



MOODY, FAMIGLIETTI & ANDRONICO

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State & Local Tax Alert

Subject:

Massachusetts Life Sciences Tax Incentive Program

Massachusetts Life Sciences Tax Incentive Program *- May 15th Eligibility Deadline Drawing Near -*

During 2008, "An Act Providing for the Investment in and Expansion of the Life Sciences Industry in the Commonwealth" was enacted which provides Massachusetts-based life science companies with \$1 billion in benefits over the next 10 years in an effort to encourage development of the life sciences industry in the state. A key component of the new Life Sciences Act is an aggressive set of tax incentives totaling \$250M (\$25M per year for 10 years.)

Known as the *Life Sciences Tax Incentive Program*, the program is being administered by the Massachusetts Life Sciences Center (MLSC). Eligibility for the incentives begins January 1, 2009 and, in order to be eligible, a life sciences company must first submit an application and be approved by the MLSC as a "certified life sciences company".

MLSC will be accepting applications on a rolling-basis up until the deadline of May 15, 2009. It is important to note that the MLSC specifically states that the program is "competitive" and they have full authority to determine which certified life science companies, if any, are entitled to receive

benefits or incentives as well as determine the amounts of any such benefits or incentives.

For more information on how applications will be evaluated, refer to the MLSC's Tax Incentive Program Guide; (<http://www.masslifesciences.com/incentive/122908TaxIncentiveSolicitationAGM.pdf>.)

The Life Sciences Tax Incentive Program includes a set of nine separate tax credits and tax benefits that are effective from January 1, 2009 through December 31, 2018. Below you will find a summary of the incentives as well as further details on eligibility.

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If you would like to discuss the content of this State and Local Tax Alert, please call:

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Life Sciences Investment Tax Credit

The program offers investment tax credits equal to 10% of the cost of qualifying property acquired, constructed, reconstructed or erected during the taxable year and used exclusively in a life sciences project in Massachusetts. This includes buildings and structural components as well as tangible personal property.

These credits may be carried forward for a period of 10 years. To the extent authorized, companies without sufficient tax liability against which to apply the credits, may elect to refund 90% of the excess credits.

FDA User Fees Credit

The program offers a 100% credit for user fees paid on or after June 16, 2008 to the FDA by the company for submission of an application to manufacture a human drug in the state of Massachusetts. This credit can be claimed in the taxable year in which the application for licensure of an establishment to manufacture the drug is approved by the FDA. To be eligible for the credit, more than 50% of the research and development costs for the drug must have been incurred in Massachusetts.

These credits may be carried forward for a period of 10 years. To the extent authorized, companies without sufficient tax liability against which to apply the credits, may elect to refund 90% of the excess credits.

Existing Research Credits Refundable

The program converts previously nonrefundable \$38M research and development credits into 90% refundable credits

for certified life sciences companies. Unexpired research credit carryforwards from 2008 and earlier years can be made refundable in 2009 and thereafter.

Life Sciences Research Credit

The program adds a new life sciences research credit that provides qualifying companies with a means to obtain a research credit for certain expenditures that do not qualify for the existing \$38M research credit. Chief among the new qualifying expenditures are the expenses associated with legally mandated clinical trial activities performed both inside and outside of Massachusetts.

The new life sciences research credit can be carried forward for 15 years. However, unlike the regular research credit, the new life sciences research credit is not refundable.

Extension of Net Operating Losses

The Life Sciences Tax Incentive Program authorizes certified life sciences companies to carry forward net operating losses to offset future income for a period of up to 15 years (rather than the five years currently permitted).

Elimination of the Sales Throwback Provision

Life sciences companies may be deemed taxable in the state of its purchaser if the property is delivered or shipped to a state other than Massachusetts, thereby reducing the sales factor for the corporate income tax apportionment formula.

Designation as R&D Corporation for Sales Tax Purposes

Under the Life Sciences Tax Incentive Program, certified life sciences companies are deemed to be research and development corporations for sales and use tax purposes. As such, they are authorized to claim sales and use tax exemptions for purchased materials, tools, fuels and machinery used in R&D

Sales Tax Exemptions for Development of Certain Facilities & Utility Support Systems

Certified life science companies are also granted a sales tax exemption for certain tangible personal property purchased specifically for use in the construction, alteration, remodeling, repair or remediation of research, development or manufacturing facilities. The exemption also includes associated "utility support systems" such as site, civil, mechanical, electrical and plumbing systems.

Deductions for Qualified Clinical Testing Expenses for Orphan Drugs

A certified life sciences company is allowed a Massachusetts deduction for the portion of expenses paid or incurred for qualified clinical expenses for certain drugs for rare diseases or conditions that equal the amount of the credit allowable.

Program Eligibility

The Program is available to for-profit entities engaged in life sciences research, development, commercialization or manufacturing in

Massachusetts. As defined by the Statute, "Life Sciences" includes: "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."

In order to be eligible for the tax incentives and other benefits available under this program, a company must first be approved by the MLSC as a "certified life sciences company." **Applications must be submitted online by May 15, 2009.** Awards will be announced no later than September 15, 2009 and eligible companies will be granted certification for renewable five-year periods, subject to annual reporting requirements.

Further Information

Link to program background:
<http://www.masslifesciences.com/taxincentive.html>

Link to draft application:
<http://www.masslifesciences.com/tax/112408MLSCTaxIncentiveApplication.pdf>

Link to application:

<https://forms.masslifesciences.com/tax/>

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