

COMMITTEE ON REVENUE ~ BILL SUMMARY

Bill Number: H.4234

Name: AN ACT PROVIDING FOR THE INVESTMENT IN AND EXPANSION OF THE LIFE SCIENCES INDUSTRY IN THE COMMONWEALTH.

Sponsor(s): Gov. Patrick

Hearing Date: December 17, 2007

Summary: The bill would make the following tax changes:

- Eliminates the Massachusetts throwback provisions for certified life science projects;
- Creates a refundable 10% Life Sciences Investment Incentive Tax Credit and allows projects to receive an additional 2% tax credit if they locate in Economic Opportunity Areas;
- Creates a sales tax exemption for bricks and mortar purchased associated with the development of life science projects;
- Creates a 100% refundable FDA User Fee Credit;
- Allows a life sciences project to take the current Research and Development Tax Credit as a refundable credit;
- Extends the NOL to 15 years;
- Eliminates the mathematical test for certified life science projects to qualify for sales and use tax exemptions as R&D companies.

Current Law:

Research and Development Corporations- *G.L. ch. 63, § 38C* – Defines a domestic research and development corporation as one in which its principal activity is research and development and which, during the taxable year, derives more than 2/3 of its receipts attributable to the Commonwealth from the activity (“receipts test”) or incurs more than 2/3 of its expenditures attributable to the Commonwealth (“expenditures test”).

G.L. ch. 63, § 42B – Defines a foreign research and development corporation by the same criteria listed under § 38C.

If a Massachusetts corporation qualifies as a research and development corporation, it is eligible for the following tax benefits:

Investment Tax Credit (ITC) – *G.L. c. 63, § 31A* – R&D corporations qualifying under the receipts test can claim the ITC against Massachusetts corporate excise for qualifying property¹ Manufacturing corporations, business corporations engaged primarily in research and development, or corporations primarily engaged in agriculture or commercial fishing may take a credit against their excise due for property either owned by them or leased pursuant to an operating lease.

Property Owned:

The amount of the credit allowed for owners is 3% of the cost or other basis for federal income tax purposes of qualifying tangible property acquired, constructed, reconstructed, or erected during the taxable year, after the deduction

¹ R&D corporations qualifying solely under the expenditures test are precluded from claiming the ITC

of any federally authorized tax credit taken with respect to such property.

Property Leased:

The amount of the credit afforded to lessee corporations with respect to tangible personal property is 3% of the lessor's adjusted basis in the property for federal income tax purposes at the beginning of the lease term, multiplied by a fraction, the numerator of which is the number of days of the taxable year during which the lessee corporation leases the tangible personal property and the denominator of which is the number of days in the useful life of the property.

In addition, corporations renting or leasing tangible property from regional business development corporations or authorities authorized under chapter 40D, or regional business development corporations organized as non-profit corporations, otherwise qualifying for the credit under chapter 63, Section 31A(j), are eligible for such credit and will be deemed to have acquired such eligible property by purchase as defined under § 179(d) of the federal Internal Revenue Code, as amended and in effect for the taxable year. The amount of the credit is 3% of the value of qualifying property leased and placed in qualified used during the taxable year.

Historically, the amount of the credit has fluctuated between 3% and 1% of the eligible costs incurred.

Sales Tax Exemptions – G.L. c. 64H, §§ 6(r), (s) – Sales of materials, tools, and fuel, or any substitute, which are consumed and used directly and exclusively in the research and development by a research and development corporation is exempted from paying sales tax for those products; furthermore, sales of machinery, or replacement parts thereof, used directly and exclusively in the research and development by a research and development corporation is exempted from paying sales tax for those products;

Local Property Tax Exemption for Machinery – G.L. c. 59, § 5(16) – R&D corporations that are also classified as manufacturing corporations are eligible for the exemption from local property tax²

Throwback Provision - In general, if a Massachusetts corporation, other than a defense, manufacturing, or mutual fund service corporation, has income from business activity which is taxable both within and without this commonwealth, its taxable net income shall be apportioned to this commonwealth according to the following formula:

$$[\text{Property Factor} + \text{Payroll Factor} + 2(\text{Sales Factor})] \div 4$$

Certain defense, manufacturing and mutual fund service corporations are allowed to apportion their taxable net income based on 100% of sales (i.e. single sales apportionment) if they meet certain requirements, including achieving certain employment/payroll targets.

For Massachusetts purposes, a "sale", for purposes of the above equation, means all gross receipts of the corporation except interest, dividends, and gross receipts from the maturity, redemption,

² R&D corporations that are not also classified as manufacturing corporations may NOT claim this exemption

sale, exchange or other disposition of securities. Further, the following transactions involving tangible personal property shall be deemed a "sale":

1. the property is delivered or shipped to a purchaser within this commonwealth regardless of the f. o. b. point or other conditions of the sale; or

2. the corporation is not taxable in the state of the purchaser and the property was not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the corporation outside this commonwealth.

Research and Development Credit - G.L. c. 63, § 38M, A domestic or foreign corporation is allowed a credit against its excise tax equal to the sum of ten (10) percent of the excess, if any, of the qualified research expenses for the taxable year, over the base amount; and fifteen percent of the basic research payments determined under I.R.C. § 41(e)(1)(A). This is a non-refundable credit.

Proposed Changes:

- **Creates a Massachusetts Life Sciences Sector Incentive Program:** generally laying out the process to become a certified life sciences project eligible for the tax credits listed below.
 - Defines "life sciences project"- that portion of a life sciences sector business consisting of a new or expanded facility that in its entirety, as of the project proposal date, is located in the Commonwealth and that:
 - Increases the number of permanent full-time employees employed by the life sciences sector business within the Commonwealth; and
 - Not a replacement or relocation of employees already in the Commonwealth.
 - Requires a project proposal to attain certification: Must be submitted to the department of business development pursuant to section 63 and be:
 - Timely, and in such form as determined by the department
 - Supported by independently verifiable information and signed under the penalties of perjury by a person authorized to bind the business
 - Include specific targets by year of the number of additional or retained full time employees, the projected salaries for those employees, and the projected income taxes generated for each of the years the project may receive benefits
 - Include documentation of a bank agreement
 - If the project is already located in the Commonwealth at the time of application, the projected increase shall not be less than 25% over the subsequent 5 yr period
 - In the case of a new facility- the number of permanent full-time employees employed by the business at other facilities located in the Commonwealth.
 - Defines a "real estate project" as real property where there shall be construction or renovation activity, which when completed will result in an increase in the assessed value of such property of at least 100% over the assessed value as of the proposal date. Such projects may qualify as a certified life sciences project.

- Requires that the project provide a “return on investment”- “tax pursuant to Chapter 62 generated by permanent full-time employees of a life sciences project, which are either new or maintained because of a project, over the period for which project benefits are received.”
 - Administered by the Department of Business development
 - With an annual report to the governor, Senate and House Ways and Means committees, and the Joint Committee on Economic Development and Emerging Technologies.
 - A review report for each certified project every two years
 - Tax incentives awarded jointly by the Secretary of HED and Secretary of ANF
- Eliminates the MA throwback provision for certified life science projects by deeming sales by the projects to be out of state if they are delivered or shipped there, regardless of whether the good is taxed by that state.
- Create a Life Sciences Investment Incentive Tax Credit equal to 10% of the cost of qualifying property used exclusively in the Commonwealth for a certified life sciences project.
 - Would allow a 10 year carry forward
 - refundable
 - allows a taxpayer to receive both this credit and 2% of the Economic Opportunity Area Credit if the project is in an Economic Opportunity Area: (generally the EOAC is 5%)
 - The corporate taxpayers would still be subject to the minimum excise
 - If the certified life sciences project files as a member of a combined group, the credit must be first applied against the excise of that member, but any remaining credit may then be applied against the excise of another group member
- Creates a sales tax exemption for bricks and mortar purchased associated with the development of life sciences projects by exempting the sale of tangible personal property purchased for a certified life sciences project for use in connection with the construction, alteration, remodeling, repair or remediation of the research, development of manufacturing facilities and the utility support systems in furtherance of such a project.
- Creates an FDA User Fee Credit equal to the amount paid to the USFDA for a human drug application or supplement, the research and development costs of which, were primarily (more than 50%) incurred in the Commonwealth.
 - There is no carry forward
 - The credit is to be refundable
 - If the certified life sciences project files as a member of a combined group, the credit may be applied against the excise of another group member
- Allows a life sciences project to take the current Research and Development Tax Credit as a refundable credit
- Allows a certified life sciences project to carry forward Net Operating Losses for 15 years instead of the normal 5 years.
- Deems all certified life science projects research and development corporations for the purposes of the Sales and Use tax exemptions. This means they will no longer need to meet the 2/3 expenditures or receipts tests.