of innovative and proprietary technology.

Selection of Eligible Technology Sectors

After consultation with Commerce and the Maryland Department of Labor, the Maryland Economic Development Commission (MEDC) must annually evaluate the potential economic growth of Maryland’s technology sectors and recommend eligible technology sectors to Commerce. Commerce must consider the annual recommendation of MEDC and establish a list of technology sectors that will be eligible for the program.

Application for Transfer of Unused Tax Benefits

An eligible technology company may apply to Commerce for the transfer of unused amounts of NOL subtraction modifications allowed under Tax-General Article § 10-310 or R&D tax credits allowed under Tax-General Article § 10-721 to another unaffiliated taxpayer in the State in exchange for consideration equal to at least 80% of the amount of the transferred tax benefit. An entity is deemed to be affiliated with an eligible technology company if the entity directly or indirectly owns or controls at least 5% of the voting rights or value of all classes of stock of both the eligible technology company and the taxpayer to which the income tax benefits are surrendered.

The amount of the transferrable tax benefit for an NOL subtraction modification is the unused amount of the loss multiplied by the eligible technology company’s anticipated Maryland apportionment factor and the corporate income tax rate. The transferrable tax benefit for an R&D tax credit is the unused amount of the credit.

Approval and Certification of Tax Benefit Transfers

In cooperation with the Comptroller, Commerce must review and approve applications by eligible technology companies and prioritize applications by eligible technology companies engaged in clean energy innovation as defined under Economic Development Article § 10-801. Commerce may approve up to \$35.0 million in transfers per calendar year. If the total amount of transfers applied for by all applicants exceeds the aggregate limit, Commerce must approve the first \$250,000 of each eligible applicant's transferrable benefits and a prorated portion of each applicant's transferrable benefits in excess of \$250,000 (if any). If the total amount of transferrable benefits that would be authorized under this method still exceeds the aggregate limit, Commerce must cooperate with the Comptroller to apply the method on an apportioned basis. The maximum lifetime value of tax benefits that an eligible technology company may transfer under the program is \$15.0 million.

On approval of an application submitted in accordance with the bill, Commerce must issue a tax benefit certificate to the applicant if the applicant certifies that, on the date of the exchange of the tax benefit certificate, the applicant is operating as an eligible technology company. Consideration received by an eligible technology company in exchange for a tax benefit transfer certificate must be used by the eligible technology company to fund expenses incurred in connection with operating the eligible technology company in the State, including expenses for fixed assets; material costs; start-up costs; expenses for tenant fit-out; working capital; salaries; R&D expenses; and any other expenses determined by Commerce to be necessary to carry out the purposes of the bill.

Required Written Agreements

Commerce must require an unaffiliated taxpayer that acquires a tax benefit transfer certificate issued under the bill to enter into a written agreement with the eligible technology company concerning the terms and conditions of the consideration paid in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the eligible technology company of a headquarters or a base of operations in the State.

Recapture

Commerce, in consultation with the Comptroller, may recapture, in whole or in part, the amount of the tax benefit transfer certificate from the eligible technology company that transferred tax benefits in accordance with the bill in the event that the eligible technology company (1) fails to use the consideration received for the transfer of tax benefits as required under the bill or (2) fails to maintain a headquarters or a base of operation in the

State during the five years following the receipt of the consideration, unless such failure is due to the liquidation of the eligible technology company.

Current Law:

Maryland Income Tax Treatment of Net Operating Losses

Maryland recognizes the federal NOL and generally follows the federal carryback and carryforward periods for NOLs. Maryland decoupled from the five-year NOL carryback election under former § 172(b)(1)(H) of the Internal Revenue Code (IRC) (repealed by the federal Tax Cuts and Jobs Act of 2017); per Tax-General Article § 10-310, invoking § 10-210.1, a corporate taxpayer must adjust federal taxable income to determine the NOL deduction allowed under IRC § 172 without regard to an election under § 172(b)(1)(H). Maryland also automatically decoupled from provisions of the federal Coronavirus Aid, Relief, and Economic Security Act requiring a five-year carryback of and suspension of the 80% carryforward limitation for NOLs arising in tax year 2020.

As detailed in [Administrative Release No. 18](#), Maryland does not allow modification of the federal NOL except in the case of a foreign dividend subtraction carryforward, Maryland decoupling modifications, and Tax-General Article § 10-306.1 related-party transactions. As specified under Tax-General Article § 10-205(e), an addition modification may be required in a carryback or carryforward year if Maryland addition modifications exceed Maryland subtraction modifications in the loss year (NOL modification recapture).

Research and Development Tax Credit

The Maryland R&D tax credit is equal to 10% of the amount of Maryland qualified R&D expenses paid or incurred during the taxable year that exceed the Maryland base amount (as defined), subject to an annual \$250,000 per taxpayer cap and certain annual aggregate limits. The tax credit is generally nonrefundable and may be carried forward for up to seven years after the tax year in which the expense was incurred. The tax credit is fully refundable for a small business, which is defined as a for-profit corporation, limited liability company, partnership, or sole proprietorship with net book value assets totaling less than \$5 million at the beginning or end of the taxable year for which Maryland qualified R&D expenses are incurred.

Commerce administers the tax credit application, approval, and certification process and may approve up to \$12.0 million in tax credits annually, of which \$3.5 million is set aside for small businesses. If the total amount of credits applied for by small businesses exceeds \$3.5 million, the amount approved for each small business applicant is reduced by a proportional amount of the excess. Similarly, if the total amount of credits applied for by non-small businesses exceeds \$8.5 million (plus any unused amount of the small business

set-aside), the amount approved for each non-small business applicant is reduced by a proportional amount of the excess.

The tax credit program terminates June 30, 2027.

State Revenues: Absent clarity regarding the bill's provisions relating to unused NOL subtraction modifications under Tax-General Article § 10-310, the potential scope of the contemplated income tax benefit transfer program is unclear. As discussed above, Maryland recognizes the federal NOL and generally follows the federal carryback and carryforward periods for NOLs. Tax-General Article § 10-310 references the decoupling modifications specified under § 10-210.1, which include the decoupling modification relating to former IRC § 172(b)(1)(H) and which otherwise may affect the amount of the NOL that may be carried back or forward or the amount of NOL used in carryback or carryforward years. However, Maryland law does not expressly provide for a subtraction modification for NOLs.

Further, the amount and timing of potential transfers of unused R&D tax credits cannot be reliably predicted. The R&D tax credit program provides a modest benefit to most program participants, thus there may be only minimal demand for such benefits under the income tax benefit transfer program. Additionally, the credit is already fully refundable for certain eligible small businesses. As noted above, the R&D tax credit program terminates June 30, 2027.

Nonetheless, general fund, TTF, and HEIF revenues may be affected beginning as early as fiscal 2026 depending on the timing of program rollout. Due to the bill's aggregate limit on the amount of income tax benefit transfers that Commerce may approve per year, resulting decreases in State revenues do not exceed \$35.0 million in any given year – although the magnitude of the effect may be well below this amount to the extent the program's scope is effectively limited to the transfer of unused R&D tax credits. To the extent the bill accelerates, rather than increases, utilization of transferred income tax benefits, revenue reductions generated by the transfers are offset by corresponding reductions in carryforwards in subsequent years. The precise effect on State revenues cannot be reliably predicted.

State Expenditures: Commerce advises that it requires two additional full-time staff to administer the income tax benefit transfer program and estimates related general fund expenditures of \$228,000 in fiscal 2026 and \$314,000 in fiscal 2030. The Department of Legislative Services (DLS) notes that, given uncertainty regarding the program's potential scope, Commerce personnel needs under the bill are unclear at this time. For purposes of this analysis, it is assumed that Commerce general fund expenditures may increase by up to \$228,000 in fiscal 2026 and up to \$314,000 in fiscal 2030.

The Comptroller's Office advises that the bill necessitates significant additional personnel resources and between \$600,000 and \$1,000,000 in one-time program costs. DLS is unable to independently verify the Comptroller's estimate at this time and notes that Comptroller personnel needs under the bill are unclear at this time. However, this analysis assumes that Comptroller general fund expenditures increase by at least \$600,000 in fiscal 2026 for one-time programming.

TTF expenditures for local highway user revenue grants are affected beginning as early as fiscal 2026 to the extent the bill accelerates and/or otherwise affects the amount of income tax benefits applied against the corporate income tax. The precise effect cannot be reliably predicted.

Local Revenues: Local highway user revenues are potentially affected beginning as early as fiscal 2026. The precise effect cannot be reliably predicted.

Small Business Effect: Small businesses may benefit to the extent they are able to transfer unused income tax benefits for consideration and/or realize reduced income tax liabilities through purchased income tax benefits. However, as previously discussed, the program's potential scope is unclear. DLS also notes that the R&D tax credit is already fully refundable for certain eligible small businesses under existing law.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 35 (Delegate Fraser-Hidalgo) - Ways and Means.

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

Fiscal Note History: First Reader - January 13, 2025
js/jrb

Analysis by: Elizabeth J. Allison

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