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HOUSE BILL NO. 1092

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02, relating to the Virginia Biotechnology Investment Tax Credit.*

Patrons—Sickles and O'Bannon

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02 as follows:

§ 58.1-439.12:02. Virginia Biotechnology Investment Tax Credit.

A. As used in this section, unless the context clearly requires a different meaning:

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels and the products, services, technologies, and subtechnologies developed as a result of insights gained from research advances that add to that body of fundamental knowledge.

"Biotechnology company" means a taxpayer (i) that maintains an office, headquarters, or base of operations in Virginia; (ii) that (a) has qualified research expenses incurred in Virginia for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes; or (b) provides services or products necessary for such research, development, production, or provision; and (iii) that has fewer than 100 employees, of whom at least 75 percent are Virginia-based employees filling positions or jobs in Virginia.

"Qualified research expenses" means qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, in the field of biotechnology.

B. For taxable years beginning on and after January 1, 2008, any biotechnology company shall be allowed a credit against the income taxes imposed pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 in an amount equal to: (i) 15 percent of the excess of the qualified research expenses for the taxable year over the base amount and (ii) 15 percent of the basic research payments determined in accordance with § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, and provided that subsection (h) of 26 U.S.C. § 41 relating to termination shall not apply. The terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research," or any other terms determined by the Tax Commissioner to affect the calculation of the credit shall only include expenditures for research conducted in Virginia.

C. No credit shall be allowed under the Code of Virginia for expenditures for which a credit is allowed, or which are includable in the calculation of a credit allowed under this section.

D. The amount of the credits applied under this section against the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 for a taxable year shall not exceed 50 percent of the tax liability otherwise due. Notwithstanding any provisions of this article, no taxpayer shall be eligible to claim a credit of more than \$500,000 per year under this section. In no event shall more than \$5 million in credits be allowed for any taxable year; however, if credits exceed \$5 million for a taxable year, they shall be allocated by the Department of Taxation on a pro rata basis. The amount of credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this subsection may be carried over, if necessary, to the 10 taxable years following the first taxable year in which such credit is allowed.

E. Credits earned by a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, for their individual income tax, as the partners, members, or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Commissioner. If such document has not been executed, such credits shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

INTRODUCED

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