

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1028 Session of  
1995

INTRODUCED BY GANNON, TRELLO, BOYES AND RAYMOND, MARCH 6, 1995

REFERRED TO COMMITTEE ON FINANCE, MARCH 6, 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:

16 ARTICLE XVII-B

17 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  
21 phrases, when used in this article, shall have the meanings  
22 ascribed to them in this section, except where the context

1 clearly indicates a different meaning:

2 "Basic research." Any original investigation for the  
3 advancement of scientific knowledge not having a specific  
4 commercial objective.

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

7 "In-house research expenses." Any one of the following:

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

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

12 (3) Subject to regulations of the Department of Revenue, any  
13 amount paid or incurred to another person for the right to use  
14 computers in the conduct of qualified research.

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

17 "Qualified services." Services consisting of engaging in  
18 qualified research, or engaging in the direct supervision or  
19 direct support of research activities which constitute qualified  
20 research.

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

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

28 "Tax liability." The liability for taxes imposed under the  
29 act of June 22, 1935 (P.L.414, No.182), known as the "State  
30 Personal Property Tax Act," and Articles IV, V and VI of this

1 act.

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

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

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

11 (i) ten per cent of the excess, if any, of the qualified  
12 research expenses for the taxable year over the base amount; and

13 (ii) ten per cent of the basic research payments determined  
14 under section 1707-B of this article.

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

18 (3) The amount of any research tax credit otherwise  
19 allowable which cannot be taken because of the limitation under  
20 subclause (2) of this clause may be carried forward to the next  
21 seven succeeding tax years.

22 Section 1704-B. Research Expenses.--(a) If any contract  
23 research expenses paid or incurred during any taxable year are  
24 attributable to qualified research to be conducted after the  
25 close of the taxable year, the amount so determined shall be  
26 treated as paid or incurred during the tax year in which the  
27 qualified research is conducted.

28 (b) As used in this section, "contract research expenses"  
29 means sixty-five per cent of any amount paid or incurred by the  
30 taxpayer to any person, other than an employe of the taxpayer,

1 for qualified research.

2 Section 1705-B. Base Amount.--(a) (1) The base amount is  
3 equivalent to the product of the fixed-base per centage and the  
4 average annual gross receipts of the taxpayer for the four  
5 taxable years immediately preceding the tax year for which the  
6 research tax credit is claimed.

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

10 (b) (1) Except as provided in subclause (2) of this clause,  
11 the fixed-base percentage is the percentage which the qualified  
12 research expenses of the taxpayer for the four taxable years  
13 immediately preceding the tax year for which the credit is  
14 claimed is to the gross receipts of the taxpayer for such years.

15 (2) The fixed-base percentage for a taxpayer who has less  
16 than four taxable years shall be determined in the same manner  
17 as set forth in subclause (1) of this clause using the number of  
18 immediately preceding taxable years to arrive at the per  
19 centage.

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

22 (c) (1) Gross receipts for any taxable year shall only  
23 consist of gross receipts which are effectively connected with  
24 the conduct of a trade or business within the Commonwealth.

25 (2) The determination of whether gross receipts are  
26 effectively connected with the conduct of a trade or business  
27 within this Commonwealth shall be made by reference to the  
28 standard established in sections 401(3)2(a)(16) and (17) of this  
29 act.

30 Section 1706-B. Qualified Research.--(a) Qualified research

1 is research which complies with all of the following criteria:

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

4 (2) Research is undertaken for the purpose of discovering  
5 information which is technological in nature and the application  
6 of which information is intended to be useful in the development  
7 of a new or improved business component for the taxpayer.

8 (3) Substantially all of the activities constitute elements  
9 of a process of experimentation for a purpose described in  
10 clause (b) of this section.

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

13 (i) A new or improved function.

14 (ii) Performance.

15 (iii) Reliability or quality.

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

18 (i) Any research conducted after the beginning of commercial  
19 production of the business component.

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

22 (iii) Any research related to the reproduction of an  
23 existing business component from a physical examination of the  
24 business component itself or from plans, blueprints, detailed  
25 specifications or publicly available information with respect to  
26 the business component.

27 (iv) Any efficiency survey; activity related to management  
28 function or technique; market research, testing or development;  
29 routine data collection; or routine or ordinary testing or  
30 inspection for quality control.

1     (v) Any research with respect to computer software which is  
2 developed by or for the benefit of the taxpayer, other than  
3 computer software for use in an activity which constitutes  
4 qualified research, or a production process which meets the  
5 requirements of clause (a) of this section.

6     (vi) Any research conducted outside the Commonwealth. If the  
7 taxpayer has research within and without Pennsylvania and cannot  
8 determine the amount of Pennsylvania qualified research expenses  
9 for the period beginning after December 31, 1991, and before  
10 January 1, 1995, the amount to be used in the numerator for the  
11 fixed based percentage should be qualified research and  
12 development expenditures everywhere for the period multiplied by  
13 the average of the payroll and property factors used on the  
14 corporation's Corporate Tax Report for the Corporate Net Income  
15 Tax imposed under Article IV of this act for the corresponding  
16 years in question.

17     (vii) Any research in the social sciences, arts or the  
18 humanities.

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

21     Section 1707-B. Basic Research Payments.--(a) For purposes  
22 of section 1703-B of this article, the amount of any basic  
23 research payments shall be equal to the excess of such basic  
24 research payments over the qualified organization base period  
25 amount. The portion of the basic research payment which does not  
26 exceed the qualified organization base period amount shall be  
27 treated as contract research expenses.

28     (b) As used in this section, the term "basic research  
29 payment" means any amount paid in cash during the tax year for  
30 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.

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

1 payment for purposes of this article.

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

5 Section 1708-B. Qualified Organizations.--The term  
6 "qualified organization" means any of the following  
7 organizations which are located within this Commonwealth:

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

10 (2) Any scientific research organization which meets the  
11 requirements of section 501(a) and (c)(3) of the Internal  
12 Revenue Code, is organized primarily to conduct scientific  
13 research and is not a private foundation.

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

22 Section 1709-B. Shareholder or Partner Pass-through.--(a)  
23 If a pass-through entity does not have an eligible tax liability  
24 against which the research expense tax credit may be applied, a  
25 shareholder or partner of the pass-through entity is entitled to  
26 a research tax credit equal to the research expense tax credit  
27 determined for the pass-through entity for the taxable year  
28 multiplied by the percentage of the pass-through entity's  
29 distributive income to which the shareholder or partner is  
30 entitled.



1     (b) The credit provided under clause (a) of this section is  
2     in addition to any research expense tax credit to which a  
3     shareholder or partner of a pass-through entity is otherwise  
4     entitled under this article. However, a pass-through entity and  
5     a shareholder or partner of the pass through entity may not  
6     claim a credit under this article for the same qualified  
7     research expenses.

8     Section 2. This act shall take effect immediately.