

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 450

An Act to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.11, relating to a research and development investment tax credit; study.

[H 1667]

Approved March 26, 1999

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 58.1-439.11 as follows:

§ 58.1-439.11. Research and development investment tax credit.

A. For taxable years beginning on and after January 1, 2001, but before January 1, 2006, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title as set forth in this section. The amount of credit earned pursuant to this section shall be equal to fifteen percent of the amount spent by a taxpayer on an eligible research and development activity during the taxable year.

B. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. "Eligible research and development activity" means qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, when such expenses are incurred by a taxpayer for activity occurring in the Commonwealth.

D. A taxpayer shall be eligible to claim the credit for the taxable year in which the eligible research and development activity occurred. No taxpayer shall be eligible to claim a credit of more than \$100,000 per year. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year the credit is allowed may be, to the extent usable, carried over for the next ten succeeding taxable years. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section. In no event shall more than five million dollars in credits be allowed for any taxable year. If applications for credits under this section exceed five million dollars for a taxable year, they shall be allocated by the Department among eligible taxpayers in the manner provided by regulations promulgated by the Department pursuant to subsection E.

E. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), that establish procedures (i) for applying for the credit provided by this section, (ii) for allocating the available amount of tax credits among taxpayers if the amount applied for exceeds five million dollars for a taxable year, and (iii) relating to the computation and carryover of the credit provided under this section.

F. Any taxpayer that receives tax credits pursuant to § 58.1-439.1; receives grants for manufacturing wafers pursuant to §§ 59.1-284.13, 59.1-284.14 or § 59.1-284.15; receives grants for manufacturing solar panels pursuant to § 45.1-392; or is deemed a qualified shipbuilder pursuant to the third enactment clause of Chapter 790 of the 1998 Acts of Assembly shall not be eligible to receive credits pursuant to this section.

2. § 1. That the Secretary of Technology and Secretary of Commerce and Trade are directed to conduct a study of tax incentives for research and development investments in the Commonwealth. The study shall specifically address the respective benefits and costs of an investment tax credit for amounts spent in Virginia on qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986. The study shall also address legal and fiscal policy issues relating to incentives for such investments, including, but not limited to, the (i) effectiveness of investment incentives offered by other states for research and development investments; (ii) amount spent in Virginia annually on qualified research expenses; (iii) relative benefits and liabilities of an incentive program that provides an income tax credit compared to a grant program; and (iv) appropriate amount of a cap on tax credits or grant funding that would provide a meaningful incentive to induce materially greater amounts of research and development investments in Virginia. The Secretaries shall work with the Innovative Technology Authority, the Virginia Biotechnology Research Park Authority, and the Commonwealth's public colleges and universities to determine whether incentives should be focused more narrowly on specific categories

of qualified research expenses, and if so shall develop guidelines establishing eligibility criteria for such incentives. The Secretaries shall confer with the Department of Taxation (i) in developing recommendations for methods of allocating tax credits or other incentives among taxpayers whose applications exceed a maximum amount of such credits or incentives and (ii) regarding how a state tax credit or other incentive program would compound the existing federal income tax credit for research and development expenses. The Secretaries shall conduct the study required by this act in conjunction with their study and development of a coordinated research and development policy for the Commonwealth pursuant to Senate Joint Resolution No. 502 of the 1999 Session of the General Assembly. All agencies of the Commonwealth shall provide assistance to the Secretaries or their designees in the conduct of this study, upon request. The Secretaries shall complete their work in time to submit their findings and recommendations to the Governor and the Chairmen of the Senate Committee on Finance and the House Committee on Finance by September 1, 1999.

3. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2000 Session of the General Assembly.