

CHAPTER 433

An Act to amend and reenact § 58.1-439.12:08 of the Code of Virginia, relating to research and development expenses tax credit; reporting requirement.

[H 590]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:08 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.12:08. Research and development expenses tax credit.

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

"Partnership" means the ~~Virginia Economic Development Partnership~~.

"Virginia base amount" means the base amount as defined in § 41(c) of the Internal Revenue Code, as amended, that is attributable to Virginia, determined by (i) substituting "Virginia qualified research and development expense" for "qualified research expense"; (ii) substituting "Virginia qualified research" for "qualified research"; and (iii) instead of "fixed base percentage," using:

1. The percentage that the Virginia qualified research and development expense for the three taxable years immediately preceding the current taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years; or

2. The percentage that the Virginia qualified research and development expense for the applicable number of taxable years immediately preceding the current taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years, for the taxpayer that has fewer than three but at least one prior taxable year.

"Virginia gross receipts" means the same as "gross receipts" as defined in § 58.1-3700.1.

"Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal Revenue Code, as amended, that is conducted in the Commonwealth.

"Virginia qualified research and development expenses" means qualified research expenses, as defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

B. For taxable years beginning on or after January 1, 2011, but before January 1, 2019, a taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to (i) 15 percent of the first \$234,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year or (ii) 20 percent of the first \$234,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year 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.

The total amount of credits granted for each fiscal year of the Commonwealth pursuant to this section shall not exceed \$6 million.

C. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit as provided herein. The Department shall develop and publish guidelines for applications and such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). In the event applications for the tax credits allowed under this section exceed \$6 million for any taxable year, the Department shall apportion the credits by dividing \$6 million by the total amount of tax credits applied for, to determine the percentage of allowed tax credits each taxpayer shall receive. In the event that the total amount of approved tax credits under this section for all applications for any taxable year is less than \$6 million, the Department shall allocate credits up to the maximum of \$6 million, on a pro rata basis, to taxpayers who are already approved for the tax credit for the taxable year equal to 15 percent of the second \$234,000 in qualified research expenses during the taxable year or 20 percent of the second \$234,000 in qualified research expenses conducted in conjunction with a public or private college or university located in the Commonwealth.

D. If the amount of the credit allowed exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability shall be refunded to the taxpayer, subject to the limitations set forth in the guidelines developed by the Department.

E. Any taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

F. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, 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, unless the partnership, limited liability company, or electing small business corporation (S corporation) elects for such credits not to be so

allocated but to be received and claimed at the entity level by the partnership, limited liability company, or electing small business corporation (S corporation) pursuant to guidelines that shall be issued by the Department for purposes of such election.

G. The Department shall adopt guidelines to prescribe standards for determining when research and development is considered conducted in the Commonwealth for purposes of allowing the credit under this section. In adopting guidelines, the Department may consider (i) the location where the research and development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting the research and development; (iii) the location where supplies used in the research and development are consumed; and (iv) any other factors that the Department deems to be relevant.

H. ~~The Partnership shall include the tax credits approved in accordance with the provisions of this section in the Annual Report on Business Incentives compiled by the Secretary of Commerce and Trade. Such report~~ *Tax Commissioner's annual report to the Governor on revenue collections by tax source* shall include (i) the total number of applicants approved for tax credits *pursuant to this section* for the applicable tax year and (ii) the total ~~number of~~ *amount of such* tax credits approved for the applicable tax year.

I. The Department shall require taxpayers applying for the credit to provide information including (i) the number of full-time employees employed by the taxpayer in the Commonwealth during the taxable year for which the credit is sought; (ii) 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; (iii) a brief description of the area, discipline, or field of Virginia qualified research performed by the taxpayer; (iv) the total gross receipts or anticipated total gross receipts of the taxpayer for the taxable year for which the credit is sought; and (v) whether the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university. The Department shall aggregate and summarize the information collected 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.