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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/17

SPONSOR Munoz LAST UPDATED _____ HB _____

SHORT TITLE Bioscience Business Tax Credits SB 479

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
Indeterminate but Negative Fiscal Impact					Recurring	General Fund

Parenthesis () indicate revenue decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

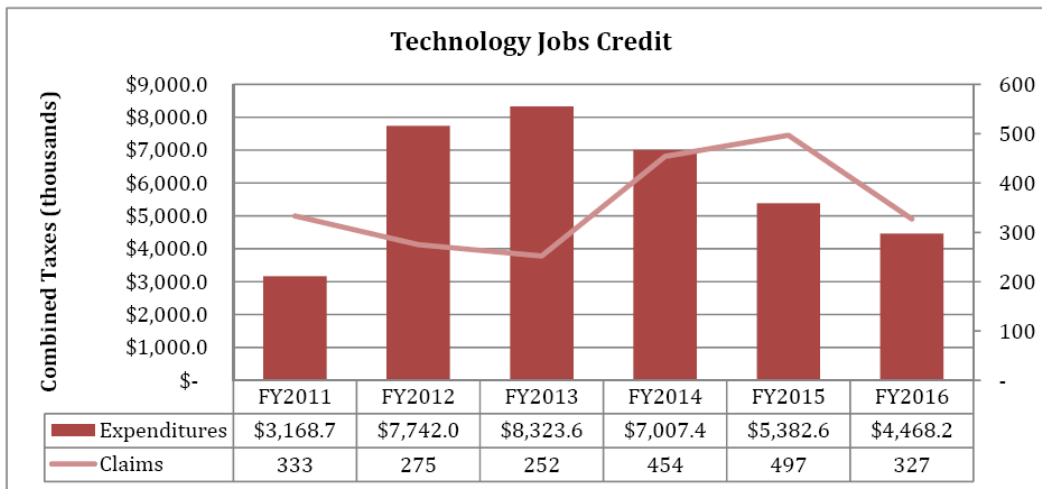
Synopsis of Bill

Senate Bill 479 amends definitions in the technology jobs and research and development (R&D) tax credit to include in the definition of “qualified facility” a facility in which bioscience activities are being undertaken and is located within 10 miles of a national laboratory or a research institution, provided that the taxpayer commenced bioscience activities at the facility on or after July 1, 2017. The bill provides definitions for “bioscience”, “national laboratory”, and “research institutions” and amends the definition for “qualified research” to include bioscience.

The provisions of the bill apply to taxable years beginning on or after January 1, 2017.

FISCAL IMPLICATIONS

The table below is from the Taxation and Revenue Department (TRD) *2016 Tax Expenditure Report (TER)*. The cost of this tax expenditure has fallen over the last three years but remains above the FY11 level. It is impossible to estimate the fiscal impact of this bill with available data, but the costs shown in the TER may give some insight as to the possible magnitude of the impact. TRD notes the bill would presumably increase the cost of the expenditure as newly eligible bioscience businesses apply for and claim the credit.



This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

TRD provided the following analysis.

Attracting biotechnology jobs could be beneficial for the state as the industry has had great success in financial markets in 2017 with no signs of slowing down. Since the White House has commented recently on the high price of pharmaceutical products, the regulatory landscape appears to be easing for the industry in 2017 and beyond. The bill would represent an incentive for existing and prospective bioscience companies to increase or initiate their operations in the state. Potentially, this could mean the creation of new economic-based jobs and increased capital spending by pharmaceutical companies.

The industry has seen a number of mergers and acquisition (M&A) deals already completed this year. In January, Takeda Pharmaceutical announced a deal to acquire Ariad for \$24.00 per share in cash, or approximately \$5.2 billion, a premium of roughly 75 percent. The amount of M&A deals is expected to pick up rapidly in 2017 as major drug makers look to boost up revenues. "2017 is likely to push biopharma deal making to new heights," wrote Ernst & Young's Andrew Forman, in a research note titled M&A Outlook and Firepower Report 2017¹.

Conversely, the bill could have a negative effect on the general fund as the utilization of the tax credit would increase. If the bill becomes law, it would be unclear how to determine the “break-

¹ [http://www.ey.com/Publication/vwLUAssets/ey-ma-outlook-and-firepower-report-2017/\\$FILE/ey-ma-outlook-and-firepower-report-2017.pdf](http://www.ey.com/Publication/vwLUAssets/ey-ma-outlook-and-firepower-report-2017/$FILE/ey-ma-outlook-and-firepower-report-2017.pdf)

even” point for the state, as the ripple effect of job creation and its economic ramifications are often considered part of “dynamic analysis”.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill’s requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

There is no administrative impact.

TECHNICAL ISSUES

TRD reported the following technical issues.

Consideration should be given to the reasoning and basis for the distance-based qualification. The proposed bill requires a bioscience business to be within ten miles of a national laboratory or research institution. Drawing narrow classifications may implicate constitutional provisions regarding special laws and equal protection. Constitutional violations typically do not occur when there is a rational, legitimate policy reason for drawing a narrow class.

"National laboratory" defined as a “prime contractor designated as a national laboratory by act of congress that is operating a facility in New Mexico” is ambiguous. The location of the “national laboratory” for purposes of the legislation is not defined. It could be its principal place of business or it could be the location of the facility. It is not clear what would occur if the facility covers 43 square miles like it does in the case of the Los Alamos National Laboratory.

On page 3 line 12, 7-9F-3 D (5), the word “bioscience” should not be used in the definition of the same word. “Agriculture and chemicals related to bioscience” is not the title of a recognized industry.

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

Does the bill meet the Legislative Finance Committee tax policy principles?

- 1. Adequacy:** Revenue should be adequate to fund needed government services.
- 2. Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- 3. Equity:** Different taxpayers should be treated fairly.
- 4. Simplicity:** Collection should be simple and easily understood.
- 5. Accountability:** Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	
Targeted		
Clearly stated purpose	✔	
Long-term goals	✘	
Measurable targets	✘	
Transparent	✔	
Accountable		
Public analysis	✘	
Expiration date	✘	
Effective		
Fulfills stated purpose	?	
Passes “but for” test	?	
Efficient	?	The LFC <i>Volume III</i> notes this credit has the potential to be one of the most expensive job creation programs or tax expenditures in the state on a per job basis.
Key: ✔ Met ✘ Not Met ? Unclear		