

Massachusetts Governor's new Life Sciences bill

Providing tax incentives to the Life Sciences industry.

On June 16, 2008, Massachusetts Governor Deval Patrick officially signed the Life Sciences Bill (H. 4829) into law. The new law provides \$1 billion in incentives to encourage development of the life sciences industry in the state. This article highlights the major provisions contained in the law, including \$500 million in capital infrastructure improvements, \$250 million in tax incentives, and \$250 million in science grants and small business assistance. The article will also discuss the role and powers granted to the newly-created Massachusetts Life Sciences Center ("MLSC") and the certification process required by companies to obtain the benefits outlined in the new law.

These life sciences initiatives are particularly advantageous to the medical device community, and provide significant incentives to grow and expand business operations in the state of Massachusetts. MassMedic and Grant Thornton would be happy to assist your company in evaluating the incentives that may be available to your company.

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Provides infrastructure funding for the Life Sciences industry

The Life Sciences Bill authorizes \$500 million in capital spending initiatives. The capital spending initiatives include \$299.5 million in designated funding, most of which will benefit the University of Massachusetts school system, including \$95 million for use in the construction of a life sciences research center at UMass Amherst and \$90 million for use in advanced therapeutics by the medical school at UMass Worcester.

The infrastructure funding also includes an earmark of \$10 million for use in building a nano- and bio-manufacturing facility at UMass Lowell. This earmark will benefit the Massachusetts Medical Device Development Center ("M2D2"), a partnership of UMass Lowell and the medical school at UMass Worcester. M2D2's role is to assist companies, particularly smaller organizations, in bringing medical devices to the marketplace.





The MLSC, discussed in further detail below, will be responsible for disbursing, within legislative guidelines, the \$299.5 million in earmarked funds and will have the authority to grant and disburse the remaining \$200.5 million that is not specifically earmarked. Grant funding for the infrastructure improvements is to be spent over a 10 year period.

Creates a new Life Sciences investment program to certify Life Sciences companies

In addition to the infrastructure funding, the law provides for certain tax incentives and grants available only to certified life sciences companies. Certified life sciences companies must have a financial and revenue growth plan approved by a board of the MLSC.

The law defines qualified life sciences companies as those companies which use advanced and applied sciences to expand the understanding of human physiology and have the potential to lead to medical advances of therapeutic applications. Companies which meet this definition would include companies in many areas, including: biomedical engineering; biopharmaceuticals; biotechnology; chemistry technology; diagnostics; genomics; image analysis; medical devices; nanotechnology; regenerative medicine; RNA interference; and stem cell research.

A qualified life sciences company will be considered for certification by submitting a project plan application, which must include among other items, an estimate of the amount of new revenue expected to be generated by the company, the amount of new permanent full-time employees, the increase in

the company's paid Massachusetts taxable wages and a calculation of how much new incremental commercial revenue the plan will bring into Massachusetts. The project plan must be supported by independently verifiable information. Approval of the plan is required by a majority of the board of the MLSC.

The MLSC board consists of seven members appointed by the governor, including two members from government, one member from a Massachusetts university and four targeted business appointments to include life sciences business representatives, including a chief executive officer, financial executive, researcher, and physician.

The MLSC has full authority to certify life sciences companies and grant awards on a competitive basis, based on project plans submitted and outlined in the requirements of the legislation. These awards may be granted from the \$200.5 million of undesignated infrastructure improvements, the \$250 million in new tax benefits provided under the tax code, or the \$250 million in science research grant funds as discussed below.

Finally, the MLSC also has the authority to provide for reductions, clawbacks and decertification for companies that do not meet their targeted project plans and estimates.

New and expanded tax incentives for qualified Life Sciences companies

The new law allows for \$250 million in tax incentives for companies that commit to creating life sciences jobs in Massachusetts in the amount of \$25 million per year for 10 years. The tax incentive provisions are effective January 1, 2009 and sunset on December 31, 2018. As described above, the MLSC has full authority to grant these incentive amounts to each certified life sciences company.

The MLSC can further cap the incentives available to certified life sciences companies to be less than the maximum allowed by tax law in both the number of incentives granted and the dollar amount of incentives granted.

The menu of tax incentives available to a certified life sciences company includes the following:

- **10% investment tax credit**
The new provision allows certified life sciences companies a credit on their Massachusetts excise tax for 10% of qualified purchases of property related to a life sciences project. If the company cannot utilize the full credit on their Massachusetts Excise Tax Return, 90% of the credit may be refunded and the balance carried forward to future tax returns for a period of 10 years until the full amount of the credit can be utilized.
- **100% FDA user fee tax credit**
The provision allows certified life sciences companies a credit on their Massachusetts excise tax for 100% of qualified payments made to the U.S. Food and Drug Administration upon submission of an application user fee. If the company cannot utilize the full credit on their Massachusetts Excise Tax Return, 90% of the credit may be refunded and the balance carried forward to future tax returns for a period of 10 years until the full amount of the credit can be utilized.
- **10% research and development tax credit**
The provision allows certified life sciences companies a credit on their Massachusetts excise tax for 10% of the incremental increase in current year Massachusetts qualified research expenses over a calculated base period of prior year Massachusetts qualified research expenses. Qualifying Massachusetts research expenses are further expanded for certified companies by allowing clinical trial expenses performed both within Massachusetts and outside of Massachusetts to qualify as Massachusetts research expenses in the calculation of the Massachusetts research and development credit. Further, if the company cannot utilize the full credit on their Massachusetts Excise Tax Return, 90% of the credit may be refunded and the balance carried forward to future tax returns for a period of 15 years until the full amount of the credit can be utilized.
- **Deduction for qualified clinical testing expenses for orphan drugs**
Companies that include qualifying clinical testing expenses as part of their Massachusetts research and development tax credit are normally disallowed a tax deduction for these same expenses since they are taking a Massachusetts research and development credit.

However, certified life sciences companies that include qualified clinical testing expenses for orphan drugs as part of their Massachusetts research and development tax credit will be allowed a tax deduction for these same expenses.



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- **Enhancement of net operating loss (NOL) carryover from 5 to 15 years**

Companies that have NOLs in Massachusetts generally are allowed to carry forward their NOLs to offset future Massachusetts state taxable income for a period of 5 years. Certified life sciences companies will be allowed to carry forward their NOLs to offset future Massachusetts state taxable income for a period of 15 years.

- **Elimination of the sales throwback provision**

Some companies that have sales operations in the state of Massachusetts are required to throw back or include sales to out-of-state customers as part of their apportionment calculation which determines their Massachusetts taxable income and therefore increases their Massachusetts excise tax. Certified life sciences companies, however, will be allowed a special dispensation from this required throwback method for sales that are attributed to out-of-state companies. They will therefore not be required to include or throw back such sales into the apportionment calculation used to determine the company's Massachusetts taxable income.

- **Elimination of sales tax for qualified property purchases**

Massachusetts allows companies that meet certain guidelines to be designated as Massachusetts research and development corporations. Qualifying purchases of property related to qualified research activity by a research and development corporation are exempt from Massachusetts state sales tax. Certified life sciences companies will be allowed this same sales tax exemption for property purchased relating to qualified life sciences research activity. A special exemption has also been created to specifically allow certified life sciences companies a sales tax exemption on the cost of property purchased that is used in the development of the company's utility systems.

Provides grant funding for Life Sciences initiatives

Finally, the new law gives authority to the MLSC to issue \$250 million in grants to fund life sciences initiatives. Grant funding for the Life Sciences initiatives are for a 10 year period and are subject to annual budget appropriations or transfers.

Four additional funds were created by the new law for administration of the grants. These funds, to be administered by the MLSC, are as follows.

- The Dr. Craig C. Mello Small Business Equity Investment Fund;
- The Judah Folkman Higher Education Grant Fund for grants to graduate school students;
- Massachusetts Small Business Matching Grant Fund; and the
- Massachusetts Life Sciences Educational Fund for vocational and technical school equipment purchases.

Conclusion

As stated by Governor Patrick at the bill signing ceremony, "With this initiative, we take our rightful place as a global leader in the life sciences. There is no place in the world with as great a concentration of life sciences talent, resources and vision as Massachusetts." The impact of these provisions will clearly help lead the Massachusetts life sciences industry, and the Massachusetts medical device community in particular, to this leadership role.

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