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## The BioTech Credit- Free Money from the IRS

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### What is it?

As part of the Patient Protection and Affordability Act recently signed into law, a tax credit was included for qualified expenses spent on advancement of healthcare. In lieu of a tax credit, a taxpayer may instead apply for a nontaxable grant equal to the same amount. Thus, both companies that have taxable income and those that are in a loss position may take advantage of this program.

The qualifying therapeutic discovery project (QTDP) credit equals 50% of the qualified investment that an eligible taxpayer makes during a tax year beginning in 2009 or 2010 on qualifying projects. Thus, an investment of \$1 million, for example, in a qualified project yields a tax credit of \$500,000 or a grant check for the \$500,000. The total amount of credits and/or grants that the IRS may approve under this program is limited to \$1 billion. Accordingly, it would be best to apply for the credit as soon as possible before funds run out.

The qualified investment amount is the aggregate amount of costs paid or incurred in the tax year for expenses necessary and directly related to the conduct of a qualified therapeutic discovery project. Qualified expenses include such items as wages, supplies and equipment, and payments to contractors. Excluded expenses include salaries to executives, facility maintenance expense (e.g. rent, insurance), service costs (i.e. general and administrative expenses), and interest expense.

A qualified therapeutic discovery project is one that is designed:

- to treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols;
- to diagnose diseases or conditions or to determine molecular factors related to diseases or conditions; or
- to develop a product, process, or technology to further the delivery or administration of therapeutics.

As the definition of a qualifying project is rather broad, most projects engaged in by pharmaceutical companies, biotech companies, and medical device companies should qualify.

### Who is eligible?

An eligible taxpayer employs 250 or less employees in all the taxpayer's business at the time of application. All entities whether partnership, S corporation, or C corporation, are all eligible.

### How do you apply for the credit?

To claim the credit, a taxpayer must submit an application to the IRS, and get it approved. Applications should cover both the scientific merit of the project, and substantiate the expenses incurred.

In evaluating the projects, the IRS will consider:

- those projects that show reasonable potential to result in (1) new therapies; (2) reduce long-term health care costs; or (3) significantly advance the goal of curing cancer in the next 30 years; and
- those projects that have the greatest potential to (1) create and sustain high quality, high-paying US jobs; and (2) advance US competitiveness in the fields of life, biological, and medical sciences.

As the IRS will be evaluating the scientific merit of these applications according to numerous guidelines, any application would be best submitted detailing expenses on a project by project basis. This will allow the IRS to review each project individually and accept or reject each project (and award funding appropriately) rather than on the application as a whole.

While a project must satisfy only one of the above goals under the first criteria, an application that addresses all of them is more likely to be accepted. An application citing only one goal that is deemed unmet would be rejected, while an application citing multiples goals would still have other goals on which to qualify.

In substantiating the costs incurred by the various projects, both qualifying and excluded expenses should be clearly labeled to inform the IRS that the taxpayer is aware that not all costs are eligible for the credit and that such costs have been considered and excluded. A clear accounting of qualified costs is crucial here to show the IRS that the expenses claimed are all qualified expenses that satisfy the terms of the credit.

#### **When must you apply?**

The IRS has until May 22, 2010, to formally establish the application process. The IRS then must approve or deny applications within 30 days of submission. Given that there is a cap of \$1 billion on total credits that may be granted, it is most prudent to submit an application shortly after the application process is finalized. This will optimize the chances that a proper application will yield the requested credit while funds remain available.

To insure that an application is filed as soon as possible, it is recommended that the process begin now. Formulating the script that describes the project(s), and gathering the financial data that substantiates the expenses all can be done now. Once this information is in place, it should be a simple mechanical process of translating that information to the final application before submission. As expediency is crucial to obtaining part of the limited funding of this program, taking steps now is critical.

Questions or requests for assistance can be addressed to [Peter Trieu](#) or [Harriet Leung](#).

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