CHAPTER 298
FORMERLY
HOUSE BILL NO. 318

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO THE RESEARCH AND DEVELOPMENT TAX CREDIT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 30, § 2070(b) of the Delaware Code as follows:

(b) Credit Calculation.

(1) General Rule. -- Subject to the limitation of § 2075 of this title on overall credits and the limitation described in subsection (c) of this section, a taxpayer may elect a Delaware research and development tax credit for the taxable year equal to: (1) 10% of the excess of the taxpayer's total Delaware qualified research and development expenses for the taxable year over the taxpayer's Delaware base amount, or (2) 50% of Delaware's apportioned share of taxpayer's federal research and development tax credit calculated using the alternative incremental credit method under § 41(c)(4) of the Internal Revenue Code of 1986 [26 U.S.C. § 41(c)(4)], using federal definitions and methodology. Delaware's apportioned share of the federal credit shall be the amount of the alternative incremental credit the taxpayer can claim under § 41(c)(4) [26 U.S.C. § 41(c)(4)], multiplied by a percentage equal to the ratio of the taxpayer's Delaware qualified research and development expenses for the taxable year to the taxpayer's total qualified research and development expenses for the taxable year. A taxpayer's Delaware research and development tax credit determination election shall be an annual election, and shall be independent of taxpayer's federal research and development tax credit determination.

(2) Alternative Calculation for Small Businesses. – In the case of a small business, paragraph (1) of this subsection shall be applied by substituting “20%” for “10%” and by substituting “100%” for “50%”. For the purposes of this subsection, “small business” means any taxpayer with average annual gross receipts, as determined by §41(c)(1)(B) of the Internal Revenue Code of 1986 [26 U.S.C. 41(c)(1)(b)], not in excess of $20,000,000. Taxpayers making use of the alternative calculation provided in this paragraph must conform to the definition of “small business” set forth herein without regard to the method by which the taxpayer calculates its federal research and development tax credit.

Section 2. This Act shall be in effect for tax periods beginning after December 31, 2013.

Approved July 15, 2014