WEST VIRGINIA CODE: §11-13R-6

§11-13R-6. Application of credit.

(a) Credit allowed. -- Beginning in the year that the annual combined qualified research and development expenditure is paid or incurred, eligible taxpayers and owners of eligible taxpayers described in subsections (d) and (f) of this section are allowed a credit against the taxes imposed by articles twenty-three, twenty-four and twenty-one of this chapter, in that order, as specified in this section.

(b) Business franchise tax. -- The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year, determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax.

(c) Corporation net income taxes. -- After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year, determined before application of allowable credits against tax.

(d) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit after application of subsections (b) and (c) of this section is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(e) Personal income tax taxes. -- After application of subsections (b), (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-one of this chapter for the taxable year determined before application of allowable credits against tax of the eligible taxpayer.

(f) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit after application of subsections (b), (c), (d) and (e) of this section is allowed as a credit against the taxes imposed by article twenty-one of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-one

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of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(g) The total amount of tax credit that may be used in any taxable year by any eligible taxpayer in combination with the owners of the eligible taxpayer under subsections (d) and (f) of this section, and including any refundable credit claimed under subsection (i) of this section, may not exceed $2 million.

(h) Unused credit carry forward. –– Except to the extent excess credit is refunded as provided in subsection (i) of this section, if the credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (b), (c), (d), (e) and (f) of this section for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in subsections (d) and (f) of this section may apply the excess as a credit against those taxes, in the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess credit is used; or

(2) The expiration of the tenth taxable year after the taxable year in which the annual combined qualified research and development expenditure was paid or incurred. Credit remaining thereafter is forfeited.

(i) Refundable credit for "small qualified research and development company". –– If the eligible taxpayer, including the controlled group, if a member of a controlled group, has gross revenues of not more than $20 million and a payroll of not more than $2,500,000, and the credit allowed under this article in any taxable year exceeds the sum of taxes enumerated in subsections (b), (c), (d), (e) and (f) of this section for that taxable year, the eligible taxpayer and owners of the eligible taxpayers described in subsections (d) and (f) of this section may claim for that year the excess amount as a refundable credit, not to exceed $100,000 per taxpayer, including owners and the controlled group, if applicable: Provided, That not more than $1 million of the unused credits described in this subsection may be approved for refundable credit by the Tax Commissioner during any fiscal year. Priority for approval of refundable credit is determined based on the filing date of the claim for refund with earlier claims having priority over later claims.

(j) Application for certification. -- No credit is allowed or may be applied under this article until the person seeking to claim the credit has filed a written application for certification of the proposed research and development program or project with the Tax Commissioner and

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has received certification of the research and development program or project from the Tax Commissioner pursuant to that written application. The certification of the program or project must be received by the eligible taxpayer from the Tax Commissioner prior to any credit being claimed or allowed for any annual combined qualified research and development expenditure for any research activity or project. This application shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use, or the qualified research and development expenses to which the credit relates are incurred by the taxpayer, and all information required by the form shall be provided by the taxpayer.

(1) In the case of owners of eligible taxpayers described in subsection (d) or (f) of this section, the application for certification filed under this section by the limited liability company, small business corporation or partnership owned by the person is considered to be filed on behalf of the owner and no separate filing of the application is required of the owner.

(2) Form of application. -- The application for certification must be filed in the form as the Tax Commissioner prescribes and shall contain the information as the Tax Commissioner requires to determine whether the project should be certified as eligible for credit under this article.

(3) Time period covered by certification. -- The application may request certification of the research and development program for one taxable year or multiple taxable years, as applicable, based on the nature and character of the program or project plan for the particular research and development project or activity.

(4) Requirements for application. -- The application shall specifically set forth a written research and development program plan generally describing the nature of the research and development to be undertaken, the number and types of jobs, if any, created by the applicant as a direct result of the research and development program and the average wages and benefits paid to those employees, the projected time period over which the research and development shall be carried out, the period of time for which the applicant seeks certification of the program or project and other information as the Tax Commissioner requires.

(5) Certification. -- The Tax Commissioner may issue certification of a research and development program or project if it appears to the Tax Commissioner that the applicant intends to engage in a bona fide research and development activity, as described in this article, and will otherwise comply with the requirements of this article and all rules and requirements applicable thereto.

(6) Time period covered by certification. -- The Tax Commissioner may issue certification for the period of time for which the eligible taxpayer seeks certification or a different period of

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time, within the discretion of the Tax Commissioner. In his or her discretion, the Tax Commissioner may require that a separate application be filed for each tax year in which qualified research and development activity is to be undertaken or in which qualified research and development property is to be placed in service or use.

(7) Failure to file. -- The failure to timely file the application for certification of a research and development program or project under this section results in forfeiture of one hundred percent of the annual credit otherwise allowable under this article. This penalty applies annually until the application is filed.

(8) Research and development undertaken without certification. -- If a person has filed an application for certification of a research and development program or project and has failed to receive certification of the plan or program from the Tax Commissioner, no credit is allowed under this article for the research and development activity or investment relating thereto.

(9) Failure to comply with terms of certification. -- If a person has filed an application for certification of a research and development program or project and has received certification of the plan or program from the Tax Commissioner, but fails to conform to the terms of the certification, no credit is allowed under this article for the research and development activity or for investment in the research and development activity by the eligible taxpayer. This restriction may be waived by the Tax Commissioner upon a finding that the research and development undertaken was within the requirements of this article and that there was no intent to defraud the state or willful neglect in the applicant's failure to conform to the terms of the certification.

(10) Failure to comply with certification time restrictions. -- If a person has filed an application for certification of a research and development program or project and has received certification of the plan or program from the Tax Commissioner, but fails to conform to the time periods specified therein for the certified research and development program or project, or fails to renew the certification so as to cover ongoing or subsequent research and development activity, the research and development activity is out of compliance with the terms of the certification and no credit is allowed under this article for, or relating to, the research and development activity by any person or taxpayer. This restriction may be waived by the Tax Commissioner upon a finding that the research and development thus undertaken was within the requirements of this article and that there was no intent to defraud the state or willful neglect in the applicant's failure to conform to the terms of the certification.

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