



To: Jay Gonzalez, Secretary, Executive Office for Administration and Finance
Navjeet Bal, Commissioner, Department of Revenue
William Welch, Clerk, Massachusetts Senate
Steven James, Clerk, Massachusetts House of Representatives

Cc: House and Senate Committee on Ways and Means
Joint Committee on Revenue
Joint Committee on Economic Development and Emerging Technologies

From: Susan Windham-Bannister, Ph.D.

Date: August 19, 2011

Re: Statutorily required 2009 tax incentive report

The Massachusetts Life Sciences Center (“the Center”) respectfully submits the following report detailing our decision to defer revocation of certification for certain life sciences companies that have been awarded tax incentives from the Center, as permitted under our statutory authority. This report is submitted in fulfillment of the requirements mandated by the General Court pursuant to the Center’s enabling statute at Mass. Gen. Laws ch. 23I, § 5(e)(2), as amended by Chapter 130 of the Acts of 2008.

As always, thank you for your ongoing interest and support.

Sincerely,

A handwritten signature in blue ink that reads "Susan Windham-Bannister".

Susan Windham-Bannister, Ph.D.
President & CEO



I. Introduction

This report provides notice to the Administration, the State Legislature and the public that the Massachusetts Life Sciences Center (the “Center”) is providing four companies that received tax incentive awards in 2009 with additional time to meet their minimum requirements for job creation under each company’s tax incentive agreement. The report is submitted in fulfillment of the requirements mandated by the General Court pursuant to the Center’s enabling statute at Mass. Gen. Laws ch. 23I, § 5(e)(2), as amended by Chapter 130 of the Acts of 2008.

II. Background

The Massachusetts Life Sciences Center is a quasi-public agency charged with implementation of the state’s ten-year, \$1 billion Life Sciences Act, passed by the legislature and signed into law in June of 2008. Under that statute the Center is responsible for administering the state’s Life Sciences Tax Incentive Program.

A. The Life Sciences Tax Incentive Program

The Center is authorized by statute to provide up to \$25 million in tax incentives annually to encourage companies to locate, invest and create jobs in Massachusetts. To be eligible, companies must have made a qualifying investment under one or more of the tax incentive provisions that are specified in the statute, which includes among others incentives for R&D, capital investment, FDA user fees and orphan drug development. Companies receiving incentives must commit to create a specific number of net new jobs during the following calendar year and retain those new jobs, along with their base headcount, for a five year period. Companies must create at least 70% of the new jobs (the “minimum threshold”) to which they have committed by the end of the following calendar year. More information about the Center’s Tax Incentive Program is available at www.masslifesciences.com.

B. Transparency and Accountability

The Center has designed its tax incentive program to be transparent and accountable. The program’s design was authorized by the Center’s Board of Directors at a public meeting. Applications are accepted once annually based on an open and widely publicized solicitation. Tax incentive awards are voted on in a public meeting, and announced publicly via press release and the Center’s web site. That announcement specifies the recipient companies, the amount of the incentive received by each company,

and the number of net new jobs that each company has committed to create in a specific calendar year.

To ensure accountability, the Center's program (and the statute authorizing it) has enforcement mechanisms, including strict monitoring and reporting requirements for recipient companies. Within 30 days of the end of each calendar year following an award, companies that receive tax incentives from the Center are required to provide an annual report to the Center that permits the Center to determine whether their job targets have been met. The statute provides for "claw-back" provisions for companies that are found not to be fulfilling their commitment to the state.

Companies may apply annually to the Tax Incentive Program, unless a company has failed to achieve its job target in any particular year. In that case the company would not be eligible to receive an award until the company is in good standing with past tax incentive agreements.

Companies that fail to achieve the minimum threshold at the end of any annual reporting period are subject to an investigation to determine the cause of the "material variance" (term used in the Life Sciences Act). The following scenarios are possible:

1. The Center may determine that it is unlikely that the company will achieve its job target based on a review of the company's financials and other information provided. In this case, the Center will decertify the company and notify the Department of Revenue (DOR), which could initiate "claw-back" procedures to recover the value of any award or refund provided.
2. The Center may determine that the company has potential to achieve its minimum threshold by the end of the year following its failure to achieve its minimum threshold in a given year. In this case, the Center may permit the company this second year to meet its job targets.¹ The Center is required to provide its reasons, in writing, for allowing the company this second year to the Secretary of Administration and Finance, the Commissioner of the Department of Revenue (DOR), the clerks of the House of Representatives and Senate, the Joint Committee on Revenue, the Joint Committee on Economic Development and Emerging Technologies, and to post these reasons on its website.

The Center is required by statute to decertify any company that fails to achieve at least 70% of its job target for two consecutive years. In this case, the Center would notify DOR and DOR could initiate "claw-back" procedures to recover the tax value of any award. Companies may also voluntarily terminate their award at any time and return to the Commonwealth any incentives or refunds received.

III. Deferments Granted for 2009 Tax Incentive Awardees

The Center, as required, has conducted investigations of the companies that received tax incentive awards in 2009 but did not achieve their minimum thresholds for job creation.

¹ Reaching the minimum threshold in the second year does not guarantee continued certification. The Center can withdraw certification at any time if there has been a material variance from the tax incentive agreement.

The Center's process for conducting these investigations includes the following steps:

1. An in-person meeting with each company to review a standard checklist of questions. Center staff also discuss process and options with each company;
2. Center staff analyze data and information provided by each company; and
3. Center staff present findings to the Investment Committee of the Center's Board of Directors.

Following this process, the Center notifies the relevant companies and the Center's Board of Directors regarding the outcome of the investigation. Those companies that the Center determines should be decertified will be notified in writing, with notice to the Massachusetts Department of Revenue. As described above, the DOR may then initiate "claw-back" proceedings. Those companies for which the Center determines not to revoke certification at this time are also notified in writing. In accordance with the statutory requirements, the Center also provides this report to the Legislature and posts it on the Center's website.

The Center presents the following findings based on its investigation into the four 2009 tax incentive awardees for which certification will not be revoked at this time:

Constellation Pharmaceuticals:

At the close of 2010 Constellation Pharmaceuticals was six jobs short of meeting its minimum threshold for job creation under the company's 2009 tax incentive agreement of 19 net new jobs. The company subsequently raised \$15 million in additional financing in 2011. At the conclusion of the Center's investigation the company was just two jobs short of the minimum threshold, and at that time the company had postings for job openings that would be sufficient to reach their threshold. Given the likelihood that Constellation Pharmaceuticals will meet the minimum threshold by the end of calendar year 2011, and the company's stated commitment to doing so, the Center has determined not to revoke the company's certification at this time. Constellation Pharmaceuticals will be required to report regarding whether it has achieved its job targets in the next annual reporting period.

Cubist Pharmaceuticals:

At the close of 2010 Cubist Pharmaceuticals was five jobs short of meeting their minimum threshold for job creation under their 2009 tax incentive agreement of 41 net new jobs. At that time the company had postings for job openings that would be more than sufficient to reach their threshold. By the conclusion of the Center's investigation, the company had exceeded their minimum threshold. Given the likelihood that Cubist Pharmaceuticals will continue to meet or exceed their minimum threshold by the end of calendar year 2011, and the company's stated commitment to doing so, the Center has determined not to revoke the company's certification at this time. Cubist Pharmaceuticals will be required to report regarding whether it has achieved its job targets in the next annual reporting period.

Infinity Pharmaceuticals:

At the close of 2010 Infinity Pharmaceuticals was 17 jobs short of meeting their minimum threshold for job creation under their 2009 tax incentive agreement of 13 net new jobs. They added five jobs during the Center's investigation with three additional offers accepted during that period. They had six additional jobs posted during the period of the investigation. Given the likelihood that Infinity Pharmaceuticals will meet their minimum threshold by the end of calendar year 2011, and the company's stated commitment to doing so, the Center has

determined not to revoke the company's certification at this time. Infinity Pharmaceuticals will be required to report regarding whether it has achieved its job targets in the next annual reporting period.

Interlace Medical (acquired by Hologic in January 2011)

At the close of 2010 Interlace Medical was five jobs short of meeting their minimum threshold under their 2009 tax incentive agreement of seven net new jobs. The company cited their pending acquisition by Hologic as the reason for the shortfall. Upon acquiring Interlace Hologic assumed the Interlace tax incentive agreement including the job creation commitment. A revised tax incentive agreement has been signed by Hologic requiring the company to assume responsibility for the tax agreement and readjusting the total headcount by combining the headcount of Hologic and Interlace as of the day of the acquisition and adding the Interlace 2009 commitment. The company provided a plan indicating that they expect to achieve the revised tax agreement headcount commitment by the end of 2011. Hologic had 15 or more job openings posted on their website during the investigation. Given the likelihood that Hologic will meet the minimum threshold by the end of calendar year 2011, and the company's stated commitment to doing so, the Center has determined not to revoke the company's certification at this time. Hologic will be required to report regarding whether it has achieved its job targets in the next annual reporting period.

IV. Next steps

The Center will continue to monitor reports submitted by these four companies to ensure that their job creation commitments are met by the end of 2011.