

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1972 Session of 2011

INTRODUCED BY SIMMONS, SAYLOR, BLOOM, BOYD, BRENNAN,
CALTAGIRONE, CHRISTIANA, CLYMER, CUTLER, FLECK, GINGRICH,
GROVE, HARHART, KAMPF, KAUFFMAN, M. K. KELLER, LAWRENCE,
LONGIETTI, MAJOR, MARSICO, PAYTON, PETRARCA, PICKETT, QUINN,
READSHAW, REED, ROSS, SCHRODER, K. SMITH, STEVENSON AND
WAGNER, NOVEMBER 9, 2011

REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 9, 2011

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 making related repeals.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

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

8 CHAPTER 43

9 RESEARCH AND DEVELOPMENT TAX CREDIT

10 Sec.

11 4301. Scope of article.

12 4302. Definitions.

13 4303. Credit for research and development expenses.

14 4304. Carryover, carryback, refund and assignment of credit.

15 4305. Application of Internal Revenue Code.

16 4306. Determination of qualified research and development

1 expenses.
2 4307. Time limitations.
3 4308. Transitional rule.
4 4309. Limitation on credits.
5 4310. Pass-through entity.
6 4311. Report to General Assembly.
7 4312. (Reserved).
8 4313. Regulations.
9 § 4301. Scope of article.

10 This article relates to research and development tax credits.

11 § 4302. Definitions.

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

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

16 "Gross receipts." Gross receipts for any taxable year shall
17 consist only of gross receipts which are effectively connected
18 with the conduct of a trade or business within this
19 Commonwealth. The determination of whether gross receipts are
20 effectively connected with the conduct of a trade or business
21 within this Commonwealth shall be made by reference to the
22 standard established in section 401(3)2(a)(16) and (17) of the
23 Tax Reform Code.

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 Tax Reform Code or a Pennsylvania S corporation
28 as defined in section 301(n.1) of the Tax Reform Code.

29 "Pennsylvania base amount." Base amount as defined in
30 section 41(c) of the Internal Revenue Code of 1986 (Public Law

99-514, 26 U.S.C. § 41(c)), except that references to "qualified research expense" shall mean "Pennsylvania qualified research and development expense" and references to "qualified research" shall mean "Pennsylvania qualified research and development." References to "fixed base percentage" shall mean the percentage which the Pennsylvania qualified research and development expense for the four taxable years immediately preceding the taxable year in which the expense is incurred is to the gross receipts for such years. The fixed base percentage for a taxpayer who has fewer than four but at least one taxable year shall be determined in the same manner using the number of immediately preceding taxable years to arrive at the percentage.

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

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

"Qualified tax liability." The liability for taxes imposed under Article III, IV or VI of the Tax Reform Code. The term shall not include any tax withheld by an employer from an employee under Article III.

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

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

"Small business." A for-profit corporation, limited liability company, partnership or proprietorship with net book

1 value of assets totaling, at the beginning or end of the taxable
2 year for which Pennsylvania qualified research and development
3 expense is incurred, as reported on the balance sheet, less than
4 \$5,000,000.

5 "Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2),
6 known as the Tax Reform Code of 1971.

7 "Taxpayer." An entity subject to tax under Article III, IV
8 or VI of the Tax Reform Code. The term shall include the
9 shareholder of a Pennsylvania S corporation that receives a
10 research and development tax credit.

11 § 4303. Credit for research and development expenses.

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

19 (b) Amount.--The following apply:

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

27 (2) A taxpayer that is a small business and is qualified
28 under subsection (a) shall receive a research and development
29 tax credit for the taxable year in the amount of 20% of the
30 excess of the taxpayer's total Pennsylvania qualified

research and development expense for the taxable year over the taxpayer's Pennsylvania base amount.

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

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

(a) Carryover.--If the taxpayer cannot use the entire amount of the research and development tax credit for the taxable year in which the research and development tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the research and development tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The research and development tax credit may be carried over and applied to succeeding taxable years for no more than 15 taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.--A research and development tax credit approved by the department for Pennsylvania qualified research and development expense in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the research and development tax credit is applied against any tax liability under subsection (a).

(c) Carry back or refund.--A taxpayer is not entitled to

1 carry back or obtain a refund of an unused research and
2 development tax credit.

3 (d) Sale or assignment.--A taxpayer, upon application to and
4 approval by the Department of Community and Economic
5 Development, may sell or assign, in whole or in part, a research
6 and development tax credit granted to the taxpayer under this
7 chapter. The Department of Community and Economic Development
8 shall establish guidelines for the approval of applications
9 under this subsection.

10 (e) Claim.--The purchaser or assignee of a portion of a
11 research and development tax credit under subsection (d) shall
12 immediately claim the credit in the taxable year in which the
13 purchase or assignment is made. The amount of the research and
14 development credit that a purchaser or assignee may use against
15 any one qualified tax liability may not exceed 75% of the
16 qualified tax liability for the taxable year. The purchaser or
17 assignee may not carry over, carry back, obtain a refund of or
18 assign the research and development tax credit. The purchaser or
19 assignee shall notify the department of the seller or assignor
20 of the research and development tax credit in compliance with
21 procedures specified by the department.

22 § 4305. Application of Internal Revenue Code.

23 The provisions of section 41 of the Internal Revenue Code of
24 1986 (Public Law 99-514, 26 U.S.C. § 41) and the regulations
25 promulgated regarding those provisions shall apply to the
26 department's interpretation and administration of the research
27 and development tax credit. References to the Internal Revenue
28 Code shall mean the sections of the Internal Revenue Code as
29 existing on any date of interpretation of this chapter, except
30 that if those sections of the Internal Revenue Code referenced

1 in this chapter are repealed or terminated, references to the
2 Internal Revenue Code shall mean those sections last having full
3 force and effect. If after repeal or termination the Internal
4 Revenue Code sections are revised or reenacted, references in
5 this chapter to Internal Revenue Code sections shall mean those
6 revised or reenacted sections.

7 § 4306. Determination of qualified research and development
8 expenses.

9 In prescribing standards for determining which qualified
10 research and development expenses are considered Pennsylvania
11 qualified research and development expense for purposes of
12 computing the research and development tax credit, the
13 department may consider:

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

15 (2) The residence or business location of the person or
16 persons performing the service.

17 (3) The location where qualified research and
18 development supplies are consumed.

19 (4) Other factors that the department determines are
20 relevant for the determination.

21 § 4307. Time limitations.

22 A taxpayer shall not be entitled to a research and
23 development tax credit for Pennsylvania qualified research and
24 development expenses incurred in taxable years ending after
25 December 31, 2015. The termination date in section 41(h) of the
26 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
27 41(h)) shall not apply to a taxpayer who is eligible for the
28 research and development tax credit for the taxable year in
29 which the Pennsylvania qualified research and development
30 expense is incurred.

1 § 4308. Transitional rule.

2 For the purpose of calculating Pennsylvania qualified
3 research and development expense used in calculating the
4 Pennsylvania base amount for taxable years ending after 1991 and
5 before 1997, if the taxpayer has incurred qualified research and
6 development expense both inside and outside this Commonwealth
7 and is unable to determine the amount of Pennsylvania qualified
8 research and development expense, the taxpayer may calculate
9 Pennsylvania qualified research and development expense by
10 multiplying qualified research and development expense
11 everywhere by the average of the payroll and property factors
12 calculated in accordance with Article IV of the Tax Reform Code
13 for the corresponding taxable years in question.

14 § 4309. Limitation on credits.

15 (a) Total.--The total amount of credits approved by the
16 department shall not exceed \$55,000,000 in any fiscal year. Of
17 that amount, \$11,000,000 shall be allocated exclusively for
18 small businesses, except that if the total amounts allocated to
19 either the group of applicants exclusive of small businesses or
20 the group of small business applicants is not approved in any
21 fiscal year, the unused portion shall become available for use
22 by the other group of qualifying taxpayers.

23 (b) Allocation for taxpayers.--If the total amount of
24 research and development tax credits applied for by all
25 taxpayers, except for small businesses, exceeds the amount
26 allocated for those credits, the research and development tax
27 credit to be received by each applicant shall be the product of
28 the allocated amount multiplied by the quotient of the research
29 and development tax credit applied for by the applicant divided
30 by the total of all research and development credits applied for

1 by all applicants, the algebraic equivalent of which is:

2 taxpayer's research and development tax credit = amount
3 allocated for those credits X (research and development
4 tax credit applied for by the applicant/total of all
5 research and development tax credits applied for by all
6 applicants).

7 (c) Allocation for small business taxpayers.--If the total
8 amount of research and development tax credits applied for by
9 all small business taxpayers exceeds the amount allocated for
10 those credits, the research and development tax credit to be
11 received by each small business applicant shall be the product
12 of the allocated amount multiplied by the quotient of the
13 research and development tax credit applied for by the small
14 business applicant divided by the total of all research and
15 development credits applied for by all small business
16 applicants, the algebraic equivalent of which is:

17 taxpayer's research and development tax credit = amount
18 allocated for those credits X (research and development
19 tax credit applied for by the small business/total of all
20 research and development tax credits applied for by all
21 small business applicants).

22 § 4310. Pass-through entity.

23 (a) Election.--If a pass-through entity has any unused tax
24 credit under section 4304 (relating to carryover, carryback,
25 refund and assignment of credit), the entity may elect, in
26 writing, according to the department's procedures, to transfer
27 all or a portion of the credit to shareholders, members or
28 partners in proportion to the share of the entity's distributive
29 income to which the shareholder, member or partner is entitled.

30 (b) Additional credit.--The credit provided under subsection

1 (a) shall be in addition to any research and development tax
2 credit to which a shareholder, member or partner of a pass-
3 through entity is otherwise entitled under this chapter, except
4 that a pass-through entity and a shareholder, member or partner
5 of a pass-through entity may not claim a credit under this
6 chapter for the same qualified research and development expense.

7 (c) Claim.--A shareholder, member or partner of a pass-
8 through entity to whom credit is transferred under subsection
9 (a) must immediately claim the credit in the taxable year in
10 which the transfer is made. The shareholder, member or partner
11 may not carry forward, carry back, obtain a refund of or sell or
12 assign the credit.

13 § 4311. Report to General Assembly.

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

25 § 4312. (Reserved).

26 § 4313. Regulations.

27 The secretary shall promulgate regulations necessary for the
28 implementation and administration of this chapter.

29 Section 2. Repeals are as follows:

30 (1) The General Assembly declares that the repeals under

paragraphs (2) and (3) are necessary to effectuate the addition of 12 Pa.C.S. Ch. 43.

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

(3) Section 1602-H of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

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

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

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

1 (3) Paragraph (2) does not apply to the addition of 12
2 Pa.C.S. § 4312.
3 Section 4. This act shall take effect in 60 days.