

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1111
(Representatives Headland, Dockter, Grueneich)
(Senators Cook, Wanzek)

AN ACT to amend and reenact section 57-38-30.5 of the North Dakota Century Code, relating to the alternative simplified method for calculating the research and experimental expenditure credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.5. Income tax credit for research and experimental expenditures.

A taxpayer is allowed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
 - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - e. ~~For~~Except as provided in subsection 4, for the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

- f. The maximum annual credit a taxpayer may obtain under this subsection is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 78.
2. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
 - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
 - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
3. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
4. A taxpayer may elect to use the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code [26 U.S.C. 41(c)] the amount of the credit under this subsection is:
 - a. Seventeen and one-half percent of the first one hundred thousand dollars of the alternative excess research and development for the taxable year plus five and six-tenths percent of the alternative excess research and development for the taxable year in excess of one hundred thousand dollars.
 - b. If a taxpayer has zero qualified research expenses in any one of the three taxable years preceding the taxable year for which the credit is determined, the amount of qualified research expenses for the taxable year multiplied by seven and one-half percent of the first one hundred thousand dollars plus two and four-tenths percent of qualified research expenses for the taxable year more than one hundred thousand dollars.
5. For purposes of this section:
 - a. "Alternative excess research and development" means the amount of qualified research expenses which exceeds fifty percent of the average qualified research expenses for the three taxable years preceding the taxable year for which the credit is being determined.
 - b. "Alternative simplified credit" means the computation set forth in section 41(c)(5) of the Internal Revenue Code [26 U.S.C. 41(c)(5)], except the term does not include qualified research expenses incurred outside the state of North Dakota.
 - c. "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.

- b.d. "Director" means the director of the department of commerce division of economic development and finance.
- e.e. "Primary sector business" has the meaning provided in section 1-01-49.
- d.f. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
- e.g. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
- f.h. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.

5.6. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.

6.7. In the case of a taxpayer that is a partner, shareholder, or a member in a passthrough entity, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

7.8. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5.6, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.

8.9. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4.5. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:

- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.

~~9-10.~~ If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

~~40-11.~~ If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection ~~89~~.

~~41-12.~~ An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-30.3.

~~42-13.~~ A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

- ~~13.~~14. For any taxable year in which the federal research tax credit provisions of section 41 of the Internal Revenue Code are ineffective, the provisions of section 41 of the Internal Revenue Code [26 U.S.C. 41] referenced in this section have the same meaning and application as provided in section 41 of the Internal Revenue Code, as amended through the most recent taxable year in which the provisions were in effect.
15. If a taxpayer claims a credit under this section on the taxpayer's original return, the taxpayer's election to calculate the credit under subsection 1, 2, 3, or 4 is binding for the taxable year in which the election is made. A taxpayer claiming a credit for tax years beginning before January 1, 2019, may not file an amended return for the purpose of calculating the credit under subsection 4.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2018.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1111.

House Vote: Yeas 86 Nays 6 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State