Qualifying Therapeutic Discovery Project Credit

**Summary:** Creates a two year temporary tax credit subject to an overall cap of $1 billion to encourage investments in new therapies to prevent, diagnose, and treat acute and chronic diseases. The credit would be available for two years.


**Next steps:**
- May 23, 2010 – IRS and HHS required to establish the new tax credit.
- June 21 – July 21, 2010 – Formal application window for program. The guidance describes the process by which firms can apply to have their research projects certified as eligible for the credit.
- October 29, 2010 -- Applicants will receive a determination no later than October 29, 2010.
- November 3, 2010 – Applicants formally announced by the Secretary of the Treasury and the Secretary of Health and Human Services.

**Additional information:**
- Full list of recipients of the qualifying therapeutic discovery project credit -- [http://www.irs.gov/businesses/small/article/0,,id=228690,00.html](http://www.irs.gov/businesses/small/article/0,,id=228690,00.html)

**Long summary:**
Sec. 9023. Qualifying therapeutic discovery project credit. Establishes a 2-year tax credit program for 50% of qualified investment costs for therapeutic discovery projects for certain entities. Certain entities include those with 250 or fewer employees. Projects are defined as those designed to treat or prevent diseases or conditions, to diagnose diseases or conditions or develop diagnostics to guide therapeutic decisions, or technology to
further the administration of therapeutics. The Secretary shall prioritize projects that show reasonable potential to result in new therapies; to treat areas of unmet medical need, to prevent, detect, or treat chronic or acute diseases and conditions; to reduce long-term health care costs in the United States; to significantly advance the goal of curing cancer within the next 30-year period; to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States; and to advance United States competitiveness in the fields of life, biological, and medical sciences. The provision allocates $1 billion during the two-year period 2009 through 2010 for the program up to a maximum credit of $5 million per certain entities. Allows the Secretary of Treasury to make grants in lieu of tax credits and details the process and rules for grants.

**Legislative text:**

SEC. 9023. QUALIFYING THERAPEUTIC DISCOVERY PROJECT CREDIT.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 48C the following new section:

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SEC. 48D. QUALIFYING THERAPEUTIC DISCOVERY PROJECT CREDIT.

(a) IN GENERAL.—For purposes of section 46, the qualifying therapeutic discovery project credit for any taxable year is an amount equal to 50 percent of the qualified investment for such taxable year with respect to any qualifying therapeutic discovery project of an eligible taxpayer.

(b) QUALIFIED INVESTMENT.—

(1) IN GENERAL.—For purposes of subsection (a), 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 qualifying therapeutic discovery project.

(2) LIMITATION.—The amount which is treated as qualified investment for all taxable years with respect to any qualifying therapeutic discovery project shall not exceed the amount certified by the Secretary as eligible for the credit under this section.

(3) EXCLUSIONS.—The qualified investment for any taxable year with respect to any qualifying therapeutic discovery project shall not take into account any cost—

(A) for remuneration for an employee described in section 162(m)(3),

(B) for interest expenses,

(C) for facility maintenance expenses,

(D) which is identified as a service cost under section 1.263A–1(e)(4) of title 26, Code of Federal Regulations, or

(E) for any other expense as determined by the Secretary as appropriate to carry out the purposes of this section.

(4) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—In the case of costs described in paragraph (1) that are paid for property of a character subject to an allowance for depreciation, rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(5) APPLICATION OF SUBSECTION.—An investment shall be considered a qualified investment under this subsection only if such investment is made in a taxable year beginning in 2009 or 2010.

(c) DEFINITIONS.—

(1) QUALIFYING THERAPEUTIC DISCOVERY PROJECT.—The term ‘qualifying therapeutic discovery project’ means a project which is designed—

(A) to treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act, or

(B) to diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or

(C) to develop a product, process, or technology to further the delivery or administration of therapeutics.

(2) ELIGIBLE TAXPAYER.—

(A) IN GENERAL.—The term ‘eligible taxpayer’ means a taxpayer which employs not more than 250 employees in all businesses of the taxpayer at the time of the submission of the application under subsection (d)(2).

(B) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be so treated for purposes of this paragraph.

(3) FACILITY MAINTENANCE EXPENSES.—The term ‘facility maintenance expenses’ means costs paid or incurred to maintain a facility, including—

(A) mortgage or rent payments,

(B) insurance payments,

(C) utility and maintenance costs, and

(D) costs of employment of maintenance personnel.

(d) QUALIFYING THERAPEUTIC DISCOVERY PROJECT PROGRAM.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 60 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall establish a qualifying therapeutic discovery project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying therapeutic discovery project sponsors.

(B) LIMITATION.—The total amount of credits that may be allocated under the program shall not exceed $1,000,000,000 for the 2-year period beginning with 2009.

(2) CERTIFICATION.—

(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the period beginning on the date the Secretary establishes the program under paragraph (1).

(B) TIME FOR REVIEW OF APPLICATIONS.—The Secretary shall take action to approve or deny any application under subparagraph (A) within 30 days of the submission of such application.
(C) MULTI-YEAR APPLICATIONS.—An application for certification under subparagraph (A) may include a request for an allocation of credits for more than 1 of the years described in paragraph (1)(B).

(3) SELECTION CRITERIA.—In determining the qualifying therapeutic discovery projects with respect to which qualified investments may be certified under this section, the Secretary—

"(A) shall take into consideration only those projects that show reasonable potential—

"(i) to result in new therapies—

"(ii) to treat areas of unmet medical need, or

"(iii) to prevent, detect, or treat chronic or acute diseases and conditions,

"(B) shall take into consideration which projects have the greatest potential—

"(i) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and

"(ii) to advance United States competitiveness in the fields of life, biological, and medical sciences.

(4) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) SPECIAL RULES—

"(1) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for an expenditure related to property of a character subject to an allowance for depreciation, the basis of such property shall be reduced by the amount of such credit.

"(2) DENIAL OF DOUBLE BENEFIT.—

"(A) BONUS DEPRECIATION.—A credit shall not be allowed under this section for any investment for which bonus depreciation is allowed under section 168(k), 1400L(b)(1), or 1400N(d)(1).

"(B) DEDUCTIONS.—No deduction under this subtitle shall be allowed for the portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under this section for the taxable year which is equal to the amount of the credit determined for such taxable year under subsection (a) attributable to such portion. This subparagraph shall not apply to expenses related to property of a character subject to an allowance for depreciation the basis of which is reduced under paragraph (1), or which are described in section 280C(g).

"(C) CREDIT FOR RESEARCH ACTIVITIES.—

"(i) IN GENERAL.—Except as provided in clause (ii), any expenses taken into account under this section for a taxable year shall not be taken into account for purposes of determining the credit allowable under section 41 or 45C for such taxable year.

"(ii) EXPENSES INCLUDED IN DETERMINING BASE PERIOD RESEARCH EXPENSES.—Any expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

"(d) COORDINATION WITH DEPARTMENT OF TREASURY GRANTS.—In the case of any investment with respect to which the Secretary makes a grant under section 9023(e) of the Patient Protection and Affordable Care Act of 2009—

"(1) DENIAL OF CREDIT.—No credit shall be determined under this section with respect to such investment for the taxable year in which such grant is made or any subsequent taxable year.

"(2) RECAPTURE OF CREDITS FOR PROGRESS EXPENDITURES MADE BEFORE GRANT.—If a credit was determined under this section with respect to such investment for any taxable year ending before such grant is made—

"(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

"(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

"(C) the amount of such grant shall be determined without regard to any reduction in the basis of any property of a character subject to an allowance for depreciation by reason of such credit.

"(1) TREATMENT OF GRANTS.—Any such grant shall not be includible in the gross income of the taxpayer.

(b) INCLUSION AS PART OF INVESTMENT CREDIT.—Section 46 of the Internal Revenue Code of 1986 is amended—

"(1) by adding a comma at the end of paragraph (2),

"(2) by striking the period at the end of paragraph (5) and inserting ", and'', and

"(3) by adding at the end the following new paragraph:

"(b) the qualifying therapeutic discovery project credit.

(c) CONFORMING AMENDMENTS—

"(1) Section 49(a)(1)(C) of the Internal Revenue Code of 1986 is amended—

"(A) by striking "and" at the end of clause (iv),

"(B) by striking the period at the end of clause (v) and inserting ", and'', and

"(C) by adding at the end the following new clause:

"(vi) the basis of any property to which paragraph (1) of section 48D(e) applies which is part of a qualifying therapeutic discovery project under such section 48D.''

"(2) Section 280C of such Code is amended by adding at the end the following new subsection:

"(1) IN GENERAL.—No deduction shall be allowed for that portion of the qualified investment (as defined in section 48D(b)) otherwise allowable as a deduction for the taxable year which—

"(A) would be qualified research expenses (as defined in section 41(b)), basic research expenses (as defined in section 41(e)(2)), or qualified clinical testing expenses (as defined in section 45C(b)) if the credit under section 41 or section 45C were allowed with respect to such expenses for such taxable year, and

"(B) is equal to the amount of the credit determined for such taxable year under section 48D(a), reduced by—

"(i) the amount disallowed as a deduction by reason of section 48D(e)(2)(B), and

"(ii) the amount of any basis reduction under section 48D(e)(1).

"(2) SIMILAR RULE WHERE TAXPAYER CAPITALIZES RATHER THAN DEDUCTS EXPENSES.—In the case of expenses described in paragraph (1)(A) taken into account in determining the credit under section 48D for the taxable year, if—

"(A) the amount of the portion of the credit determined under such section with respect to such expenses, exceeds
that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

(A) IN GENERAL.—The Secretary of the Treasury shall make payment of the amount of any grant under paragraph (3) as if the investment to which such grant relates had ceased to be a qualified investment immediately after such grant was made.

(b) TAXABLE YEARS BEGINNING IN 2010.—An application for a grant under paragraph (1) for a taxable year beginning in 2010 shall be submitted—

(i) not earlier than the day after the last day of such taxable year, and

(ii) not later than the due date (including extensions) for filing the return of tax for such taxable year.

(C) INFORMATION TO BE SUBMITTED.—An application for a grant under paragraph (1) shall include such information and be in such form as the Secretary may require to state the amount of the credit allowable (but for the receipt of a grant under this subsection) under section 48D for the taxable year for the qualified investment with respect to which such application is made.

(3) TIME FOR PAYMENT OF GRANT.—

(A) IN GENERAL.—The Secretary of the Treasury shall make payment of the amount of any grant under paragraph (1) as if the investment to which such grant relates had ceased to be a qualified investment immediately after such grant was made.

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