

## **The Maryland Biotechnology Tax Credit**

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During the 2005 Maryland legislative session, the state legislature passed the Biotechnology Investment Incentive Act (HB 664), which has been codified as the Maryland Biotechnology Investment Incentive Tax Credit, MD. CODE ANN. TAX-GENERAL §10-725 (2005). The act provides a refundable tax credit of 50% of the “Investment” of “Qualified Investors” who invest in a “Qualified Maryland Biotechnology Company.” The tax credit program is administered through the Maryland Department of Business and Economic Development (“DBED”) and funded each year through the Governor’s budget. During 2006, Six Million Dollars (\$6,000,000) of tax credits were set aside to fund the program (thus supporting \$12,000,000 in investments) and all of those tax credits were subscribed for before the end of the year.

### **Key Terms**

**Investment.** In order to obtain the credit, a Qualified Investor must make an “Investment,” which is defined as “contribution of property, at risk of loss...in exchange for stock, a partnership interest, or other ownership interest in the qualified company.” MD. CODE ANN. TAX-GENERAL §10-725(a)(4)(i). Importantly, the investment must be in exchange for equity in the Company. Other investments, such as convertible debt, do not qualify. Practitioners should also note that the equity purchased by the investor must be held for at least 2 years or the credit will be subject to certain recapture rules.

**Qualified Investors.** The next step in the process is to determine whether the investor qualifies for the credit. The tax credit is available to any individual who invests at least \$25,000, and any corporation who invests at least \$250,000, in a Qualified Biotechnology Company. Individuals and corporations making these investments need not be Maryland residents, and in fact nearly one-third of the Eligible Investments in 2006 were from people or entities domiciled in other states.

An additional class of investor entitled to take advantage of this tax credit is a Qualified Maryland Venture Capital Firm who invests at least \$250,000 in a Qualified Biotechnology Company. A Qualified Maryland Venture Capital Firm is an entity organized for the purpose of investing funds in privately held companies engaged in the research, development, or commercialization of innovative or proprietary technology. *Id.* at §10-725(a)(7). In addition, the firm must: (1) have at least two principals with at least five years of venture capital experience each; (2) have at least one year of experience investing in biotechnology or biopharmaceutical companies; and (3) have its principal place of business in Maryland. *Id.*

Because the statute does not specifically contemplate investment by limited liability companies, partnerships or any other entity that is not a corporation or a Qualified Venture Capital Firm, DBED has issued guidelines stating that such entities are not entitled to take advantage of the tax credit.

**Qualified Maryland Biotechnology Company.** The credit is designed for individuals and companies who invest in Qualified Biotechnology companies in Maryland. A Biotechnology Company is a “company organized for profit and primarily engaged in the research, development, or commercialization of innovative and proprietary technology that comprises, interacts with, or analyzes biological material including biomolecules (DNA, RNA, or protein), cell tissues, or organs.” *Id.* at §10-725(a)(2). In order to be “Qualified,” the company must (1) have its headquarters or base of operations in Maryland; (2) have fewer than 50 employees; (3) have been in active business no longer than 10 years; and (4) be certified as a biotechnology company by the Department. *Id.* at §10-725(a)(6). These requirements illustrate the legislature’s intent to favor investment in small business in Maryland.

### **The Process**

The process to obtain the tax credit has many steps. First, the Investor must complete a Qualified Investor application (Form A.1 (for individuals), A.2 (for corporations) or A.3 (for venture funds)) and the Company must complete a Qualified Maryland Biotechnology Company application (Form B). These forms are filed with DBED, and officials meet weekly to review and approve the applications. Within thirty (30) days of receiving a complete application, and assuming the tax credits have not been fully subscribed for, DBED will issue an initial tax credit certificate. The investor will then have thirty (30) days to make the investment in the Company and notice must be sent to DBED by a Proof of Investment Form, along with supporting documentation (such as a cancelled check or wire confirmation) within ten (10) days of the actual investment. Upon receipt of the Proof of Investment Form, DBED will issue a final tax credit certificate.

Once the final tax credit certificate is issued, the investor will be able to claim a refundable tax credit for 50% of his, her or its investment. The credit may be claimed in a taxable year beginning after December 31, 2006. *Id.* at §10-725(e)(3)(vii). Therefore, those investors investing in 2006 and 2007 will be able to claim the tax credit on their 2007 returns and receive the refund in 2008.

### **The Future of the Tax Credit**

Because the tax credit program is funded through the Governor’s budget, the amount of tax credits set aside each year is subject to change. The recently submitted Governor’s budget again sets aside Six Million Dollars (\$6,000,000) of tax credits. Having successfully gone through this process and seeing first-hand the positive impact it has on generating investments in Maryland biotechnology companies, we are hopeful that the program will continue and, better yet, grow. According to DBED, approximately twenty (20) Maryland biotechnology companies benefited from the tax credit program in its first year. As Maryland fights to maintain itself as a national leader in the biotechnology industry, targeted programs such as this one are key to achieving that goal.

More information on the Maryland Biotechnology Investment Incentive Tax Credit, as well as the application forms, can be found on DBED’s website at [www.choosemaryland.org](http://www.choosemaryland.org).