

LIFE SCIENCES RESEARCH AND DEVELOPMENT TAX CREDIT PROGRAM

Frequently asked Questions

Q: HOW IS A “NEW BUSINESS” DEFINED?

A: A new business means any business that qualifies as a new business under §210-b(1)(f) of the NYS Tax Law, or an individual that qualifies as an owner of a new business under §606(a)(10) of the NYS Tax Law. The new business test is as follows:

- If the applicant is a C-Corp, less than 50% must be owned or controlled, either directly or indirectly, by another company that is a taxpayer in NYS.
- The applicant cannot be substantially similar in ownership and operation to another company that is, or was previously, a taxpayer in NYS.
- The applicant has not been a taxpayer, or, if an individual owner either as a sole proprietor or a member of a partnership, has not operated the new business entity, in NYS for more than five years.

Q: IF A BUSINESS IS NEW TO NYS, DOES IT QUALIFY AS A NEW BUSINESS?

A: To qualify as a new business, the applicant must pass the new business test as indicated above. The test is applicable to any applicant, regardless of whether the business is already located in NYS or relocating from elsewhere.

Q: WHAT ARE QUALIFIED RESEARCH EXPENSES?

A: Qualified research expenses are those defined in §41(b) of the internal revenue code but do not include contract research expenses. Expenses that do qualify are:

- **Wages** paid or incurred to employees for qualified services performed by such employees.
- **Supplies** used in the conduct of qualified research.
- Amounts paid or incurred to another person for the **right to use computers** in the conduct of qualified research.

Q: HOW MUCH IS THE TAX CREDIT?

A: The fully refundable credit is 20% of qualified expenses for applicants having fewer than 10 employees and 15% of qualified expenses for applicants having 10 or more employees.

Q: WHAT DOES IT MEAN TO SAY THE TAX CREDIT IS “REFUNDABLE?”

A: Refundable tax credits can reduce a business’ tax liability to the statutory minimum and allow the business to treat the excess as an overpayment of tax to be credited or refunded.

Q: ARE THERE REQUIREMENTS FOR JOB CREATION?

A: No. Applicants are not required to create jobs to qualify for participation in the Program. As indicated above, the number of jobs affects only whether an applicant qualifies for a 15% or 20% credit.

Q: WHAT HAPPENS IF I HAVE LESS THAN 10 EMPLOYEES IN THE FIRST YEAR THAT I APPLY AND GROW THE COMPANY TO 10 OR MORE EMPLOYEES WHEN I APPLY FOR YEARS TWO AND THREE?

A: The job thresholds are applicable for each year that you apply so that if you grow to 10 or more employees in any particular year during your benefit period, you will qualify for the 15% credit for that year. Conversely, if your employment was initially 10 or greater when you first applied and decreases to fewer than 10 in a particular year, you would be eligible for the 20% credit for that year.

Q: HOW IS AN APPLICANT'S EMPLOYMENT DETERMINED?

A: The number of persons employed during a year is an average of full-time employees, excluding general executive officers, employed throughout the year. Specifically, the number of individuals employed on March 31st, June 30th, September 30th and December 31st are added together and divided by four.

Q: WHAT IS A FULL-TIME EMPLOYEE?

A: A full time employee is an individual, excluding general executive officers, in a job consisting of at least 35 hours a week, or two or more employees who are in jobs that together constitute the equivalent of a job of at least 35 hours per week (i.e. a full-time equivalent or FTE).

Q: IS THERE A LIMIT TO HOW MUCH I CAN APPLY FOR IN ANY PARTICULAR YEAR?

A: Yes, an applicant is limited to a credit of \$500,000 per year, up to a maximum of \$1.5 million over the three years allowed for participation in the Program.

Q: IS THERE A LIMIT TO THE AMOUNT OF CREDITS AVAILABLE TO ALL APPLICANTS?

A: Yes, \$10 million is allotted to the Program each year for all applicants.

Q: WHEN CAN I APPLY TO THE PROGRAM?

A: Applicants can first apply to the Program for qualified expenses incurred on or after January 1, 2018 and may be eligible for a credit for a period of three consecutive years and must apply for the credit in each of those years. An application will be available and accepted any time after January 1, 2018. However, since the first full calendar year of the Program will not be completed until December 31, 2018, an applicant undertaking research during 2018 may wish to wait until the end of 2018 to apply for the credit on qualified expenses incurred during 2018.

Q: ARE ANY EXPENSES INCURRED PRIOR TO 2018 QUALIFIED?

A: No, only expenses incurred on or after January 1, 2018 are qualified.

Q: WHAT HAPPENS IF I INCUR ENOUGH QUALIFIED EXPENSES DURING THE YEAR TO EXCEED THE \$500,000/YEAR LIMIT?

A: An applicant cannot qualify for any more than \$500,000/year in credits, and there is a lifetime cap of \$1.5 million.

Q: IF MY BUSINESS IS CURRENTLY PARTICIPATING IN THE EXCELSIOR JOBS PROGRAM, CAN I ALSO PARTICIPATE IN THE LIFE SCIENCES RESEARCH AND DEVELOPMENT TAX CREDIT PROGRAM?

A: A business cannot participate in both Programs simultaneously for the same activities, i.e. jobs and investments used as a basis for participating in the Excelsior Jobs Program cannot also be used as a basis for participating in the Life Sciences R&D Program or vice versa.

However, there are circumstances where a business can participate in both Programs where the activities used as the basis for one are different from those used as a basis for the other. Provided all the other eligibility criteria for Program participation are met, a determination would be made based on the specific facts and statutory limitations.

Q: ARE THERE GRANTS AVAILABLE FOR MY BUSINESS?

A: We are not accepting applications for life science grants until completion of an assessment of the state's life science assets and gaps in 2Q2018, which will enable us to invest our funds for maximum impact. As the life science initiative advances, we will ensure that program opportunities, eligibility guidelines, and application timelines are broadly communicated.