

# Massachusetts Life Sciences Center Tax Incentive Program

## Overview

On June 15, 2018, Governor Charlie Baker signed An Act Providing Continued Investment in The Life Sciences Industry in The Commonwealth (2018),<sup>1</sup> which included the following modifications to the Massachusetts Life Sciences Center (MLSC) Tax Incentive Program (MLSC Program):

- Extending the MLSC Tax Incentive Program from Dec. 31, 2018 to Dec. 31, 2028; and
- Increasing the aggregate credit limit to \$30 million annually beginning Jan. 1, 2019.<sup>2</sup>

Because of these law changes, life science companies may continue to apply for incentives under the program. However, applications have traditionally only been accepted during specified times of the year.<sup>3</sup> Although the state has not yet published guidance regarding the MLSC Program's application cycle, based on limited changes in prior year programs, Deloitte anticipates the current cycle to be announced in December 2019. This tax alert summarizes the procedural requirements that have historically applied to the MLSC Program.

## Program Summary

The MLSC is an economic development agency dedicated to the support and growth of the life science industry in Massachusetts. Part of its mission includes the administration of a state tax incentive program ("Program") for "Qualified Life Sciences Companies" (as defined by NAICS code) committing to hire new employees in the state.<sup>4</sup> Under the Program qualified applicants may receive refundable tax benefits, as discussed below.<sup>5</sup> In prior periods, MLSC Program incentive awards have ranged from \$15,000 to \$25,000 per new job created.<sup>6</sup> However, it is important to note that typically the MLSC exercises significant discretion when allocating incentive awards, due in part, to a statutory limitation.<sup>7</sup> As noted above, for years beginning January 1, 2019, the credit limit is an aggregate of \$30 million per year.<sup>8</sup>

## Application Process

In prior years, the annual application cycle opened in December for a 30-day period, after which time applications were no longer considered for the year's award cycle.<sup>9</sup> Completed applications were required to be submitted online through the MLSC website.<sup>10</sup> Historically, following the Center's review, the MLSC staff then would recommend to the MLSC Board of

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<sup>1</sup> 2018 Mass. Acts Ch. 112. A copy of the adopted law is accessible [here](#).

<sup>2</sup> 2018 Mass. Acts Ch. 112; Mass. Gen. Laws ch. 23I, § 5(d).

<sup>3</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01.

<sup>4</sup> The Massachusetts Life Sciences Center, <http://www.masslifesciences.com/>.

<sup>5</sup> Mass. Gen. Laws ch. 23I, § 5(d); Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01.

<sup>6</sup> The Massachusetts Life Sciences Center (May 2, 2019), <http://www.masslifesciences.com/baker-polito-administration-announces-job-creation-incentives-for-27-massachusetts-life-sciences-companies/#more-8328>; The Massachusetts Life Sciences Center (June 5, 2018), <http://www.masslifesciences.com/news/announcements/page/3/>; The Massachusetts Life Sciences Center (April 12, 2017), <http://www.masslifesciences.com/wp-content/uploads/Tax-Incentive-Awards-2017-Press-Release-final-41217.pdf>.

<sup>7</sup> Mass. Gen. Laws ch. 23I, § 5(d); Mass. Gen. Laws ch. 63, § 38CC; Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01.

<sup>8</sup> *Supra* 2.

<sup>9</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01.

<sup>10</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01; The Massachusetts Life Sciences Center Tax Incentive Program, <http://www.masslifesciences.com/programs/tax/>.

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Directors the applicants to receive awards.<sup>11</sup> Taxpayers that received an award were required to enter into an incentive agreement with the MLSC.<sup>12</sup>

### Key Criteria

Historically, the MLSC staff has used the below criteria to evaluate completed applications:<sup>13</sup>

1) *Threshold Criteria* – reflects the statutory requirements of the program relating to an applicant’s eligibility, for example:

- Applicants must be registered to do business in Massachusetts;
- Applicants must employ at least 10 permanent full-time employees as of Dec. 31, of the applicable year;
- Applicants must file a Massachusetts tax return for the applicable calendar year ending Dec. 31, or for a fiscal year ending after that date, on which return Applicants are required to claim the incentive received (after July 1); and
- Applicants must create and maintain a minimum of 10 new jobs over a 5-year window, i.e., new, incremental jobs would be required to be created in 2020 and maintained for an additional 4 years.<sup>14</sup>

2) *Programmatic Criteria* – MLSC may favor Applications that contribute to a balanced and strong portfolio of tax beneficiaries, including but not limited to factors such as:

- Ability to create and retain jobs for five (5) years;
- Wide geographic distribution of life sciences operations in Massachusetts;
- Wide distribution of life sciences technologies and industries supported by MLSC; and
- Diversity among businesses at different stages of product development and commercialization.<sup>15</sup>

### Incentives

Taxpayers have typically been allowed to apply for multiple incentives provided under the MLSC Program.<sup>16</sup> As set forth in Massachusetts Technical Information Release 08-23, under the prior program (periods January 1, 2009 to December 31, 2018), ten possible incentives were available:<sup>17</sup>

- Jobs incentive tax credit: Applicants must create at least 50 new full-time positions in MA. The credit is 90% refundable (may not be carried forward).<sup>18</sup>
- Investment Tax Credit: 10% of qualifying property. 90% is refundable (then carryover is not available).<sup>19</sup>
- Life Sciences Research Credit - MGL Ch. 63 Sec. 38W (for activities performed both inside and outside of MA – for certain expenditures not qualifying for the existing MA R&D credit under Sec. 38M) – not refundable.<sup>20</sup>
- 90% refund of already-available excess §38M research credits.<sup>21</sup>
- Extension of NOL to 15 years (from 5 years for pre-2009 NOLs).<sup>22</sup>
- Elimination of throwback (company deemed to be taxable in the state of its purchaser).<sup>23</sup>

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<sup>11</sup> The Massachusetts Life Sciences Center (May 2, 2019), <http://www.masslifesciences.com/baker-polito-administration-announces-job-creation-incentives-for-27-massachusetts-life-sciences-companies/#more-8328>; The Massachusetts Life Sciences Center (June 5, 2018), <http://www.masslifesciences.com/news/announcements/page/3/>; The Massachusetts Life Sciences Center (April 12, 2017), <http://www.masslifesciences.com/wp-content/uploads/Tax-Incentive-Awards-2017-Press-Release-final-41217.pdf>.

<sup>12</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01.

<sup>13</sup> *Id.*

<sup>14</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01; The Massachusetts Life Sciences Center Tax Incentive Program, <http://www.masslifesciences.com/programs/tax/>.

<sup>15</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01.

<sup>16</sup> Massachusetts Life Sciences Center, Frequently Asked Questions for the MLSC Life Sciences Tax Incentive Program.

<sup>17</sup> Life Sciences Tax Incentive Program Solicitation No. 2018 TAX-01; [Massachusetts TIR 08-23](#), Life Sciences Tax Incentive Program

<sup>18</sup> Mass. Gen. Laws ch. 63 § 38CC.

<sup>19</sup> Mass. Gen. Laws ch. 62 § 6(m); Mass. Gen. Laws ch. 63 § 38U.

<sup>20</sup> Mass. Gen. Laws ch. 63 § 38W.

<sup>21</sup> Mass. Gen. Laws ch. 63 § 38M(j).

<sup>22</sup> Mass. Gen. Laws ch. 63 § 30(17).

<sup>23</sup> Mass. Gen. Laws ch. 63 § 38(f)(6).

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- Life Sciences companies deemed to be R&D corporations for sales tax purposes (sales tax exemption on materials, tools, fuels, and machinery used in R&D).<sup>24</sup>
- Sales tax exemption for purchases of tangible personal property for use in connection with the construction, alteration, remodeling, repair or remediation of research, development, or manufacturing facilities and utility support systems.<sup>25</sup>
- FDA User Fee credit. The credit is 90% refundable.<sup>26</sup>
- Deduction for qualified orphan drug expenses.<sup>27</sup>

### Claw Back/Compliance

Certified Life Sciences Companies under the MLSC Program have also been required to file an annual report with the MLSC.<sup>28</sup> This annual report should include details demonstrating compliance with any hiring and employment targets set forth in any incentive agreement.<sup>29</sup>

### Considerations

Although the guidelines for the current MLSC program have not yet been announced, based on limited changes in prior year programs, Deloitte anticipates that the program will be similar to prior years. Given the likely limited timeframe to apply, and the aggregate credit cap of \$30 million annually, taxpayers should be aware of the potential applicability and timing, as well as potential for future guidance around the MLSC Program. Taxpayers should consult with their tax advisers regarding these incentive programs with any questions.

## Contacts:

If you have questions regarding the Massachusetts Life Science Center Tax Incentives Program or additional Massachusetts incentives programs, please contact any of the following Deloitte professionals:

### Linda Bonelli

#### Tax Partner

Deloitte Tax LLP, Chicago  
+1 312 486 2716  
[lbonelli@deloitte.com](mailto:lbonelli@deloitte.com)

### Carl Nerlich

#### Managing Director

Deloitte Tax LLP, New York  
+1 212 436 4342  
[cnrlich@deloitte.com](mailto:cnrlich@deloitte.com)

### Brandon Pyers

#### Senior Manager

Deloitte Tax LLP, Philadelphia  
+1 215 405 7881  
[bpyers@deloitte.com](mailto:bpyers@deloitte.com)

### Zsuzsanna Goodman

#### Senior Manager

Deloitte Tax LLP, Boston  
+1 617 585 5858  
[zgoodman@deloitte.com](mailto:zgoodman@deloitte.com)

For further information, visit our website at [www.deloitte.com/us/multistatetax](http://www.deloitte.com/us/multistatetax)

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<sup>24</sup> Mass. Gen. Laws ch. 63 § 42B(3).

<sup>25</sup> Mass. Gen. Laws ch. 64H § 6(xx).

<sup>26</sup> Mass. Gen. Laws ch. 62 § 6(n); Mass. Gen. Laws ch. 63 § 31M.

<sup>27</sup> Mass. Gen. Laws ch. 63 § 38V.

<sup>28</sup> Mass. Gen. Laws ch. 23I, § 5(e); Massachusetts Life Sciences Center, Life Sciences Tax Incentive Program Annual Report and Multiple Awards Policy (Dec. 7, 2018).

<sup>29</sup> *Id.*

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