

TAX LAW ALERT
SEPTEMBER 2012

**LIFE SCIENCES TAX INCENTIVE PROGRAM:
APPLICATIONS NOW BEING ACCEPTED FOR 2012**

In an effort to expand employment opportunities, promote health-related innovations and stimulate research and development, manufacturing, and commercialization in the life sciences, the Massachusetts Life Sciences Center (MLSC) is offering tax incentives in 2012 to companies engaged in life sciences research and development, commercialization and manufacturing in Massachusetts. This tax incentive program, created in 2008 under the Massachusetts Life Sciences Act, invests \$1 billion in public funding over ten years in research and economic development in the life sciences industry. Of this amount, \$250 million – or up to \$25 million each year – is invested in the form of tax benefits targeted toward creating jobs in Massachusetts. Good candidates for the tax credit include early stage biotech companies that are focused on research and development, or that are ramping up their production-related hiring.

The primary goal of the program is to incentivize life sciences companies to create new long-term jobs in Massachusetts. MLSC, in consultation with the Commissioner of Revenue, may annually award targeted tax incentives to certified life sciences companies. Awards are non-transferrable and may be limited to specific dollar amounts or time duration. Applicants are limited to one application per program year.

Available tax incentives include:

- ▶ Life sciences investment tax credit;
- ▶ FDA user fees credit;
- ▶ Extension of net operating losses from 5 to 15 years;
- ▶ Elimination of throwback provision in calculation of sales factor;
- ▶ 90% refund of excess credits for qualified research expenses;
- ▶ Life sciences research credit for excess qualified research expenses and basic research payments;
- ▶ Deduction for qualified orphan drug expenses;
- ▶ Designation as an “R&D corporation” entitled to sales tax exemptions;
- ▶ Sales tax exemption for certain property; and
- ▶ Life sciences jobs incentive refundable credit.

The program is competitive. MLSC has full discretion and authority to determine which certified life sciences companies are entitled to receive incentives under the program and the amounts of any such incentives. Submission of an application does not guarantee an award of incentives under the program.

MLSC may favor applications that contribute to a balanced and strong portfolio of tax beneficiaries, including but not limited to factors such as:

- ▶ Wide geographic distribution of life sciences operations in Massachusetts;
- ▶ Wide distribution of life sciences technologies and industries supported by MLSC; and
- ▶ Diversity among businesses at different stages of product development and commercialization.

MLSC may, in its sole judgment, also take other factors into consideration in making a final award recommendation, including but not limited to:

- ▶ Minimal geographic overlap of project areas; and
- ▶ Applicant's plans or policies regarding environmental sustainability, corporate governance, labor standards and achieving a diverse workforce.

Applications are now being accepted for the 2012 program and must be submitted online by noon on October 25, 2012. Click [here](#) to complete an application. MLSC will consider and evaluate each application submitted by an eligible applicant that meets the application criteria. To be considered, each applicant must be a legally organized for-profit entity in good standing with the office of the Secretary of State and Department of Revenue engaged in life sciences research, development, manufacturing or commercialization in The Commonwealth of Massachusetts.

In addition to the completed application, applicants must also submit:

- (1) Signature and Acceptance Form;
- (2) Certificate of Good Standing from the Secretary of State (in PDF format);
- (3) Certificate of Good Standing/Letter of Compliance from the Department of Revenue (in PDF format); and
- (4) Revenue Plan (in PDF format).

Each certified company must file an annual report with MLSC detailing whether it has met the specific targets established in its certification proposal. However, applicants should be aware that, under the Commonwealth's Public Records Law, recipients of tax incentives will be required to agree that MLSC have the unlimited right to make use of and disseminate all periodic reports, case studies and any other deliverables and work products, including all data, materials and documentation submitted to MLSC with the application, with the exception of trade secrets, or commercial or financial information regarding the operation of any business. Therefore, applicants should consider deleting from the application any confidential information not covered by these exceptions.

To provide more information and answer any questions that a prospective applicant may have, MLSC is offering several information sessions throughout the state. Click [here](#) for a list of dates and locations.

If you have any questions about this alert or would like further information on this tax incentive program, please contact the author, [Brian L. Gaudet](#) in our [Business Law Practice Area](#).

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