WEST VIRGINIA CODE: §11-13D-5

§11-13D-5. Eligible investment for research and development.

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

(b) Applicable percentage of property. -- For the purpose of subsection (a), the applicable percentage for land and depreciable property shall be determined under the following table:

If useful life is: The applicable percentage is:

Less than 6 years 33 1/3

6 years or more but less than 8 years 66 2/3

8 years or more 100

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost of property. -- For purposes of subsection (a), the cost of each property purchased for the conduct of an eligible research and development project shall be determined under the following rules:

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

(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 shall 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 an eligible research and development project, 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 eligible research and development project shall be considered to be eligible investment subject to

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the conditions and limitations of this section.

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

(d) Qualified research expenses. -- For purposes of this section:

(1) "Qualified research expenses" means the sum of in-house and contract research expenses for qualified research allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under sections two-a, two-b and two-m, article thirteen of this chapter, or under section two-h of said article thirteen (in the case of manufacturing services only): Provided, That on and after July 1, 1987, "qualified research expenses" shall mean the sum of in-house and contract research expenses for qualified research, allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under article thirteen, thirteen-a or twenty-three of this chapter, that would have been taxable under section two-a, two-b, two-m or two-h (in the case of manufacturing services only) of said article thirteen, as in effect on January 1, 1985.

In no event shall "qualified research expenses" include 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.

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

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

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

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

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

(A) Engaging in qualified research in this state; or

(B) Engaging in the direct supervision or direct support of research activities in this state, which constitute qualified research.

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

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year.

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

(A) Land or improvements to land; and

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

(5) "Wages" has the meaning given to such term by Section 3401(a) (26 U.S.C. § 3401(a)) of the Internal Revenue Code of 1954, as amended. In the case of self-employed individuals and owner-employees (within the meaning of Section 401(c)(1) (26 U.S.C. § 401(c)(1)) of said Internal Revenue Code), the term "wages" includes the earned income (as defined in Section 401(c)(2) (26 U.S.C. § 401(c)(2)) of said Internal Revenue Code of such employee. The term "wages" shall not include any amount taken into account in determining the federal targeted jobs credit under Section 51(a) (26 U.S.C. § 51(a)) of said Internal Revenue Code.

(6) "Contract research 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.

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

(7) "Qualified research" means research and development conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for and increasing sales of this state's natural resource products or manufactured products, or both: Provided, That it shall not include:

(A) Research or development conducted outside this state;

(B) Research or development not directly related to increasing the uses for and sales of this state's natural resource products and industrial products;

(C) Research in the social sciences or humanities; or

(D) Research and development to the extent funded by any grant, contract or otherwise by another person (or any governmental entity).

(e) Research by colleges, universities and certain research organizations. -- In general, sixty-five percent of the amount paid or incurred by a corporation to any nonprofit educational organization which is an institution of higher education (as defined in Section 3304(f) (26 U.S.C. § 3304(f)) of the Internal Revenue Code of 1954, as amended), an institution of higher education subject to the jurisdiction of the West Virginia board of regents, or any other

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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 for research to be performed by such organization shall be treated as contract research expenses. The preceding sentence shall apply only if the amount is paid or incurred pursuant to a written research agreement between the corporation and the qualified organization.

(f) Standards for determining qualified research expenses. -- In prescribing standards for determining which research and development expenses are considered to be West Virginia qualified research 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 qualified research supplies are consumed; and (4) other factors that the Tax Commissioner believes relevant in determining whether or not the research and development expenses, land and depreciable property were purchased and used for qualified research, as defined in this article, during the taxable year.

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