

SENATE BILL 563

Q3

8lr1815

By: **Senator Serafini**

Introduced and read first time: January 31, 2018

Assigned to: Budget and Taxation

Committee Report: Favorable

Senate action: Adopted

Read second time: March 6, 2018

CHAPTER _____

1 AN ACT concerning

2 **Income Tax Credit – Qualified Research and Development Expenses –**
3 **Application for and Procedure to Claim Credit**

4 FOR the purpose of altering the date by which an individual or a corporation is required to
5 submit a certain application for a certain credit against the State income tax for
6 certain research and development expenses incurred by the individual or
7 corporation; altering the date by which the Department of Commerce shall certify
8 the credits approved for the individual or corporation; altering the method by which
9 the individual or corporation may claim the credit; and generally relating to certain
10 credits against the State income tax based on certain expenses paid or incurred for
11 certain research and development conducted in the State.

12 BY repealing and reenacting, without amendments,
13 Article – Tax – General
14 Section 10–205(a) and (i) and 10–306(a) and (b)(5)
15 Annotated Code of Maryland
16 (2016 Replacement Volume and 2017 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Tax – General
19 Section 10–721
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2017 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 That the Laws of Maryland read as follows:

2 **Article – Tax – General**

3 10–205.

4 (a) In addition to the modification under § 10–204 of this subtitle, the amounts
5 under this section are added to the federal adjusted gross income of a resident to determine
6 Maryland adjusted gross income.

7 (i) The addition under subsection (a) of this section includes the amount of a
8 credit claimed under § 10–721 of this title for Maryland qualified research and development
9 expenses.

10 10–306.

11 (a) In addition to the modification under § 10–305 of this subtitle, the amounts
12 under this section are added to the federal taxable income of a corporation to determine
13 Maryland modified income.

14 (b) The addition under subsection (a) of this section includes the additions
15 required for an individual under:

16 (5) § 10–205(i) of this title (Maryland research and development tax credit).

17 10–721.

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

19 (2) “Department” means the Department of Commerce.

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

22 (i) substituting “Maryland qualified research and development
23 expense” for “qualified research expense”;

24 (ii) substituting “Maryland qualified research and development” for
25 “qualified research”; and

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

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

30 2. for a taxpayer who has fewer than 4 but at least 1 prior

1 taxable year, the percentage as determined under item 1 of this item, determined using the
2 number of immediately preceding taxable years that the taxpayer has.

3 (4) "Maryland gross receipts" means gross receipts that are reasonably
4 attributable to the conduct of a trade or business in this State, determined under methods
5 prescribed by the Comptroller based on standards similar to the standards under § 10-402
6 of this title.

7 (5) "Maryland qualified research and development" means qualified
8 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this State.

9 (6) "Maryland qualified research and development expenses" means
10 qualified research expenses as defined in § 41(b) of the Internal Revenue Code incurred for
11 Maryland qualified research and development.

12 (7) "Small business" means a for-profit corporation, limited liability
13 company, partnership, or sole proprietorship with net book value assets totaling, at the
14 beginning or the end of the taxable year for which Maryland qualified research and
15 development expenses are incurred, as reported on the balance sheet, less than \$5,000,000.

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

18 (1) 3% of the Maryland qualified research and development expenses, not
19 exceeding the Maryland base amount for the individual or corporation, paid or incurred by
20 the individual or corporation during the taxable year; and

21 (2) 10% of the amount by which the Maryland qualified research and
22 development expenses paid or incurred by the individual or corporation during the taxable
23 year exceed the Maryland base amount for the individual or corporation.

24 (c) (1) By [September 15] **NOVEMBER 15** of the calendar year following the
25 end of the taxable year in which the Maryland qualified research and development
26 expenses were incurred, an individual or corporation shall submit an application to the
27 Department for the credits allowed under subsection (b)(1) and (2) of this section.

28 (2) (i) Except as provided under paragraph (4) of this subsection, the
29 total amount of credits approved by the Department under subsection (b)(1) of this section
30 may not exceed:

31 1. \$4,500,000 in calendar year 2016; and

32 2. \$5,500,000 in calendar year 2017 and each calendar year
33 thereafter.

34 (ii) Subject to paragraph (4) of this subsection, if the total amount of
35 credits applied for by all individuals and corporations under subsection (b)(1) of this section

1 exceeds the maximum specified under subparagraph (i) of this paragraph, the Department
2 shall approve a credit under subsection (b)(1) of this section for each applicant in an amount
3 equal to the product of multiplying the credit applied for by the applicant times a fraction:

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

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

8 (3) (i) Except as provided in paragraph (4) of this subsection, the total
9 amount of credits approved by the Department under subsection (b)(2) of this section may
10 not exceed:

11 1. \$4,500,000 in calendar year 2016; and

12 2. \$6,500,000 in calendar year 2017 and each calendar year
13 thereafter.

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

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

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

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

30 (ii) For any calendar year, if the maximum specified under
31 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all
32 individuals and corporations under subsection (b)(2) of this section, the maximum specified
33 under paragraph (2)(i) of this subsection shall be increased for that calendar year by an
34 amount equal to the amount by which the maximum specified under paragraph (3)(i) of this
35 subsection exceeds the total amount of credits applied for by all individuals and
36 corporations under subsection (b)(2) of this section.

1 (5) By [December 15] **FEBRUARY 15** of the calendar year following the
2 end of the [taxable] year in which the [Maryland qualified research and development
3 expenses were incurred] **INDIVIDUAL OR CORPORATION SUBMITTED AN APPLICATION**
4 **FOR THE CREDIT IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION**, the
5 Department shall certify to the individual or corporation the amount of the research and
6 development tax credits approved by the Department for the individual or corporation
7 under subsection (b)(1) and (2) of this section.

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

10 (i) **1.** file an amended income tax return for the taxable year in
11 which the Maryland qualified research and development expense was incurred; and

12 [(ii)] **2.** attach a copy of the Department's certification of the
13 approved credit amount to the amended income tax return; **OR**

14 **(II) SUBJECT TO SUBSECTION (D) OF THIS SECTION, ATTACH A**
15 **COPY OF THE DEPARTMENT'S CERTIFICATION OF THE APPROVED CREDIT AMOUNT**
16 **TO AN INCOME TAX RETURN FILED FOR ANY OF THE 7 TAXABLE YEARS AFTER THE**
17 **TAXABLE YEAR IN WHICH THE MARYLAND QUALIFIED RESEARCH AND**
18 **DEVELOPMENT EXPENSES WERE INCURRED.**

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (f) (1) The Department of Commerce and the Comptroller jointly shall adopt
14 regulations to prescribe standards for determining when research or development is
15 considered conducted in the State for purposes of determining the credit under this section.

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

18 (i) the location where services are performed;

19 (ii) the residence or business location of the person or persons
20 performing services;

21 (iii) the location where supplies used in research and development
22 are consumed; and

23 (iv) any other factors that the Department determines are relevant
24 for the determination.

25 (g) (1) In accordance with § 2.5-109 of the Economic Development Article, the
26 Department shall report on the credits approved under this section.

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

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

31 (ii) the amount of the credit approved.

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

5 (4) The report required under paragraph (1) of this subsection shall
6 summarize for the credits approved under subsection (b)(1) of this section and for the
7 credits approved under subsection (b)(2) of this section:

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

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

12 (iii) the total credits authorized under this section for all calendar
13 years under this section.

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
20 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.