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\$250 Million of Tax Incentives Now Available for Life Science Companies

By Rachel Pust with Beth Golden, CPA

Last June, the Massachusetts legislature passed a bill aimed at stimulating the life science industry in the Commonwealth of Massachusetts. The bill provides for \$1 billion in funding to be spent over a ten-year period in the life sciences sector. Consequently, \$250 million has been designated to be used for state tax incentives, and there are nine types of state tax incentives available to life science companies that qualify.

The Massachusetts Life Sciences Center (MLSC) was established to expand life science-related employment opportunities in the commonwealth and to promote health-related innovations by supporting and stimulating research and development, manufacturing and commercialization in the life sciences. It is also responsible for identifying qualifying life science companies to participate in the state tax incentive program.

A life science company is defined as a legally organized for-profit business, corporation, partnership, firm, unincorporated association or other entity engaged in life sciences research, development, manufacturing or commercialization in the Commonwealth of Massachusetts. This includes businesses engaged in agricultural biotechnology, biogenetics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science.

To qualify as a *certified* life science company and take advantage of the state tax incentives, a company must apply online (www.masslifesciences.com/programs.html) to the MLSC. The application is extensive and competitive. A company must provide information regarding their projected impact on the life science industry, such as the number of Massachusetts jobs that will be created and an estimate of revenues expected to be generated. Applications must be completed online by 5/15/09.

If accepted as a life sciences company, certification is granted for a five-year period with an annual evaluation. The company must file a report on an annual basis with the MLSC to determine if the applicant has met the specific targets that were established. If the targets are not met, certification may be revoked.

The good news is there are nine types of state tax incentives available to ***certified life science companies***. Each of these incentives may have specific additional requirements that must be met in order to qualify. These incentives are outlined briefly below:

1. Life Sciences Investment Tax Credit

Credit equal to 10% of the cost of qualifying property acquired, constructed, reconstructed or erected during the taxable year and used exclusively in the Commonwealth, of which 90% of the credit may be refundable to the taxpayer for the tax year in which the qualified property is placed in service.

2. FDA User Fees Credit

Credit for user fees paid to the U. S. Food and Drug Administration (U.S.F.D.A.) upon submission of an application to manufacture a human drug in the Commonwealth.

3. Extension of Net Operating Losses

Allows losses to be carried forward for up to 15 years (in lieu of the current 5-year time period).

- 4. Elimination of Sales Factor Throwback Provision**
Permits a certified life sciences company to be deemed to be taxable in the state of its purchaser if the property purchased is delivered or shipped to another state. This treatment would preclude such sales from being counted in the numerator of the sales factor of the corporate apportionment formula.
- 5. Section 38M Research Credit (Refundable)**
90% of the balance of the credit that exceeds the amount that may be claimed under § 38M for a taxable year may be refunded. Unexpired research credit carried forward from 2008 and earlier years can be made refundable in 2009 and thereafter.
- 6. Section 38W Life Sciences Research Tax Credit**
Allows for a new tax credit for research expenditures performed both inside and outside of the Commonwealth, to the extent they relate to legally mandated clinical trial activities.
- 7. Deduction for Orphan Drug Qualified Clinical Testing Expenses**
Allows a Massachusetts deduction for qualified clinical expenses for certain drugs for rare diseases or conditions.
- 8. Designated as R&D Company for Sales Tax Purposes**
A certified life sciences company may be deemed a research and development corporation for purposes of the sales and use tax exemptions for materials, tools, fuels and machinery used in research and development.
- 9. Sales Tax Exemption for Property Used in Certain Development**
Grants a sales tax exemption for certain tangible personal property purchased for a life sciences company used in connection with the construction, alteration, remodeling, repair or remediation of research, development or manufacturing facilities and utility support systems.

For more details about the new tax incentives available to life science companies, contact Rachel Pust at 781-937-5375 or Beth Golden at 781-937-5326.