The Limited Monopoly

Adding Value to the Process of Obtaining a Patent Through New York State Tax Credits for "Emerging Technology" Companies

The Law.

Emerging technology companies often require far more resources early in the business development cycle due to uncertainties in the marketplace. Many emerging technology companies are faced with a shortage of working capital at the front-end of their business development cycle and are therefore constantly pursuing avenues to save a buck here and there.

Recognizing the special resources required by emerging technology companies, New York State, in fiscal year 2005, passed new legislation to help emerging technology companies in New York be competitive. The new law, also known as the "Qualified Emerging Technology Company Facilities, Operations and Training Tax Credit" (QETC credit), provides a unique bundle of tax credits to assist with the growth and development of technology-oriented businesses, particularly small emerging technology companies.

The QETC credits are issued by New York State to offset state tax liabilities for emerging technology companies in the early stage of development. These tax credits apply to property used for research and development, expenses related to research and development, and training expenditures. The QETC credit was a key component of the economic stimulus package passed by the Legislature and signed into law by Governor Pataki to assist New York's home-grown technology businesses grow, produce jobs, and provide other economic benefits.

Eligibility.

Companies must meet the definition of an "Emerging Technology Company" pursuant to Section 3102-e of the New York Public Authorities Law. An "Emerging Technology" is defined as having:

- No more than 100 employees with 75% of those employees employed in New York State.
- Gross revenues that do not exceed $20 million.
- A ratio of R&D to net sales that equals or exceeds 6%.

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Allowable Credit.

***Research and Development Property* - 18% credit for property used in research and development, including:**

- Property used in the testing or inspection of materials and products
- Costs or expenses associated with quality control of the research and development
- Fees for use of sophisticated technology facilities and processes
- Fees for the production or eventual commercial distribution of materials and products

***Qualified Research Expense* - 9% credit for qualified research expense, including:**

- Expenses associated with in-house research and processes
- Costs associated with the dissemination of the results of the products that directly comes from such research and development activities (excludes advertising or promotion through media)
- **Costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses fees.**
- The credit cannot be used toward expenses for litigation or to challenge another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

***High Technology Training Expenditures* - Up to $4000.00 per employee**

This covers a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in New York State that is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. This does not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline, specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines.

Credits can be applied toward expenses for tuition and mandatory fees, software, textbook or other literature required by the institution offering the course or courses (minus applicable scholarships). This excludes room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. The employee for whom the expenditures are disbursed must continuously be employed by the taxpayer in a full-time, full-year position, primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work.

This month we would like to thank our guest Jeong Oh for preparing this article for "The Limited Monopoly."

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