

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2078 Session of 2014

INTRODUCED BY KAMPF, KOTIK, SAYLOR, SCAVELLO, O'BRIEN, FLYNN,
 GODSHALL, THOMAS, CLYMER, GROVE, GINGRICH, GIBBONS, GILLEN,
 READSHAW, HARHART, MURT, STEVENSON, EVANKOVICH, ROSS,
 KILLION, KAUFFMAN, REED AND HARPER, MARCH 10, 2014

REFERRED TO COMMITTEE ON COMMERCE, MARCH 10, 2014

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
 2 Consolidated Statutes, providing for a research and
 3 development tax credit; and repealing provisions of the Tax
 4 Reform Code of 1971 and the Fiscal Code relating to research
 5 and development tax credit.

6 The General Assembly of the Commonwealth of Pennsylvania
 7 hereby enacts as follows:

8 Section 1. Title 12 of the Pennsylvania Consolidated
 9 Statutes is amended by adding a chapter to read:

10 CHAPTER 43

11 RESEARCH AND DEVELOPMENT TAX CREDIT

12 Sec.

13 4301. Scope of chapter.

14 4302. Definitions.

15 4303. Credit for research and development expenses.

16 4304. Carryover, carryback, refund and assignment of credit.

17 4305. Application of Internal Revenue Code.

18 4306. Determination of qualified research and development

1 expenses.
2 4307. Time limitations.
3 4308. (Reserved).
4 4309. Limitation on credits.
5 4310. Pass-through entity.
6 4311. Report to General Assembly.
7 4312. Regulations.
8 § 4301. Scope of chapter.

9 This chapter relates to research and development tax credits.

10 § 4302. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Department." The Department of Revenue of the Commonwealth.

15 "Gross receipts." Gross receipts for any taxable year shall
16 consist only of gross receipts which are effectively connected
17 with the conduct of a trade or business within this

18 Commonwealth. The determination of whether gross receipts are
19 effectively connected with the conduct of a trade or business
20 within this Commonwealth shall be made by reference to the

21 standard established in section 401(3)2(a)(16) and (17) of the
22 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
23 of 1971.

24 "Internal Revenue Code." The Internal Revenue Code of 1986
25 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

26 "Pass-through entity." A partnership as defined in section
27 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
28 Tax Reform Code of 1971 or a Pennsylvania S corporation as
29 defined in section 301(n.1) of the Tax Reform Code.

30 "Pennsylvania base amount." Base amount as defined in

1 section 41(c) of the Internal Revenue Code of 1986 (Public Law
2 99-514, 26 U.S.C. § 41(c)), except that references to "qualified
3 research expense" shall mean "Pennsylvania qualified research
4 and development expense" and references to "qualified research"
5 shall mean "Pennsylvania qualified research and development."
6 References to "fixed base percentage" shall mean the percentage
7 which the Pennsylvania qualified research and development
8 expense for the four taxable years immediately preceding the
9 taxable year in which the expense is incurred is to the gross
10 receipts for such years. The fixed base percentage for a
11 taxpayer who has fewer than four but at least one taxable year
12 shall be determined in the same manner using the number of
13 immediately preceding taxable years to arrive at the percentage.

14 "Pennsylvania qualified research and development." Qualified
15 research and development as defined in section 41(d) of the
16 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
17 41(d)) that is conducted in this Commonwealth.

18 "Pennsylvania qualified research and development expense."
19 Qualified research expenses as defined in section 41(b) of the
20 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
21 41(d)) incurred for Pennsylvania qualified research and
22 development.

23 "Qualified tax liability." The liability for taxes imposed
24 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,
25 No.2), known as the Tax Reform Code of 1971. The term shall not
26 include any tax withheld by an employer from an employee under
27 Article III of the Tax Reform Code of 1971.

28 "Research and development tax credit." The credit provided
29 under this chapter.

30 "Secretary." The Secretary of Revenue of the Commonwealth.

1 "Small business." A for-profit corporation, limited
2 liability company, partnership or proprietorship with net book
3 value of assets totaling, at the beginning or end of the taxable
4 year for which Pennsylvania qualified research and development
5 expense is incurred, as reported on the balance sheet, less than
6 \$5,000,000.

7 "Taxpayer." An entity subject to tax under Article III, IV
8 or VI of the act of March 4, 1971 (P.L.6, No.2), known as the
9 Tax Reform Code of 1971. The term shall include the shareholder
10 of a Pennsylvania S corporation that receives a research and
11 development tax credit.

12 "Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2),
13 known as the Tax Reform Code of 1971.
14 § 4303. Credit for research and development expenses.

15 (a) Application.--A taxpayer who incurs Pennsylvania
16 qualified research and development expense in a taxable year may
17 apply for a research and development tax credit as provided
18 under this chapter. By September 15, a taxpayer must submit an
19 application to the department for Pennsylvania qualified
20 research and development expense incurred in the taxable year
21 that ended in the prior calendar year.

22 (b) Amount.--

23 (1) Except as provided under paragraph (2), a taxpayer
24 that is qualified under subsection (a) shall receive a
25 research and development tax credit for the taxable year in
26 the amount of 10% of the excess of the taxpayer's total
27 Pennsylvania qualified research and development expense for
28 the taxable year over the taxpayer's Pennsylvania base
29 amount.

30 (2) A taxpayer that is a small business and is qualified

1 under subsection (a) shall receive a research and development
2 tax credit for the taxable year in the amount of 20% of the
3 excess of the taxpayer's total Pennsylvania qualified
4 research and development expense for the taxable year over
5 the taxpayer's Pennsylvania base amount.

6 (c) Notification.--By December 15 of the calendar year
7 following the close of the taxable year during which the
8 Pennsylvania qualified research and development expense was
9 incurred, the department shall notify the taxpayer of the amount
10 of the taxpayer's research and development tax credit approved
11 by the department.

12 § 4304. Carryover, carryback, refund and assignment of credit.

13 (a) Carryover.--

14 (1) If a taxpayer cannot use the entire amount of the
15 research and development tax credit for the taxable year in
16 which the research and development tax credit is first
17 approved, then the excess may be carried over to succeeding
18 taxable years and used as a credit against the qualified tax
19 liability of the taxpayer for those taxable years.

20 (2) Each time that the research and development tax
21 credit is carried over to a succeeding taxable year, it shall
22 be reduced by the amount that was used as a credit during the
23 immediately preceding taxable year.

24 (3) The research and development tax credit may be
25 carried over and applied to succeeding taxable years for no
26 more than 15 taxable years following the first taxable year
27 for which the taxpayer was entitled to claim the credit.

28 (b) Application.--A research and development tax credit
29 approved by the department for Pennsylvania qualified research
30 and development expense in a taxable year first shall be applied

1 against the taxpayer's qualified tax liability for the current
2 taxable year as of the date on which the credit was approved
3 before the research and development tax credit is applied
4 against any tax liability under subsection (a).

5 (c) Carry back or refund.--A taxpayer is not entitled to
6 carry back or obtain a refund of an unused research and
7 development tax credit.

8 (d) Sale or assignment.--

9 (1) A taxpayer, upon application to and approval by the
10 Department of Community and Economic Development, may sell or
11 assign, in whole or in part, a research and development tax
12 credit granted to the taxpayer under this chapter.

13 (2) The Department of Community and Economic Development
14 shall establish guidelines for the approval of applications
15 under this subsection.

16 (e) Claim.--

17 (1) The purchaser or assignee of a portion of a research
18 and development tax credit under subsection (d) shall
19 immediately claim the credit in the taxable year in which the
20 purchase or assignment is made.

21 (2) The amount of the research and development credit
22 that a purchaser or assignee may use against any one
23 qualified tax liability may not exceed 75% of the qualified
24 tax liability for the taxable year.

25 (3) The purchaser or assignee may not carry over, carry
26 back, obtain a refund of or assign the research and
27 development tax credit.

28 (4) The purchaser or assignee shall notify the
29 department of the seller or assignor of the research and
30 development tax credit in compliance with procedures

1 specified by the department.

2 § 4305. Application of Internal Revenue Code.

3 The provisions of section 41 of the Internal Revenue Code and
4 the regulations promulgated regarding those provisions shall
5 apply to the department's interpretation and administration of
6 the research and development tax credit. References to the
7 Internal Revenue Code shall mean the sections of the Internal
8 Revenue Code as existing on any date of interpretation of this
9 chapter, except that if those sections of the Internal Revenue
10 Code referenced in this chapter are repealed or terminated,
11 references to the Internal Revenue Code shall mean those
12 sections last having full force and effect. If after repeal or
13 termination the Internal Revenue Code sections are revised or
14 reenacted, references in this chapter to Internal Revenue Code
15 sections shall mean those revised or reenacted sections.

16 § 4306. Determination of qualified research and development
17 expenses.

18 In prescribing standards for determining which qualified
19 research and development expenses are considered Pennsylvania
20 qualified research and development expenses for purposes of
21 computing the research and development tax credit, the
22 department may consider:

23 (1) The location where the services are performed.

24 (2) The residence or business location of the person or
25 persons performing the service.

26 (3) The location where qualified research and
27 development supplies are consumed.

28 (4) Other factors that the department determines are
29 relevant for the determination.

30 § 4307. Time limitations.

1 The termination date in section 41(h) of the Internal Revenue
2 Code shall not apply to a taxpayer who is eligible for the
3 research and development tax credit for the taxable year in
4 which the Pennsylvania qualified research and development
5 expense is incurred.

6 § 4308. (Reserved.)

7 § 4309. Limitation on credits.

8 (a) Total.--The total amount of credits approved by the
9 department shall not exceed \$100,000,000 in any fiscal year. Of
10 that amount, \$15,000,000 shall be allocated exclusively for
11 small businesses, except that if the total amounts allocated to
12 either the group of applicants exclusive of small businesses or
13 the group of small business applicants is not approved in any
14 fiscal year, the unused portion shall become available for use
15 by the other group of qualifying taxpayers.

16 (b) Allocation for taxpayers.--If the total amount of
17 research and development tax credits applied for by all
18 taxpayers, except for small businesses, exceeds the amount
19 allocated for those credits, the research and development tax
20 credit to be received by each applicant shall be the product of
21 the allocated amount multiplied by the quotient of the research
22 and development tax credit applied for by the applicant divided
23 by the total of all research and development credits applied for
24 by all applicants, the algebraic equivalent of which is:

25 taxpayer's research and development tax credit = amount
26 allocated for those credits X (research and development tax
27 credit applied for by the applicant/total of all research and
28 development tax credits applied for by all applicants).

29 (c) Allocation for small business taxpayers.--If the total
30 amount of research and development tax credits applied for by

1 all small business taxpayers exceeds the amount allocated for
2 those credits, the research and development tax credit to be
3 received by each small business applicant shall be the product
4 of the allocated amount multiplied by the quotient of the
5 research and development tax credit applied for by the small
6 business applicant divided by the total of all research and
7 development credits applied for by all small business
8 applicants, the algebraic equivalent of which is:

9 taxpayer's research and development tax credit = amount
10 allocated for those credits X (research and development tax
11 credit applied for by the small business/total of all
12 research and development tax credits applied for by all small
13 business applicants).

14 § 4310. Pass-through entity.

15 (a) Election.--If a pass-through entity has any unused tax
16 credit under section 4304 (relating to carryover, carryback,
17 refund and assignment of credit), the entity may elect in
18 writing according to the department's procedures, to transfer
19 all or a portion of the credit to shareholders, members or
20 partners in proportion to the share of the entity's distributive
21 income to which the shareholder, member or partner is entitled.

22 (b) Additional credit.--The credit provided under subsection
23 (a) shall be in addition to any research and development tax
24 credit to which a shareholder, member or partner of a pass-
25 through entity is otherwise entitled under this chapter, except
26 that a pass-through entity and a shareholder, member or partner
27 of a pass-through entity may not claim a credit under this
28 chapter for the same qualified research and development expense.

29 (c) Claim.--A shareholder, member or partner of a pass-
30 through entity to whom credit is transferred under subsection

1 (a) must immediately claim the credit in the taxable year in
2 which the transfer is made. The shareholder, member or partner
3 may not carry forward, carry back, obtain a refund of or sell or
4 assign the credit.

5 § 4311. Report to General Assembly.

6 The secretary shall submit an annual report to the General
7 Assembly indicating the effectiveness of the credit provided
8 under this chapter no later than March 15 following the year in
9 which the credits were approved. The report shall include the
10 names of all taxpayers utilizing the credit as of the date of
11 the report and the amount of credits approved and utilized by
12 each taxpayer. Notwithstanding any law providing for the
13 confidentiality of tax records, the information contained in the
14 report shall be public information. The report may also include
15 any recommendations for changes in the calculation or
16 administration of the credit.

17 § 4312. Regulations.

18 The secretary shall promulgate regulations necessary for the
19 implementation and administration of this chapter.

20 Section 2. Repeals are as follows:

21 (1) The General Assembly declares that the repeal under
22 paragraph (2) is necessary to effectuate the addition of 12
23 Pa.C.S. Ch. 43.

24 (2) Article XVII-B of the act of March 4, 1971 (P.L.6,
25 No.2), known as the Tax Reform Code of 1971, is repealed.

26 Section 3. The addition of 12 Pa.C.S. Ch. 43 is a
27 continuation of Article XVII-B of the act of March 4, 1971
28 (P.L.6, No.2), known as the Tax Reform Code of 1971. The
29 following apply:

30 (1) Except as otherwise provided in 12 Pa.C.S. Ch. 43,

1 all activities initiated under Article XVII-B of the Tax
2 Reform Code of 1971 shall continue and remain in full force
3 and effect and may be completed under 12 Pa.C.S. Ch. 43.
4 Orders, regulations, rules and decisions which were made
5 under Article XVII-B of the Tax Reform Code of 1971, and
6 which are in effect on the effective date of section 2(2) of
7 this act shall remain in full force and effect until revoked,
8 vacated or modified under 12 Pa.C.S. Ch. 43. Contracts,
9 obligations and collective bargaining agreements entered into
10 under Article XVII-B of the Tax Reform Code of 1971 are not
11 affected nor impaired by the repeal of Article XVII-B of the
12 Tax Reform Code of 1971.

13 (2) Except as set forth in paragraph (3), any difference
14 in language between 12 Pa.C.S. Ch. 43 and Article XVII-B of
15 of the Tax Reform Code of 1971 is intended only to conform to
16 the style of the Pennsylvania Consolidated Statutes and is
17 not intended to change or affect the legislative intent,
18 judicial construction or administration and implementation of
19 Article XVII-B of the Tax Reform Code of 1971.

20 (3) Paragraph (2) does not apply to the addition of 12
21 Pa.C.S. §§ 4308 and 4309(a).

22 Section 4. This act shall take effect in 60 days.