

SECOND REGULAR SESSION

HOUSE BILL NO. 2249

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ONDER.

Read 1st time February 21, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4705L.01I

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for qualified research costs.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.770, to read as follows:

135.770. 1. As used in this section, the following terms mean:

- (1) **"Business component"**, any product, process, computer software, technique, formula, or invention which is to be held for sale, lease, or license, or is to be used by the taxpayer in a trade or business of the taxpayer. Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component and not as part of the business component being produced;
- (2) **"Department"**, the department of revenue;
- (3) **"Qualified Missouri business"**, an independently owned and operated business which is headquartered and located in this state. Such business shall have no more than two hundred employees, eighty percent of which are employed in this state. Such business shall be involved in commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce but excluding retail, real estate, real estate development, insurance, and professional services provided by accountants, lawyers, or physicians. At the time approval is sought, such business shall be a small business concern that meets the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

requirements of the United States Small Business Administration's qualification size standards for its venture capital program, as defined in the Small Business Investment Act of 1958, as amended, and rules promulgated in 13 CFR 121.301(c), as amended;

(4) "Qualified research", research which is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in this section. Qualified research shall not include any of the following:

(a) Research after commercial production (any research conducted after the beginning of commercial production of the business component);

(b) Adaptation of existing business components (any research related to the adaptation of an existing business component to a particular customer's requirement or need);

(c) Duplication of existing business component (any research related to the reproduction of an existing business component, in whole or in part, from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component);

(d) Surveys or studies (any efficiency survey, activity relating to management function or technique, market research, testing, or development including advertising or promotions, routine data collection, or routine or ordinary testing or inspection for quality control);

(e) Computer software (any research with respect to computer software which is developed by or for the benefit of the taxpayer primarily for internal use by the taxpayer, other than for use in an activity which constitutes qualified research or a production process);

(f) Funded research (any research to the extent funded by any grant, contract, or otherwise by another person or governmental entity).

For purposes of this section, the term "qualified research" shall be applied separately with respect to each business component of the taxpayer;

(5) "Qualified research costs", costs incurred in conducting or engaging in qualified research;

(6) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or otherwise due under chapter 147, 148, or 153, RSMo;

52 (7) "Taxpayer", any qualified Missouri business that is:

53 (a) Subject to the tax imposed in chapter 143, RSMo, excluding withholding tax
54 imposed by sections 143.191 to 143.265, RSMo, or the tax imposed in chapter 147, 148, or
55 153, RSMo; and

56 (b) Incurs qualified research costs.

57 2. For all taxable years beginning on or after January 1, 2008, a taxpayer shall be
58 allowed a tax credit for qualified research costs incurred. The tax credit amount shall be
59 equal to the following schedule:

60 (1) Thirty percent of the qualified research costs incurred by the taxpayer; or

61 (2) Forty percent of the qualified research costs incurred if a taxpayer incurs the
62 costs in consortium or in partnership with any public university, public college, or public
63 community college in this state.

64 3. The amount of the tax credit issued shall not exceed the amount of the taxpayer's
65 state tax liability for the tax year for which the credit is claimed. No amount of credit that
66 the taxpayer is prohibited by this section from claiming in a tax year shall be refundable.
67 Tax credits granted under this section may be transferred, sold, or assigned. The
68 cumulative amount of tax credits which may be issued under this section in any one fiscal
69 year shall not exceed five million dollars.

70 4. Each recipient of a tax credit under this section shall, when applying to the
71 department for a tax credit under this section:

72 (1) Specify that the costs incurred and for which the tax credits are claimed were
73 incurred for the purposes authorized in this section;

74 (2) Describe the qualified research costs, including the amount and type of costs;

75 (3) State why the qualified research is needed;

76 (4) State the public purpose or purposes for the qualified research;

77 (5) State the goal or goals for the qualified research and the time periods by which
78 these goals will be met;

79 (6) State the name and address of its parent corporation, if any;

80 (7) State all other financial assistance that was received for the same project; and

81 (8) Ensure that any qualified research costs incurred for any purpose other than
82 projects authorized in this section are not claimed under this section. In the event that
83 such unauthorized costs are issued, the recipient shall calculate and remit to the
84 department a payment equal to the percentage of the costs incurred for purposes other
85 than those authorized by this section. All proceeds returned to the department under this
86 subsection shall be used for worker training and retraining programs administered by the
87 division of workforce development in the department of economic development.

88 **5. The department shall prepare an annual report regarding all tax credits issued**
89 **under this section in the previous calendar year and submit such report to the president**
90 **pro tem of the senate and the speaker of the house of representatives by July first of each**
91 **year. The annual report shall be made available to the public and shall include, but not**
92 **be limited to, the following elements:**

- 93 **(1) The total amount of tax credits awarded by region of the state;**
94 **(2) The total amount of tax credits awarded by industry;**
95 **(3) The distribution of tax credits by type and public purpose;**
96 **(4) The distribution of tax credits by the size of all business recipients; and**
97 **(5) A reporting of any legal action taken by the department or the state with any**
98 **parties which have failed to comply with this section.**

99 **6. Research shall be treated as conducted for a purpose described in this section if**
100 **it relates to a new or improved function, performance, or reliability or quality. Research**
101 **shall not be treated as conducted for a purpose described in this section if it relates to style,**
102 **taste, cosmetic, or seasonal design factors.**

103 **7. The department may promulgate rules to implement the provisions of this**
104 **section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
105 **that is created under the authority delegated in this section shall become effective only if**
106 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
107 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
108 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
109 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
110 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
111 **adopted after August 28, 2008, shall be invalid and void.**

112 **8. Under section 23.253, RSMo, of the Missouri Sunset Act:**

113 **(1) The provisions of the new program authorized under this section shall**
114 **automatically sunset on December thirty-first six years after the effective date of this**
115 **section unless reauthorized by an act of the general assembly; and**

116 **(2) If such program is reauthorized, the program authorized under this section**
117 **shall automatically sunset on December thirty-first twelve years after the effective date of**
118 **the reauthorization of this section; and**

119 **(3) This section shall terminate on September first of the calendar year immediately**
120 **following the calendar year in which the program authorized under this section is sunset.**

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