

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** Jerrauld C. Jones

3. **Committee** House Finance

4. **Title** Virginia's Research and Development Tax
Credit Programs; Increases Aggregate Caps
and Extends Sunset Dates

2. **Bill Number** HB 748

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

The bill would increase the annual credit cap for the Research and Development Expenses Tax Credit from \$7 million to \$10 million per fiscal year. This bill would increase the annual credit cap for the Major Research and Development Expenses Tax Credit from \$20 million to \$40 million per fiscal year. This bill would extend the sunset dates for both credits from January 1, 2022, to January 1, 2027.

This bill would also move the deadline for submitting credit applications for both credits to the Department of Taxation ("the Department") from July 1 to September 1 of the calendar year following the close of the taxable year in which the expenses were paid or incurred.

The portion of the bill increasing the annual cap on these tax credits would be effective for taxable years beginning on and after January 1, 2020. If enacted during the 2020 Regular Session of the General Assembly, the remaining portions of this bill would become effective July 1, 2020.

6. **Budget amendment necessary:** Yes.

Items(s): Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

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

Revenue Impact

This bill would have an overall annual negative General Fund revenue impact of up to \$23 million for Fiscal Year 2022 and each fiscal year thereafter.

Both of these credit programs are currently oversubscribed by a significant amount. For Taxable Year 2017, taxpayers requested \$15 million of Research and Development Expenses Tax Credits, in excess of the current \$7 million cap. Similarly, taxpayers requested \$63.3 million of Major Research and Development Expenses Tax Credits for Taxable Year 2017, in excess of the current \$20 million cap.

Because both credits are currently oversubscribed, the Department anticipates that it would fully allocate the increased amount of both credits if this bill is enacted. Therefore, increasing the annual credit cap for the Research and Development Expenses Tax Credit would result in a negative General Fund impact of up to \$3 million for Fiscal Year 2022 and each fiscal year thereafter. Increasing the aggregate cap of the Major Research and Development Expenses Tax Credit would result in a negative General Fund revenue impact of up to \$20 million for Fiscal Year 2022 and each fiscal year thereafter.

The portion of this bill that would extend the sunset dates for both of these credits would have no General Fund revenue impact because their extension is already assumed in the official General Fund revenue forecast. The portion of this bill that would change the deadline for submitting tax credit applications would have no General Fund revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Research and Development Expenses Tax Credit

The Research and Development Expenses Tax Credit is a refundable individual and corporate income tax credit for conducting qualified research and development in Virginia. The credit is comprised of a base credit and a supplemental credit that is available only to the extent that the total amount of base credits granted for a fiscal year is less than the annual credit cap. A taxpayer may compute the base credit using the primary method for determining the credit or elect to compute the base credit using the alternative simplified method ("simplified method") for determining the credit.

The base credit for a taxpayer using the primary method is equal to: (i) 15 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the credit year (up to a \$45,000 credit), or (ii) 20 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the credit year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university (up to a \$60,000 credit), to the extent such expenses exceed the taxpayer's Virginia base amount.

The base credit for a taxpayer that elects to utilize the simplified method is equal to 10 percent of the difference between:

- The Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year; and
- 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three immediately preceding taxable years.

If a taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three preceding taxable years, the base credit is equal to 5 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year. The annual base credit amount allowed may not exceed (i) \$45,000 or (ii) \$60,000 if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university

When the credit was first enacted, it was subject to a \$5 million annual cap. The cap was increased to \$6 million for Taxable Years 2014 and 2015, and to \$7 million for Taxable Year 2016 and thereafter. No taxpayer may claim both this credit and the Major Research and Development Expenses Tax Credit for the same taxable year.

Applications requesting allocations of the Research and Development Expenses Tax Credit are currently due July 1.

The credit is currently effective for taxable years beginning on or after January 1, 2011, but before January 1, 2022.

Major Research and Development Expenses Tax Credit

Virginia allows a nonrefundable individual and corporate income tax credit for incurring more than \$5 million of Virginia qualified research and development expenses during a taxable year. The amount of the credit is equal to 10 percent of the difference between:

- The Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year; and
- 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable years.

If a taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the credit is equal to 5 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year.

The Major Research and Development Expenses Tax Credit is subject to an annual cap of \$20 million. Applications requesting allocations of the Major Research and Development Expenses Tax Credit are due July 1.

The credit is effective for taxable years beginning on or after January 1, 2016, but before January 1, 2022.

Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the 2016 Appropriations Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond June 30, 2022. Any new income tax credit or sales tax exemption enacted by the General Assembly prior to the 2021 Session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to income tax credits or sales tax exemptions with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 Session.

Further, during the 2012 Session, the General Assembly enacted House Bill 246, which prohibits legislation from adding a new credit or renewing an existing credit unless the legislation contains a sunset date of not longer than five years from the effective date of the new or renewed credit.

Proposed Legislation

The bill would increase the annual credit cap for the Research and Development Expenses Tax Credit from \$7 million to \$10 million per fiscal year. This bill would increase the annual credit cap for the Major Research and Development Expenses Tax Credit from \$20 million to \$40 million per fiscal year. This bill would extend the sunset dates for both credits from January 1, 2022, to January 1, 2027.

This bill would also move the deadline for submitting credit applications for both credits to the Department from July 1 to September 1 of the calendar year following the close of the taxable year in which the expenses were paid or incurred.

The portion of the bill increasing the annual cap on these tax credits would be effective for taxable years beginning on and after January 1, 2020. If enacted during the 2020 Regular Session of the General Assembly, the remaining portions of this bill would become effective July 1, 2020.

Similar Bills

Senate Bill 110 is identical to this bill.

cc : Secretary of Finance

Date: 3/6/2020 JJS
HB748F161