

# Massachusetts LIFE SCIENCES CENTER

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## Frequently Asked Questions for the MLSC Life Sciences Tax Incentive Program

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## GENERAL

### 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 \$1 billion initiative that was signed into law in June of 2008. On June 15, 2018 Governor Charlie Baker signed Chapter 112 of the Acts of 2018, *An Act Providing Continued Investment in the Life Sciences Industry in the Commonwealth* to further invest up to \$623 million in bond authorization and tax credits over five years in education, research and development, and workforce training. 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).

### What is the Life Sciences Tax Incentive Program?

The Life Sciences Tax Incentive Program was established as part of the Center’s enabling legislation. The program provides nine different tax incentives in exchange for job creation in Massachusetts. Companies must commit to hire at least 10 new FTEs during the first year of the program and retain them for the following four years. If a company fails to meet its stated commitment during the five-year time frame, a pro-rated amount of tax credits must be returned to MA Department of Revenue.

### 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, biogenerics, 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.

## **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 MLSC 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 Life Sciences 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 MLSC 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 MLSC determines that a material variance commenced. The Center’s Annual Report and Multiple Awards Policy specifies the compliance outcomes based on an awardee’s actual achievement for a calendar year including outcomes requiring revocation. The policy can be located at <http://www.masslifesciences.com/programs/tax/>

## **TAX INCENTIVES**

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

The Life Sciences Act provides for nine 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 (refundable)
- FDA user fees credit (refundable)
- Extension of net operating losses from 5 to 15 years
- 90% refund of already-available excess §38M research credits (refundable)
- §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 credit (refundable)

For more information about the Program in general, or about the individual incentives offered under the Program (including information provided by the Massachusetts Department of Revenue’s Technical Information Release and the Life Sciences Jobs Incentive Refundable Credit), please visit our website at <http://www.masslifesciences.com/programs/tax-incentive>

Consult your tax advisor for tax advice. The MLSC does not provide any tax advice or guidance regarding which tax incentives are appropriate for your company.

## **ELIGIBILITY CRITERIA**

### **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.

### **Can a company that received a prior MLSC Tax Incentive award apply for an award from the current round of the Program?**

Yes, companies are eligible to apply each year to the MLSC's Tax Incentive Program. In addition to achieving award criteria, existing awardees must be in compliance with the Center's Annual Report and Multiple Awards Policy which specifies the criteria for achieving additional awards. The policy can be located at <http://www.masslifesciences.com/programs/tax-incentive>

If a company voluntarily terminates a prior MLSC Tax Incentive award, the company would be ineligible to apply to the subsequent round of the tax program following the date of the termination agreement (one year "cooling off" period). If a company doesn't elect to voluntarily terminate their award and the MLSC formally revokes the company's statutory Life Science Certification, and MA DOR is required to recover any incentives or funds provided to the company, the company will not be allowed to participate in any future rounds of the tax program.

The Center's Tax Award Termination policy can be located at <http://www.masslifesciences.com/programs/tax-incentive>

### **What if an organization previously declined a tax program award?**

A company that declines their tax program award is not considered a termination that is subject to the Termination policy. Companies may decline their awards by notifying the MLSC in writing that they will not accept the award within 30 days of the award notification and prior to executing an agreement with MLSC. The MLSC Tax Program Termination Policy can be located at <http://www.masslifesciences.com/programs/tax-incentive>

### **Can companies apply for more than one tax incentive?**

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

### **Is the Tax Program only for Research & Development hires?**

No. All permanent MA full time equivalent hires in the applicant's organization qualify including, but not limited to, manufacturing, research & development, commercial operations, administration, finance, marketing and sales.

### **What size company is the Tax Program targeting?**

The Life Sciences Tax Incentive Program is open to all life science companies regardless of size. The Center is encouraging small and medium-sized eligible companies that have 250 or fewer full-time employees globally to apply to the program.

### **Is there a minimum number of net new jobs to be eligible for the Tax Program?**

Yes, applicants must commit to creating and retaining 10 net new full time equivalent employees (FTE's). Applicants must also have 10 active full time equivalent employees (FTE's) as of December 31, 2022.

### **Is this Tax Program only applicable for companies within certain geographic regions in Massachusetts?**

No. The Tax Incentive Program is open to all companies regardless of location.

## **APPLICATION PROCESS**

### **How do companies apply for awards under the Life Sciences Tax Incentive Program?**

Companies interested in applying for awards under the Program should first review the Program Solicitation which is available on MLSC's web site: <http://www.masslifesciences.com/programs/tax-incentive>. Each company may submit only one application. Applications may only be submitted online and the MLSC will not accept paper submissions or applications submitted outside of MLSC's application portal.

### **Submitting Certificates of Good Standing**

Two certificates of good standing are required to be submitted with the application: one from the Commonwealth of Massachusetts Secretary of State and one from the Massachusetts Department of Revenue (DOR).

In the event that the DOR Certificate is not available at the time of application submission, applicants may upload verification of the request of such Certificate of Good Standing. Upon receipt of the DOR Certificate of Good Standing by applicant, the certificate should be sent to the MLSC at [taxprogram@masslifesciences.com](mailto:taxprogram@masslifesciences.com). The deadline for submission of the certificates by email is noon EST on Monday, March 6, 2023.

### **Once an application is submitted, will the applicant be able to change responses to the questions?**

No, unless the change is related to the applicant's identifying information. For example, applicants will not be able to modify their 2023 headcount commitment once their application is submitted. It is advisable that applicants be conservative in their commitment. 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.

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

The MLSC 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. However, "public records" do not include certain materials or data which fall within a specifically enumerated exemption set forth in the MLSC's enabling act, M.G.L. Chapter 23I. Such exemption that may be applicable to documents submitted by a company is for any documentary materials or data made or received by MLSC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the company, or regarding the competitive position of such company in a particular field of endeavor (Trade Secrets Exemption). In the event that a company wishes to submit certain documents to MLSC and believes such a document or documents may be proprietary in

nature and may fall within the parameters of the Trade Secrets Exemption, the company should identify such materials in its application as Confidential.

Please refer to Section 8.1 of the Program Solicitation, which sets forth the MLSC's policy regarding the Public Records Law and disclosure of confidential information.

### **When is the application deadline?**

The application deadline for the Program is noon EST on February 24, 2023.

### **When does the Center anticipate making award announcements?**

The Center anticipates making award announcements by the end of April 2023.

## **REVIEW PROCESS**

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

MLSC 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.

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

The MLSC 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.

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

Applicant companies to the 2022 Life Sciences Tax Incentive Program will be evaluated on whether they meet the following criteria and other factors included in the Program Solicitation:

- a. Ability to create and retain jobs for five (5) years. **It therefore is imperative that Applicants provide accurate information regarding actual, permanent 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 under the Program.**
- b. Wide geographic distribution of life sciences operations in Massachusetts;
- c. Wide distribution of life sciences technologies and industries supported by MLSC; and
- d. Diversity among businesses at different stages of product development and commercialization.

A complete summary of the official criteria used to select recipients of tax incentives under the Program are included in the Program Solicitation on the MLSC's website at: <http://www.masslifesciences.com/programs/tax-incentive>

## **CONTRACTUAL AND COMPLIANCE REQUIREMENTS**

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

The Tax Incentive Program is jointly administered by the MLSC 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 MLSC 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 it has received. The MLSC's Annual Report and Multiple Awards Policy specifies the compliance outcomes based on an awardee's actual achievement for a calendar year including outcomes requiring revocation. The policy can be located at <http://www.masslifesciences.com/programs/tax-incentive>

For purposes of headcount reporting including establishing an Applicant's baseline Massachusetts headcount to determine compliance with their net new job creation commitment, full-time equivalents (FTE) employees (35 hours or more per week) from the following companies, subsidiaries, or divisions will be included:

- Massachusetts FTE headcount of Applicant and Applicant's wholly-owned MA subsidiaries and divisions;
- Massachusetts FTE headcount of Applicant's parent company and/or the parent company's wholly owned subsidiaries and divisions *only* if 75% or more of parent company's total global consolidated annual revenues are derived from "Life Sciences" as defined below.

**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, as defined in chapter 23I, section 2 of the MGL.

Successful applicants will be required to execute a Tax Incentive Agreement with the MLSC that sets forth the requirements of the incentive and the terms and conditions of compliance. A sample copy of the standard tax agreement is available, together with the Program Solicitation on the MLSC's website at:

<http://www.masslifesciences.com/programs/tax-incentive>

### **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 only, and the MLSC will not have any claim to an applicant's intellectual property solely by virtue of an award under the Program.

### **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, 2023 including, without limitation, in the calculation of estimated taxes.

## **How is headcount defined under the Program?**

For purposes of headcount reporting including establishing an Applicant's baseline Massachusetts headcount to determine compliance with their net new job creation commitment, full-time equivalents (FTE) employees (35 hours or more per week) from the following companies, subsidiaries, or divisions will be included:

- Massachusetts FTE headcount of Applicant and Applicant's wholly-owned MA subsidiaries and divisions;
- Massachusetts FTE headcount of Applicant's parent company and/or the parent company's wholly owned subsidiaries and divisions *only* if 75% or more of parent company's total global consolidated annual revenues are derived from "Life Sciences" as defined below.

### **On-Site requirements in calculating number of permanent full-time employees**

The following shall be applicable in determining whether an employee who does not work on-site at a company full-time may be counted as a permanent full-time employee for the purpose of complying with job creation or retention requirements of the program.

1. A company may count all Massachusetts resident employees who are a Permanent Full-Time Employee, as defined above.
2. A Permanent Full-Time Employee who is not a resident of Massachusetts must work on-site at least 50% of the time to count toward the job creation or retention requirements of the program.

If the company claims any employees for job compliance purposes in violation of this policy, MLSC reserves to the right to review and amend, rescind, or terminate the application or agreement. The company shall be offered a hearing to explain such violation or material changes prior to any adverse action taken by MLSC.

The MLSC may request information related to a company's workers at any time.

**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, as defined in chapter 23I, section 2 of the MGL.

**Interns, third-party contractors or employees paid by employment agencies cannot be counted as employees under the program.**