



Tax Planning for Maryland Biotechnology Companies 2021

Tax Compliance, BIITC, and Other Valuable Opportunities



Agenda

- Maryland BioTech Investment Incentive Tax Credit (BIITC)
- Employee Retention Credit (ERC)
- PPP Round 2
- Additional items

Biotech Investment Incentive Tax Credit

Overview:

Credit to the investor of 33% of the eligible investment in a Qualified Maryland Biotechnology Company (QMBC) up to \$250,000 in credits (per QMBC).

Specific named jurisdictions and companies located in RISE or Opportunity zones *may* qualify for 50-65% of eligible investment, up to \$500,000.

The program was funded for \$12 million for FY 2021. Credits are issued on first come, first served basis.

What is a “QMBC”

Qualified Maryland Biotechnology Company

“Biotechnology company” means a company organized for profit that is primarily engaged (*or within 2 months will be primarily engaged in*) 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), cells, tissues, or organs.

Qualifying as a QMBC

To qualify, a QMBC must have:

- Headquarters and base of operations in Maryland
- Fewer than 50 employees and at least one full-time employee engaged in biotech research in Maryland
- At least one non-executive employee performing research
- \$100,000 in capital (equity, drawn-down grants, long-term debt)
- Does not have its securities publicly traded on any exchange
- Has been in active business no longer than 12 years
- Certified by the Secretary as a QMBC
- Qualified investors in the Company have not received more than \$7M in biotechnology investment incentive tax credits.

The “Cure” Period

If a company fails to qualify as a QMBC, the company has 60 days from the receipt of the investment to meet criteria.

Qualifying as an Investor

Qualified Investors:

- An individual or entity, *and does not include qualified pension plans or qualified retirement plans*
- Investment of at least \$25,000 in a QMBC
- Non-resident investors are qualified for the program. NR investors from tax haven countries are disqualified.
- Limited to a credit of \$250,000 for each QMBC for each fiscal year (*except in Allegany, Dorchester, Garrett or Somerset counties, where investors qualify for a credit of 50% of the investment, not to exceed \$500,000*)

Precertification

Form B – application for QMBC

- Attachments for Question 11
 - Organizational documents, certificate of good standing from SDAT within the last 30 days
 - Listing of intellectual property, licenses, patents
 - Documentation of laboratory and experimentation activity
 - Formal business plan with copies of licenses, list of intellectual property, break out of expenses including R&D, and balance sheet information showing equity
- Filed for each prospective investment if the Form B submission is less than 31 days old

Precertification

Investors

Forms A1, A2, or A3 – investor application forms

- Good standing verification and organizational documents for non-individuals
- Questions regarding criminal offenses, delinquent taxes, litigation are for the determination of securities fraud and full disclosure to the Department

Timeline Overview



Form B Details

- QMBC qualification period begins August 23. During this period, applying companies only submit Form B.
- Form B must be submitted BEFORE Commerce will accept investor applications.

Form A Details

- Beginning Sept. 7, Commerce will begin accepting Form A investor applications.
- Form A must be submitted no later than Sept. 27 in order to be eligible for the electronic queue.
- Upon receipt of Form A, Commerce will issue eligible investors a username and reference number for the next step (Sept. 28)
- Investor applications (Form A) submitted after 9/27 at 11:59pm will be issued a username and reference number AFTER Sept. 28.

September 28th....Ready, Set, GO

- Queue opens September 28 at 9am EST
- Investor username and reference number required
- Multiple submissions using the same UN and RN will be considered filed at the date and time of the LAST submission.
- An eligible investor has 30 days from the date when Commerce issues the initial tax credit certificate to make the investment in QMBC.
- Within 10 days of making the investment, the investor shall provide written notice with supporting proof (investment documentation) to Commerce.

Access the Forms

<http://commerce.maryland.gov/fund/programs-for-businesses/bio-tax-credit>

Convertible Debt

- Provided that the conversion to equity takes place within 30 days of the Initial Tax Credit Certification, convertible debt **will qualify if the debt had been created within one year prior to the date of the investors' application for a BIITC**. Renewal of debt that has been outstanding for more than one year is ineligible for this conversion qualification.
- The equity ownership may be converted to common or preferred stock of a corporation or partnership capital of a partnership or LLC

Employee Retention Tax Credit (ERC)

Summary:

Under the CARES Act, eligible employers are allowed a credit against payroll taxes for 50% of the qualified wages paid to employees from March 13, 2020 to December 31, 2020, for a combined maximum credit per employee of \$5,000 for all four quarters of 2020.

The ERC was extended under the Consolidated Appropriations Act of 2021 and again in the American Rescue Plan Act of 2021 to allow for a credit of 70% of qualified wages paid to employees, for a maximum credit per employee of \$7,000 per quarter or a total maximum credit of \$28,000 per employee in 2021.

ERC- What's It Worth?

For ELIGIBLE EMPLOYERS:

- A refundable tax credit against the employer share of Social Security tax equal to 70% of the qualified wages paid to employees after 12/31/2020 through 6/30/2021.
- Maximum ERC amount is \$7,000 per employee per calendar quarter (= \$14,000/employee in 2021)

ERC- Am I Eligible?

Employers are eligible if they operate a trade or business during 3/11/2020 through 12/31/21 and experience either:

- A full or partial suspension of the operation of their trade or business during this period because of governmental orders limiting commerce, travel or group meetings due to COVID-19, or
 - 2020 ERC: A decline in gross receipts to 50% of the gross receipts compared to the same calendar quarter in 2019
 - 2021 ERC: A decline in gross receipts to 80% of the gross receipts compared to the same calendar quarter in 2019
 - New businesses with no activity in 2019 may compare the same quarter of 2020 to 2021 or the quarter immediately prior to the quarter for which the credit is being requested.

ERC Qualified Wages: What counts?

- Qualified wages are generally those wages paid to all employees during these periods regardless of whether the employees are providing services if the business is considered small (less than 100 employees for 2020, less than 500 employees for 2021).
- Qualified wages also include payments by the employer for qualified health insurance plans.
- Qualified wages EXCLUDE wages already covered by:
 - PPP loans 1 or 2
 - FFCRA sick or family leave coverage credits

ERC Summary

	2020	2021
Eligibility (Small Employers)	Full or partial closure due to government mandate OR 50% reduction of gross receipts compared to 2019	Full or partial closure due to government mandate OR 80% reduction of gross receipts compared to 2019
Qualified Wages	\$10,000 combined for all quarters of 2020	\$10,000 per quarter for each quarter of 2021
Maximum Credit per Employee	\$5,000	\$28,000
How to File	Amended 941 return for any applicable quarter	Amended 941 return for Q1, Q2 Reduce tax deposits for Q3, Q4

PPP Round 2 Forgiveness

Key questions:

- Who should be applying to have the PPP loan forgiven?
- How do I apply?
- Can I have my PPP loan forgiven AND qualify for ERC in 2021?

Other Maryland Incentives

- Research & Development Tax Credit
- New hire tax credits
 - More Jobs for Marylanders manufacturing credit
- Hub/enterprise/RISE zone credits
- Manufacturing credits and accelerated depreciation
- Opportunity Zone benefits for investors

[Maryland Department of Commerce Tax Credit List](#)

Maryland BioHealth Directory

- Sign up!
- Update your profile.
- Commerce becomes your advocate and BD team.
- Find partnerships and customers.
- <https://commerce.maryland.gov/biodirectory>

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