# WEST VIRGINIA CODE: §11-13R-4

**§11-13R-4. Annual combined qualified research and development expenditure, qualified research and development expenses.**

(a) General. -- The annual combined qualified research and development expenditure is the sum of the applicable percentage of the cost of depreciable property purchased for the conduct of a qualified research and development activity, which is placed in service or use in this state during the taxable year, plus the amount of qualified research and development expenses (as defined in this section) deducted by the eligible taxpayer, for federal income tax purposes for the taxable year.

(b) Applicable percentage of the cost of depreciable property. -- For the purpose of subsection (a), the applicable percentage of the cost of depreciable property is determined under the following table:

If useful life is: The applicable percentage is:

Less than 4 years 33 1/3

4 years or more but less than 6 years 66 2/3

6 years or more 100

The useful life of any property for purposes of this section is determined by those methods as the Tax Commissioner may require as of the date the property is first placed in service or use in this state by the taxpayer.

(c) Placed in service or use. -- For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(d) Cost of property. -- For purposes of subsection (a) of this section, the cost of each property purchased for the conduct of a qualified research and development activity is determined under the following rules:

(1) Trade-ins. -- Cost does not include the value of property given in trade or exchange for the property purchased for conduct of the research and development activity.

(2) Damaged, destroyed or stolen property. -- If property is damaged or destroyed by fire,

flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) Rental property. -- The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(4) Property purchased for multiple use. -- The cost of property purchased for multiple business use, including direct use in the conduct of a qualified research and development activity, together with some other business or activity not eligible under this section, shall be apportioned between such activities. The amount apportioned to the conduct of the qualified research and development activity is considered to be eligible investment subject to the conditions and limitations of this section.

(5) Self-constructed property. -- In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(e) Qualified research and development expenses. -- For purposes of this section:

(1) "Qualified research and development expenses" means the sum of in-house and contract research and development expenses for qualified research and development allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year. In no event does "qualified research and development expenses" include:

(A) Any expense that must be capitalized and depreciated for federal income tax purposes, or any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of coal, limestone or other natural resource, including oil and natural gas; or

(B) Any wage or salary expense for wages or salary reported on form W-2 for federal income tax purposes on which the personal income tax is imposed under article twenty-one of this chapter, and against which tax the credit allowed under this article is applied.

(2) "In-house research and development expenses" means:

(A) Wages paid or incurred to an employee for qualified services performed in this state by the employee;

(B) Amounts paid or incurred for supplies used in the conduct of qualified research and development in this state; or

(C) Amounts paid or incurred to another person for the right to use personal property in the conduct of qualified research and development in this state.

(3) "Qualified services" means services consisting of:

(A) Engaging in qualified research and development;

(B) Engaging in the direct supervision or direct support of qualified research and development; or

(C) If substantially all of the services performed by an individual for the taxpayer during the taxable year consist of services meeting the requirements of paragraph (A) or (B) of this subdivision, the term "qualified services" means all services performed by the individual for the taxable year.

(4) "Supplies" means any tangible property other than:

(A) Land or improvements to land; or

(B) Property of a character subject to depreciation for federal income tax purposes.

(5) "Wages" has the meaning given to that term by section 3401(a) of the Internal Revenue Code of 1986, as amended. In the case of self-employed individuals and owner-employees (within the meaning of section 401(c)(1) of the Internal Revenue Code), the term "wages" includes the earned income (as defined in section 401(c)(2) of the Internal Revenue Code) of the employee. The term "wages" shall not include any amount taken into account in determining the federal targeted jobs credit under section 51(a) of the Internal Revenue Code.

(6) "Contract research and development expenses" means:

(A) In general, sixty-five percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research and development; and

(B) If any contract research and development expenses paid or incurred during any taxable year are attributable to qualified research and development to be conducted after the close of the taxable year, that amount is treated as paid or incurred during the taxable year during which the qualified research and development is conducted.

(7) "Qualified research and development" means research and development that occurs in West Virginia.

(8) Excluded property. -- Any property owned or leased by the taxpayer, the cost of which was the basis of a credit against tax taken under any other article of this chapter, does not qualify as property purchased for the conduct of a qualified research and development activity for purposes of this article.

(9) Excluded expense. -- Any expense paid or incurred by the taxpayer, which was the basis of a credit against tax taken under any other article of this chapter, does not qualify as a qualified research and development expense for purposes of this article.

(f) Research and development by colleges, universities and certain research and development organizations. -- In general, sixty-five percent of the amount paid or incurred by a taxpayer to a research institution as defined in this section for research and development to be performed by the research institution is treated as contract research and development expenses. The preceding sentence applies only if the amount is paid or incurred pursuant to a written research and development agreement between the taxpayer and the research institution.

For purposes of this section, the term "research institution" means any nonprofit educational organization which is an institution of higher education (as defined in section 3304(f) of the Internal Revenue Code of 1986, as amended), a West Virginia institution of higher education subject to the jurisdiction of a board described in article two-a, chapter eighteen-b of this code, or any other nonprofit organization exempt from federal income taxes which is organized and operated primarily to conduct scientific research and is not a private foundation for federal income tax purposes.

(g) Standards for determining qualified research and development expenses. -- In prescribing standards for determining which research and development expenses are considered to be qualified research and development expenses for purposes of this section, the Tax Commissioner may consider: (1) The place where the services are performed; (2) the residence or business location of the person or persons performing the services; (3) the place where research and development supplies are consumed; and (4) other factors that the Tax Commissioner believes relevant in determining whether or not the research and development expenses were made for qualified research and development, and depreciable property was purchased and used for qualified research and development, during the taxable year.

(h) Depreciable property. -- Purchases of depreciable property for the conduct of qualified research qualify as part of the annual combined qualified research and development expenditure for purposes of this article only if:

(1) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(2) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(3) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(A) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(B) Under section 1014(e) of the United States Internal Revenue Code of 1986, as amended.