

Client Alert

Latham & Watkins
Tax Department

Massachusetts Life Sciences Tax Incentive Program: Now Open for 2012

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The Massachusetts Life Sciences Center (the Center) has announced that it is now accepting applications for the 2012 round of the Massachusetts Life Sciences Tax Incentive Program (the LSTI Program). Companies with operations in Massachusetts associated with the life sciences industry should consider whether they may be eligible for benefits under the LSTI Program. Applications are due by noon on October 25, 2012 and may be submitted online via the Center's website. The application process is competitive, and total benefits under the LSTI Program are subject to an annual \$25 million cap.

The Massachusetts Life Sciences Act

In June 2008, Governor Deval Patrick signed the Massachusetts Life Sciences Act (the Act) into law. The Act represents a 10-year, \$1 billion initiative to expand employment in the life sciences industry in Massachusetts and to promote health-related innovations. The Center is a quasi-public agency of the Commonwealth of Massachusetts tasked with implementing certain provisions of the Act, including the LSTI Program.

The Massachusetts Life Sciences Tax Incentive Program

In General

The LSTI Program offers specified tax incentives to certain companies engaged in life sciences research and development, commercialization and manufacturing in Massachusetts. Pursuant to the LSTI Program, the Act authorizes the Center to award up to \$25 million in specified tax incentives each year.

The primary purpose of the LSTI Program is to incentivize life sciences companies to create new long-term jobs in Massachusetts. Through three prior rounds of applications, the Center has 57 active awards totaling \$56.7 million and involving companies that have created or are promising to create more than 2,000 jobs.

The Meaning of “Life Sciences”

For purposes of the LSTI Program, “life sciences” is broadly defined to mean advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, 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.

Specified Tax Incentives Available Under the LSTI Program

The Act provides for 10 different tax incentives, which are designed to address the capital expenditures associated with the life sciences R&D cycle and the high costs of translating research into commercially viable products. The LSTI Program currently consists of the following incentives (in each case subject to certain qualifications and limitations):

- Life sciences investment tax credit
- FDA user fees credit
- Extension of net operating losses from 5 to 15 years
- Elimination of throwback provision
- 90 percent refund of already-available excess §38M research credits
- §38W life sciences research credit
- Deduction for qualified orphan drug expenses
- Designation as R&D company for sales tax purposes
- Sales tax exemption for certain property
- Life sciences jobs incentive refundable credit

Several of the incentives set forth above are refundable, meaning an awardee may be entitled to receive cash from the Commonwealth of Massachusetts with respect to such incentives even if it pays no income tax.

Criteria Applied in Making Award Decisions

Applicants to the LSTI Program will generally be evaluated on whether they meet the following criteria:

- Applicants must be life sciences companies with operations in Massachusetts eligible for tax incentives;
- Applicants must be in good standing with the Commonwealth of Massachusetts; and
- Applicants must have developed credible employment and revenue targets for the next five years and have a reasonable plan for achieving those targets.

The Center indicates that applicants' ability to create and retain jobs is the primary criterion for selection. A complete summary of the official criteria used to select recipients of tax incentives under the LSTI Program is included in the LSTI Program Solicitation available at <http://www.masslifesciences.com/taxincentive.html>. The Center expects to announce award decisions by the end of February, 2013.

Contractual and Compliance Requirements

The LSTI Program is jointly administered by the Center and the Massachusetts Department of Revenue (the DOR), which oversees the technical administration of the incentives. Jobs that are created must be maintained for at least five years. The LSTI Program mandates that companies receiving awards submit reports and respond to inquiries by the Center and the DOR regarding employment figures, revenue generation, and various other operational and business information. If a recipient company does not meet and maintain its job creation commitment, the applicable credit may be recaptured or “clawed back” by the DOR.

Conclusion

The benefits available to successful applicants under the LSTI Program are significant. Potential applicants should carefully review the LSTI Program-related materials available on the Center's website at <http://www.masslifesciences.com/taxincentive.html>, and should begin to gather information necessary to prepare responses to the LSTI Program application (available on the Center's website).

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