DEPARTMENT OF TAXATION
2014 Fiscal Impact Statement

1. Patron Ryan T. McDougle

2. Bill Number SB 623

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee Passed House and Senate

4. Title Research and Development Expenses Tax Credit

Second House:
_____ **In Committee**
_____ **Substitute**
_X_ **Enrolled**

5. Summary/Purpose:

This bill would increase the annual cap for the Research and Development Expenses Tax Credit from $5 million to $6 million.

This bill would also increase the amount of Research and Development Expenses Tax Credits that each taxpayer could claim to an amount equal to 15 percent of the first $234,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer or 20 percent of the first $234,000 in such expenses if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer. If the total amount of approved credits is less than $6 million for any taxable year, this bill would require the Department of Taxation ("the Department") to allocate credits of up to $6 million, on a pro rata basis, to taxpayers that are already approved for the credit in an amount equal to 15 percent of the second $234,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer or 20 percent of the second $234,000 in such expenses if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

This bill would allow a partnership, limited liability company, or electing small business corporation (S corporation) to elect to receive and claim the credit at the entity level.

This bill would require taxpayers applying for the credit to provide certain information to the Department, and would require the Department to report such information to the Governor and any member of the General Assembly upon request.

This bill would also extend the sunset date for the Research and Development Expenses Tax Credit from December 31, 2015 to December 31, 2018.

This bill would be effective for taxable years beginning on or after January 1, 2014, except that the provisions increasing the annual credit cap would be effective for fiscal years beginning on or after July 1, 2014.

6. Budget amendment necessary: Yes.
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7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7b. Revenue Impact:

Fiscal Year	*Dollars*	*Fund*
2013-14	$0	GF
2014-15	($1 million)	GF
2015-16	($1 million)	GF
2016-17	($1 million)	GF
2017-18	($1 million)	GF
2018-19	($1 million)	GF
2019-20	($1 million)	GF

8. Fiscal implications:

Administrative Cost

The Department considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

Because this bill would increase the annual cap for the Research and Development Expenses Tax Credit from $5 million to $6 million, it would have a negative General Fund revenue impact of $1 million beginning in Fiscal Year 2015, provided that the maximum amount of credits is claimed.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Research and Development Expenses Tax Credit

Virginia currently allows Research and Development Expenses Tax Credits in an amount equal to 15 percent of the first $167,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year or 20 percent of the first $175,000 of such expenses if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer. If the total amount of approved credits is less than $5 million for any taxable year, the Department is required to allocate credits of up to $5 million, on a pro rata basis, to taxpayers that are already approved for the credit in an amount equal to 15 percent of the second $167,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer or 20 percent of the second $175,000 in such expenses if the Virginia qualified research was

conducted in conjunction with a Virginia public or private college or university. The credit is capped at $5 million per fiscal year.

The amount of credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) are required to be allocated to the individual partners, shareholders, or members in proportion to their ownership or interest in such entities or in accordance with a written agreement entered into by such individual partners, members, or shareholders. This is consistent with how the majority of Virginia's tax credits are administered.

Secrecy of Taxpayer Information

Unless an exception applies, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to law, or any former officer or employee of any of the aforementioned offices may not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. It is also unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document.

The prohibition on impermissibly divulging tax information or publishing confidential tax documents does not prohibit the publication of statistics as long as the statistics are classified so as to prevent the identification of particular reports or returns and the items thereof. In order to prevent the identification of particular reports or returns and the items thereof, it is the Department's policy not to publish statistics if fewer than four taxpayers claimed the preference in a taxable year. Because of this policy, the Department did not report certain statistics on the following tax credits in the three most recent Annual Reports:

- Biodiesel and Green Diesel Fuels Producers Tax Credit (Fiscal Years 2013 and 2012);
- Community of Opportunity Tax Credit (Fiscal Years 2013, 2012, and 2011);
- International Trade Facility Tax Credit (Fiscal Year 2013);
- Motion Picture Production Tax Credit (Fiscal Year 2012);
- Rent Reductions Tax Credit (Fiscal Years 2012 and 2011);
- Virginia Port Volume Increase Tax Credit (Fiscal Year 2013); and
- Worker Retraining Tax Credit (Fiscal Years 2013 and 2011).

This was also the case in the recent report on the Motion Picture Production Tax Credit, which was issued on October 29, 2013.

Proposed Legislation

This bill would increase the annual cap for the Research and Development Expenses Tax Credit from $5 million to $6 million.

This bill would also increase the amount of Research and Development Expenses Tax Credits that each taxpayer could claim to an amount equal to 15 percent of the first $234,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer or 20 percent of the first $234,000 in such expenses if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer. If the total amount of approved credits is less than $6 million for any taxable year, this bill would require the Department to allocate credits of up to $6 million, on a pro rata basis, to taxpayers that are already approved for the credit in an amount equal to 15 percent of the second $234,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer or 20 percent of the second $234,000 in such expenses if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

This bill would allow a partnership, limited liability company, or electing small business corporation (S corporation) to elect to receive and claim the credit at the entity level, pursuant to guidelines that the Department would be required to issue for purposes of such election. If this election is not made, this bill would require that such credits be allocated to the individual partners, members, or shareholders in proportion to their ownership interests in such entities or in accordance with a written agreement entered into by such individual partners, members, or shareholders.

This bill would require taxpayers applying for the credit to provide the following information to the Department:

- The number of full-time employees employed by the taxpayer in the Commonwealth during the taxable year for which the credit is sought;
- The taxpayer's sector or sectors according to the 2012 edition of the North American Industry Classification System (NAICS) as published by the United States Census Bureau;
- A brief description of the area, discipline, or field of Virginia qualified research performed by the taxpayer;
- The total gross receipts or anticipated total gross receipts of the taxpayer for the taxable year for which the credit is sought; and
- Whether the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

This bill would require the Department to aggregate and summarize the information collected from taxpayers, and make it available to the Governor and any member of the General Assembly upon request, regardless of the number of taxpayers applying for the credit. This bill would also require the Department to, upon request of the General Assembly or any duly constituted committee of the General Assembly, disclose the total aggregate amount of credits claimed by all taxpayers, regardless of how few taxpayers claim the credit or any other circumstances.

This bill would also extend the sunset date for the Research and Development Expenses Tax Credit from December 31, 2015 to December 31, 2018.

This bill would be effective for taxable years beginning on or after January 1, 2014, except that the provisions increasing the annual credit cap would be effective for fiscal years beginning on or after July 1, 2014.

Similar Bills

House Bill 1220 is identical to this bill.

cc : Secretary of Finance

Date: 3/6/2014 MTH
SB623FER161