

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 769 Session of  
1995

INTRODUCED BY TRELLO, BOYES, TIGUE, DENT, GIGLIOTTI, NAILOR,  
PESCI, D. W. SNYDER, COY, MERRY, GORDNER, REBER, MARKOSEK,  
MAITLAND, MELIO, HERMAN, LUCYK, SATHER, DALEY, LAUGHLIN,  
McCALL, ROONEY, PETRARCA, STEELMAN AND BELFANTI,  
FEBRUARY 14, 1995

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 14, 1995

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," providing for a research tax credit.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
14 the Tax Reform Code of 1971, is amended by adding an article to  
15 read:

ARTICLE XVII-B

RESEARCH TAX CREDIT

18 Section 1701-B. Short Title of Article.--This article shall  
19 be known and may be cited as the "Research Tax Credit Law."

20 Section 1702-B. Definitions.--The following words, terms and

phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Base Period." The three-taxable-year period ending with the taxable year immediately preceding the last taxable year beginning after December 31, 1993.

"Basic Research." Any original investigation for the advancement of scientific knowledge not having a specific commercial objective.

"Credit." The research tax credit made available under the provisions of this article.

"In-house Research Expenses." Any one of the following:

(1) Any wages paid or incurred to an employee for qualified services performed by that employee.

(2) Any amount paid or incurred for supplies used in the conduct of qualified research.

(3) Subject to regulations of the Department of Revenue, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research, except that this subclause shall not apply to any amount to the extent that the taxpayer receives or accrues any amount from any other person for the right to use substantially identical personal property.

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

"Qualified Organization." Any of the following organizations which are located within this Commonwealth:

(1) Any educational organization which is an institution of higher education.

(2) Any scientific research organization which meets the requirements of section 501(a) or (c)(3) of the Internal Revenue

Code, is organized primarily to conduct scientific research and is not a private foundation.

(3) Any scientific tax-exempt organization which meets the requirements of section 501(a) and (c)(3) or (6) of the Internal Revenue Code, is organized and operated primarily to promote scientific research by institutions of higher education under written agreements and currently expends all of its funds or substantially all of its basic research payments received by it for grants to or contracts with institutions of higher education for basic research.

"Qualified Research Expenses." The sum of the in-house research expenses and the contract research expenses which are paid or incurred by the taxpayer during the taxable year for which the research tax credit is claimed.

"Qualified Services." Services consisting of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research.

"Supplies." Any tangible property other than land or improvements to land and any property of a character subject to depreciation.

"Wages." Compensation as defined in section 301 of this act.

Section 1703-B. Research Tax Credit.--(a) Any taxpayer subject to Article IV, VI or XI of this act shall be eligible for and may claim a research tax credit as provided in this article.

(b) (1) Subject to the overall limitation set forth in subclause (2) of this clause, the amount of the research tax credit under this article for any taxable year shall be equal to the sum of:

1     (i) ten per cent of the excess, if any, of the qualified  
2 research expenses for the taxable year over the base amount; and  
3     (ii) ten per cent of the basic research payments determined  
4 under section 1707-B of this article.

5     (2) The amount of the research tax credit under this article  
6 for any taxable year shall not exceed fifty per cent of the tax  
7 liability for that taxpayer in that tax year.

8     (3) The amount of any research tax credit otherwise  
9 allowable which cannot be taken because of the limitation under  
10 subclause (2) of this clause may be carried forward to the next  
11 three succeeding tax years.

12     Section 1704-B. Research Expenses.--(a) If any contract  
13 research expenses paid or incurred during any taxable year are  
14 attributable to qualified research to be conducted after the  
15 close of the taxable year, the amount so determined shall be  
16 treated as paid or incurred during the tax year in which the  
17 qualified research is conducted.

18     (b) As used in this section, the term "contract research  
19 expenses" means sixty-five per cent of any amount paid or  
20 incurred by the taxpayer to any person, other than an employee of  
21 the taxpayer, for qualified research.

22     Section 1705-B. Base Amount.--(a) (1) The base amount is  
23 equivalent to the product of the fixed-base percentage and the  
24 average annual gross receipts of the taxpayer for the four  
25 taxable years immediately preceding the tax year for which the  
26 research tax credit is claimed.

27     (2) In no event shall the base amount be less than fifty per  
28 cent of the qualified research expenses for the taxable year for  
29 which the credit is claimed.

30     (b) (1) Except as provided in subclause (2) of this clause,

1 the fixed-base percentage is the percentage which the aggregate  
2 qualified research expenses of the taxpayer for the four taxable  
3 years immediately preceding the tax year for which the credit is  
4 claimed is to the aggregate gross receipts of the taxpayer for  
5 such years.

6 (2) The fixed-base percentage for a taxpayer who has less  
7 than four taxable years shall be determined in the same manner  
8 as set forth in subclause (1) of this clause using the number of  
9 immediately preceding taxable years to arrive at the percentage.

10 (3) In no event shall the fixed-base percentage exceed  
11 sixteen per cent.

12 (c) Gross receipts for any taxable year shall only consist  
13 of gross receipts which are effectively connected with the  
14 conduct of a trade or business within this Commonwealth.

15 Section 1706-B. Qualified Research.--(a) Qualified research  
16 is research which complies with all of the following criteria:

17 (1) Expenditures on the research may be treated as expenses  
18 under section 175 of the Internal Revenue Code.

19 (2) Research is undertaken for the purpose of discovering  
20 information which is technological in nature and the application  
21 of which information is intended to be useful in the development  
22 of a new or improved business component for the taxpayer.

23 (3) Substantially all of the activities constitute elements  
24 of a process of experimentation for a purpose described in  
25 clause (b) of this section.

26 (b) (1) Research may qualify for a credit under this  
27 article if that research relates to any of the following:

28 (i) A new or improved function.

29 (ii) Performance.

30 (iii) Reliability or quality.

1     (2) A tax credit under this article shall not be allowed for  
2 any of the following types of research:

3     (i) Any research conducted after the beginning of commercial  
4 production of the business component.

5     (ii) Any research related to the adaptation of an existing  
6 business component to a particular customer's need.

7     (iii) Any research related to the reproduction of an  
8 existing business component from a physical examination of the  
9 business component itself or from plans, blueprints, detailed  
10 specifications or publicly available information with respect to  
11 the business component.

12     (iv) Any efficiency survey; activity related to management  
13 function or technique; market research, testing or development;  
14 routine data collection; or routine or ordinary testing or  
15 inspection for quality control.

16     (v) Any research with respect to computer software which is  
17 developed by or for the benefit of the taxpayer, other than  
18 computer software for use in an activity which constitutes  
19 qualified research, or a production process which meets the  
20 requirements of clause (a) of this section.

21     (vi) Any research conducted outside of this Commonwealth.

22     (vii) Any research in the social sciences, the arts or the  
23 humanities.

24     (viii) Any research to the extent funded by a grant,  
25 contract or otherwise by another person or governmental entity.

26     Section 1707-B. Basic Research Payments.--(a) For purposes  
27 of section 1703-B of this article, the amount of any basic  
28 research payments shall be equal to the excess of such basic  
29 research payments over the qualified organization base period  
30 amount. The portion of the basic research payment which does not

exceed the qualified organization base period amount shall be treated as contract research expenses.

(b) As used in this section, the term "basic research payment" means any amount paid in cash during the tax year for which credit is claimed by the taxpayer to a qualified organization for basic research if such payment is made under written agreement between that taxpayer and the qualified organization and the basic research is to be performed by that qualified organization.

(c) (1) The qualified organization base period amount is an amount equal to the sum of the minimum basic research amount plus the maintenance-of-effort amount.

(2) Minimum basic research amount is an amount equal to the greater of:

(i) one per cent of the average of the sum of amount paid or incurred during the base period for in-house research expenses and any contract research expenses; or

(ii) the amounts treated as contract expenses during the base period by reason of clause (a) of this section. The minimum basic research amount for any base period shall not be less than fifty per cent of the basic research payments for the tax year for which credit is claimed.

(3) Maintenance-of-effort amount is an amount equal to the excess, if any, of an amount equal to the average of the nondesignated higher education contributions paid by the taxpayer during the base period multiplied by the cost-of-living adjustment for the calendar year in which the tax year begins over the amount of nondesignated higher education contributions paid by the taxpayer during the tax year for which credit is claimed.

1     (4) Nondesignated higher education contribution is any  
2 amount paid by a taxpayer to a qualified institution of higher  
3 education for which a deduction is allowable under section 170  
4 of the Internal Revenue Code and which amount was not used to  
5 compute a credit under this article or as a basic research  
6 payment for purposes of this article.

7     (5) Cost-of-living adjustment for any calendar year is the  
8 cost-of-living adjustment for such calendar year calculated  
9 under section 1(f)(3) of the Internal Revenue Code.

10     Section 2. This act shall take effect in 60 days.