



## **2011 TAX INCENTIVE PROGRAM FREQUENTLY ASKED QUESTIONS (FAQ)**

### **GENERAL**

#### **1. What is the Massachusetts Life Sciences Center?**

The Massachusetts Life Sciences Center (Center) is a quasi-public agency of the Commonwealth of Massachusetts tasked with implementing the Massachusetts Life Sciences Act, a ten-year, \$1 billion initiative that was signed into law in June of 2008. The Center's mission is to create jobs in the life sciences and support vital scientific research that will improve the human condition. This work includes making financial investments in public and private institutions that are advancing life sciences research, development and commercialization as well as building ties between sectors of the Massachusetts life sciences community. For more information, visit [www.masslifesciences.com](http://www.masslifesciences.com).

#### **2. What is the Life Sciences Tax Incentive Program?**

The Life Sciences Tax Incentive Program, established as part of the Center's enabling legislation, authorizes up to \$25 million in tax incentives each year for companies engaged in life sciences research and development, commercialization and manufacturing. The primary goal of the program is to incentivize life sciences companies to create new long-term jobs in Massachusetts.

#### **3. What constitutes "life sciences?"**

For purposes of the Program, "life sciences" means 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.

#### **4. Are awardees required to be “Certified Life Sciences” companies?**

Yes, and granting of certification status occurs only in conjunction with an award by the Center’s Board of Directors. Funding under the Program is available only to a Certified Life Sciences Company. Certification as a Certified Life Sciences Company pursuant to the Life Sciences Statute is valid for 5 years starting with the tax year in which certification is granted. A Certified Life Sciences Company must file an annual report with the Center detailing whether it has met the specific employment generation targets established in its certification proposal. **Companies do not have to be certified prior to submitting a Tax Incentive Program application.**

If the awardee fails to meet the specified targets, the applicant’s status as a Certified Life Sciences Company may be subject to revocation. The Life Sciences Statute contains procedures for revocation of certification, and provisions regarding denial and recapture of benefits, if the Center determines that representations made by a Certified Life Sciences Company in its certification proposal are materially at variance with the conduct of the life sciences company after receiving certification. In such a case, revocation of certification is effective on the first day of the year in which the Center determines that a material variance commenced. Revocation of benefits is mandatory in the event of a material variance for two consecutive years.

### **TAX INCENTIVES**

#### **5. What Tax Incentives are available to Life Sciences Companies?**

The Life Sciences Act provides for ten different incentives which address the significant capital expenditures associated with the life sciences R&D cycle and the high costs of translating research into commercially viable products. Several of these incentives are refundable, enabling an awardee to receive cash from the Commonwealth, even if no income tax is paid. The Program consists of the following incentives:

- Life sciences investment tax credit
- FDA user fees credit
- Extension of net operating losses from 5 to 15 years
- Elimination of throwback provision
- 90% 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

For more information about the Program in general, or about the individual incentives offered under the Program, please [click here](#), to consult the Department of Revenue’s Technical Information Release regarding the first nine incentives referenced above. For more information about the recently-enacted life sciences jobs incentive refundable credit, please visit our website [www.masslifesciences.com/taxincentive](http://www.masslifesciences.com/taxincentive) for a summary.

**6. Can a Life Sciences Company apply for both the Life Sciences Investment Tax Credit and the Economic Development Incentive Program?**

Yes, subject to certain limitations described below.

The Life Sciences Investment Tax Credit (LS-ITC) is jointly administered by the Center and the Massachusetts Department of Revenue (DOR). Under the LS-ITC, life sciences companies are eligible to receive up to 10% of the cost of qualifying property acquired, constructed, reconstructed or erected during the taxable year and used exclusively in the Commonwealth.

The Economic Development Incentive Program (EDIP) Investment Tax Credit (EDIP-ITC) is administered by the Massachusetts Office of Business Development. Under the EDIP-ITC companies are eligible to receive up to 5% of the cost of qualifying property.

If a life sciences company is awarded an LS-ITC with respect to a specific project (i.e. Project A), they are eligible for no more than a 2% EDIP-ITC with respect to the same qualifying property. The percentage of the LS-ITC (up to 10%) awarded by the Center will depend on a number of factors and may result in companies not receiving the full amount of the requested LS-ITC. Therefore, once a company has received the LS-ITC on a qualifying property, no matter the dollar amount, the same qualifying property is limited to no more than a 2% EDIP-ITC.

The same life sciences company may also apply for an LS-ITC and EDIP-ITC for a *different* qualifying property associated with a *different* project (i.e., Project B) and would be subject to the same cap of no more than 2% EDIP-ITC on top of the LS-ITC on Project B. If, however, a company chose not to apply for an LS-ITC on a particular qualifying property, such company would be eligible for up to the full 5% EDIP-ITC for that same property.

For more information about the EDIP and certified projects, [click here](#).

**ELIGIBILITY CRITERIA**

**7. Are applicants required to have Massachusetts operations?**

Yes, applicants must be engaged in life sciences research, development, manufacturing or commercialization in the Commonwealth of Massachusetts.

**8. Can a company that received a prior MLSC Tax Incentive award apply for an award in 2011?**

Yes, companies are eligible to apply each year to the Center's Tax Incentive Program. In addition to achieving award criteria, prior awardees must have achieved 100% of their prior hiring commitments made under their existing award(s) to receive a 2011 award. If an applicant terminated an MLSC Tax Incentive Agreement in the 14 months prior to the 2011 program awards date, applicant is not eligible to receive an award from the 2011 program.

**9. Can companies apply for more than one tax incentive?**

Yes. Companies may request more than one tax incentive in any given year.

**SCHEDULE**

**10. Will there be information sessions?**

Yes. For the 2011 Tax Incentive program, information sessions are scheduled to be held on:

- July 21, August 18, and September 13 at 1100 Winter Street, Waltham, MA
- July 28 at Worcester Polytechnic Institute, 60 Prescott St. in Worcester
- August 10 at MassBio, One Cambridge Center in Cambridge.

RSVP's are requested. For more information, please check the Center's website at [www.masslifesciences.com](http://www.masslifesciences.com).

**11. What is the application deadline?**

The application deadline for the Program is noon EDT on October 7, 2011.

**12. When does the Center anticipate making award announcements?**

The Center anticipates making award announcements by the end of February 2012.

**APPLICATION PROCESS**

**13. How do companies apply for awards under the 2011 Tax Incentive Program?**

Companies interested in applying for awards under the Program should first review the Program solicitation and application, which will be available starting on July 11, 2011 on the Center's web site, [www.masslifesciences.com](http://www.masslifesciences.com). Each company may submit only one application.

**Applications may only be submitted online and the Center will not accept paper submissions.** Consult your tax advisor for tax advice. The Center does not provide any tax advice or guidance regarding which tax incentives are appropriate for your company.

**14. Once an application is submitted will applicant be able to change responses to the questions.**

No, unless the change is related to the applicant's identifying information. It is the applicant's responsibility to review their application prior to submission. Applicants are able to print out and review a copy of their application prior to submission.

### **15. Should applicants submit confidential information as part of an application?**

The Center is subject to the requirements of the Massachusetts Records Law, M.G.L. c.66, which governs the retention, disclosure, disposition and archiving of public records. While certain information submitted to the Center may be protected under an exception granted through the Life Sciences Statute, most information submitted to the Center may be subject to public disclosure. Whenever possible, we would advise you not to submit confidential information. Please refer to Section 8.1 of the Program solicitation, which sets forth the Center's policy regarding the Public Records Law and disclosure of confidential information.

## **REVIEW PROCESS**

### **16. What is the process for reviewing applications?**

Center staff will conduct a review and analysis of all applications to ensure that applicants are eligible for the Program and to apply guidelines developed in collaboration with the Massachusetts Department of Revenue (DOR) regarding projections of anticipated tax revenues from job creation. The DOR then conducts an analysis through a calculation of the tax revenue impact on the Commonwealth of the proposed incentive awards. Subsequent to DOR's review and written approval by the Commissioner of DOR, the Center then confers with the Board's Investment Committee and provides the total costs of such incentives to the Secretary of Administration and Finance.

### **17. Who makes the award decisions?**

The Center consults throughout the review process with the Massachusetts Department of Revenue (DOR). Based on DOR's input, the Commonwealth's Secretary of Administration and Finance provides express approval for the cost of the tax incentives for the fiscal year. Following these statutorily-mandated procedures, the Center's Board of Directors then has final authority for approving all tax incentives under the Program.

### **18. What criteria will be applied in making the award decisions?**

Applicant companies to the 2011 Tax Incentive Program will be evaluated on whether they meet the following criteria and other factors included in the Program Solicitation:

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

**The ability to create and retain jobs is the primary criterion for selection. It therefore is imperative that applicants provide accurate information regarding actual full-time Massachusetts employees (over 35 hours per week) and credible estimates regarding**

**projected employment targets. Third party contractors or employees paid by employment agencies should not be counted as employees of the applicant.**

A complete summary of the official criteria used to select recipients of tax incentives under the Program are included in the Program Solicitation.

## **CONTRACTUAL AND COMPLIANCE REQUIREMENTS**

### **19. What are the recipients' contractual and compliance requirements?**

The Tax Incentive Program is jointly administered by the Center and the Massachusetts Department of Revenue (DOR), which oversees the technical administration of the incentives. Jobs that are created must be maintained for at least five years. The Tax Incentive Program mandates that awarded companies submit reports and respond to inquiries by the Center and DOR regarding employment figures, revenue generation, amount of private capital leveraged, and information as to the recipient's operations and business affairs. If a company receiving a tax incentive under the program does not meet and maintain their job creation commitment, the credit may be recaptured or "clawed back" by DOR, requiring that the company pay back all or a portion of the tax incentives (i.e., credits, refunds, etc.) that they have received.

Successful applicants will be required to execute a Tax Incentive Agreement with the Center that sets forth the requirements of the incentive and the terms and conditions of compliance. A copy of the standard tax agreement is available, together with the Program Solicitation on the Center's website at [www.masslifesciences.com](http://www.masslifesciences.com).

### **20. Will the Center have any rights to intellectual property developed by the applicant by virtue of any award?**

No. Awards under the Program are tax incentives, and the Center will not have any claim to an applicant's intellectual property solely by virtue of an award under the Program.

### **21. When will awardees be allowed to use the tax incentive(s)?**

All Tax Incentive Agreements executed by successful applicants will stipulate that tax incentive(s) may only be claimed after July 1, 2012 including, without limitation, in the calculation of estimated taxes.