

11100149D

HOUSE BILL NO. 2325

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:06, relating to research and development expenses tax credit.*

Patrons—Lingamfelter, Greason and Keam

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 58.1-439.12:06 as follows:

§ 58.1-439.12:06. Research and development expenses tax credit.

A. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"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 and development" for "qualified research"; and (iii) instead of "fixed base percentage," using:

1. The percentage that the Virginia qualified research and development expense for the four taxable years immediately preceding the 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 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 four 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 and development" means qualified research, as defined in § 41 (d) of the Internal Revenue Code, as amended, that is conducted in the Commonwealth in partnership with any Virginia nonprofit college or university.

"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 and development conducted.

B. For taxable years beginning on January 1, 2012, but before January 1, 2017, 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) three percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year, not to exceed the Virginia base amount for the taxpayer, and (ii) 10 percent of the amount by which the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year 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 and shall be allocated equally between the two credits allowed under clauses (i) and (ii).

C. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit to the extent the taxpayer applies for such credit through the Partnership as provided herein. The Partnership shall establish and publish policies and procedures for such applications. In the event applications for the tax credits allowed under clauses (i) and (ii) of subsection B exceed the \$3 million amount allocated for each, the Partnership shall apportion the money by dividing the \$3 million by the total amount of tax credits applied for under clauses (i) and (ii) of subsection B, respectively, to determine the percentage each taxpayer shall receive.

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 may be carried over for credit against the income taxes of the taxpayer in the next five taxable years or until the total amount of credit has been taken, whichever occurs sooner.

E. A taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such research and development 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

INTRODUCED

HB2325

59 *proportion to their ownership interests in such entities.*

60 *G. The Department of Taxation, with assistance from the Partnership, shall adopt regulations to*
61 *prescribe standards for determining when research and development is considered conducted in the*
62 *Commonwealth for purposes of allowing the credit under this section. In adopting regulations, the*
63 *Department may consider (i) the location where the research and development are performed; (ii) the*
64 *residence or business location of the taxpayer or taxpayers doing the research and development; (iii) the*
65 *location where supplies used in the research and development are consumed; and (iv) any other factors*
66 *that the Department deems to be relevant. The regulations shall be exempt from the Administrative*
67 *Process Act (§ 2.2-4000 et seq.).*

68 *H. On or before December 1 of each year, the Partnership shall issue a report to the Governor and*
69 *the chairmen of the House Committee on Appropriations, the House Committee on Finance, and the*
70 *Senate Committee on Finance on the tax credits approved in accordance with the provisions of this*
71 *section. Such report shall include (i) the total number of applicants for tax credits for each tax year, (ii)*
72 *the total number of tax credit applications approved each tax year, and (iii) the total amount of credits*
73 *authorized for all tax years in accordance with the provisions of this section.*