

Section 48D:

“Qualifying Therapeutic Discovery Projects”



phylogeny

the in situ company

www.phylogenyinc.com

Phone: 614-474-0003

Qualifying Therapeutic Discovery Project Credit

Section 48D – Overview

- The Patient Protection and Affordable Care Act established a 50% nonrefundable investment tax credit for qualified investments in qualifying therapeutic discovery projects (QTDP)
 - \$1 billion tax credit allocation during two-year period 2009 through 2010
 - Taxpayer may elect to receive credits that have been allocated in the form of Treasury grants
 - Treasury in consultation with the Secretary of Health and Human Services will award certifications for qualified investments
 - The credit is available only to companies with 250 or fewer employees
 - A Notice describing the program rules must be issued no later than May 22, 2010 (Treasury has indicated to expect guidance by May 21, 2010)

Qualifying Therapeutic Discovery Project Credit

Technical Requirements

Qualified Investment

- The qualified investment for any taxable year is the aggregate amount of the costs paid or incurred in such taxable year for expenses necessary for and directly related to the conduct of a QTDP
- The qualified investment for any taxable year with respect to any QTDP shall not include any costs for
 - Remuneration for any employee described in Section 162(m)(3)
 - CEO and 4 highest paid officers not including the CEO
 - Interest expense
 - Facility maintenance expense (mortgage/rent, utilities, insurance, etc.)
 - Service cost under Reg. Section 1.263A-1(e)(4)
 - Any other expense as determined by Treasury/IRS as appropriate to carry out the purpose of Section 48D
- An investment shall be considered a qualified investment only if such investment is made in a taxable year beginning in 2009 or 2010

Qualifying Therapeutic Discovery Project Credit Technical Requirements

Qualifying Therapeutic Discovery Project

- A project which is designed to
 - Treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, clinical studies or carrying out research protocols to obtain FDA approval of a regulated pharmaceutical or biologic, or
 - Diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or
 - Develop a product, process or technology to further the delivery or administration of therapeutics

Qualifying Therapeutic Discovery Project Credit

Technical Requirements

Eligible Taxpayer

- A taxpayer which employs not more than 250 employees in all businesses of the taxpayer at the time of application
- For purposes of the definition of an eligible taxpayer, the following groups are treated as a single employer under Section 48D
 - Section 52(a) – controlled group of corporations
 - Section 52(b) – partnerships, proprietorships which are under common control
 - Section 414(m) – affiliated service groups
 - Section 414(o) – separate organizations, employee leasing arrangements

Qualifying Therapeutic Discovery Project Credit Technical Requirements

Certification

- Each applicant for certification must submit an application containing such information as Treasury may require during the period beginning on the date Treasury establishes the program
- Program expected to be established no later than May 21, 2010
- Treasury shall take action to approve or deny any application within 30 days of submission of such application
- An application may include a request for an allocation of credits for more than 1 year

Qualifying Therapeutic Discovery Project Credit Technical Requirements

Selection Criteria

- Treasury shall take into consideration only those projects that show reasonable potential to
 - Result in new therapies to treat areas of unmet medical need, or
 - Result in new therapies to prevent, detect or treat chronic or acute diseases and conditions, or
 - Reduce long-term health care costs in the U.S., or
 - Significantly advance the goal of curing cancer within 30 years from the date the program is established

AND

- Treasury shall take into consideration which projects have the greatest potential to
 - Create and sustain (directly or indirectly) high quality, high paying jobs in the U.S., and
 - Advance U.S. competitiveness in the fields of life, biological and medical sciences

Qualifying Therapeutic Discovery Project Credit

Technical Requirements

Special Rules

- Basis Adjustment – if a credit is allocated under the QTDP program for an expenditure for property subject to an allowance for depreciation, the basis of such property is reduced by the amount of the credit
- Denial of Double Benefit – Expenditures taken into account in determining the credit do not qualify for the research credit, orphan drug credit or bonus depreciation. Expenditures taken into account in determining the credit are nondeductible to the extent of the credit claimed that is attributable to such expenditures
- Recapture – excessive grants can be recaptured by Treasury if
 - It is subsequently determined that grant made > amount allowable
 - Recaptured as an adjustment through the income tax system

Qualifying Therapeutic Discovery Project Credit

Technical Requirements

Grant in Lieu of Tax Credit

- Cash grant option equal to 50% of a qualified investment is available for QTDP's
- Qualified investment must be made in a taxable year beginning in 2009 or 2010
- Grant is nontaxable for federal income tax purposes
- The following entities are ineligible to receive cash grants
 - Any federal, state or local government or any political subdivision, agency or instrumentality of such government
 - Any organization described in Section 501(c) and exempt from tax under Section 501(a)
 - Any entity referred to in Section 54(j)(4) – clean renewable energy bond lenders, cooperative electric companies or governmental bodies or
 - Any partnership or other pass-through entity if any partner (or other holder of an equity or profits interest) is described in the above three categories

Contacts

Ray Tusick

Director – BDM Tax Services
Deloitte Services LP
(216) 589-5443
rtusick@deloitte.com

Ashley Price

Senior Manager, National
Federal Tax Services
Deloitte Tax LLP
(216) 589-5236
asprice@deloitte.com

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