

Research and Development Tax Credit Assignment

Program Guidelines | September 2004

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Section I – General

A. Introduction

The Research and Development Tax Credit (R&D Tax Credit) Assignment program was established to assist the growth and development of technology-oriented businesses, particularly small start-up technology businesses. R&D Tax Credits have been issued by the Commonwealth to offset state tax liabilities for some time, and there has been a special minimum portion of the R&D Tax Credits reserved for small businesses. However, many small businesses in the early stages of development are not yet profitable and do not have significant tax liability. In the past, these businesses have often not bothered to apply for the available R&D Tax Credits for which they were eligible. With this new R&D Tax Credit Assignment program, technology businesses can now sell unused R&D Tax Credits on the open market to help advance and grow the business.

The R&D Tax Credit program is a key component of the economic stimulus program to assist Pennsylvania's home-grown technology businesses to grow and produce jobs and other economic benefits.

The actual R&D Tax Credits are issued or approved by the Pennsylvania Department of Revenue. Businesses that have not used all or part of their issued R&D Tax Credits within one year after the R&D Tax Credits were approved by the Department of Revenue may apply to the Pennsylvania Department of Community and Economic Development (DCED) for approval to assign their eligible R&D Tax Credits to a "buyer"--another taxpayer that can then use the purchased credits to offset up to 75% of its own tax liability with the purchased credit.

R&D Tax Credits not used by the business to which the credits were initially issued, and not assigned to a 'buyer' taxpayer, may be carried over for a maximum of fifteen (15) taxable years. Therefore, R&D Tax Credits issued to a calendar year taxpayer on December 15, 2003 and not assigned may be used by the business to which the credits were issued until the tax calendar year ending December 31, 2018, assuming all tax reports were filed for a full calendar year.

B. Eligibility

1. Sellers

In order to be eligible to assign R&D Tax Credits, a business must demonstrate the following:

- a. The 'seller' business must possess R&D Tax Credits issued by the Pennsylvania Department of Revenue at least one year prior to the date of the proposed assignment. For example, the first R&D Tax Credits eligible for approval to be assigned under this program are those approved by the Department of Revenue on December 15, 2003. Those credits may be approved for assignment after the one year anniversary of their date of approval. That anniversary date would be December 15, 2004. Those R&D Tax Credits, with the approval of DCED, may be approved for assignment beginning on December 15, 2004. They must be used by the 'buyer' within the tax year of the approval of the assignment. Credits may only be assigned once. A buyer may not apply to assign the credits again. Any R&D Tax Credits not used to offset state tax liability by the business to which the credits were issued within the fifteen year maximum 'lifetime' of the credits, or by a buyer within the tax year of the approval of the assignment by DCED, expire and no longer exist.
- b. A business requesting approval to assign its R&D Tax Credits may only apply to assign R&D Tax Credits that have not already been used, and are still within their fifteen (15) year maximum lifetime as explained above.

- c. A business requesting approval to assign its R&D Tax Credits is only eligible to apply to assign R&D Tax Credits to the extent that the amount of the credits exceeds any collectible Pennsylvania tax liability against which the credits may be offset.
- d. A business that has used an R&D Tax Credit to offset a tax liability that is later subject to a ruling or agreement by the Department of Revenue reducing that tax liability, may have some or all of its original R&D Tax Credits reinstated. If such reinstated R&D Tax Credits are verified by the Department of Revenue, and the credits are still within their fifteen year maximum lifetime, they may be eligible for application to be assigned the same as if they had never been used.
- e. Questions about the existence or status of R&D Tax Credits should be directed to the PA Department of Revenue. Questions regarding the eligibility of any specific R&D Tax Credit to be approved for assignment should be directed to DCED, Technology Investment Office.
- f. If the company holding the R&D Tax Credit is a Pennsylvania S Corporation, and does not have sufficient tax liability to use the R&D Tax Credit, a shareholder of the S Corporation is entitled to a R&D Tax Credit equal to the product of:
 - 1.) The unused amount of the R&D Tax Credit, and
 - 2.) The percentage of the Pennsylvania S Corporation's distributive income to which the shareholder is entitled.

This R&D Tax Credit for the S Corporation shareholder is in addition to any R&D Tax Credit to which the shareholder is otherwise entitled, but the Pennsylvania S Corporation and a shareholder of that corporation may not claim a R&D Tax Credit for the same portion of the approved R&D Tax Credit. The S Corporation may not apply to assign any R&D Tax Credit that has been passed through to a shareholder.

2. Buyers

- a. A buyer may use an R&D Tax Credit, purchased after the proper approval, to offset or use against any qualified tax liability up to a maximum of 75% of that qualified tax liability for the taxable year in which the approval is made. Qualified tax liabilities are those covered in Articles III, IV, or VI of the Tax Reform Code including:
 - 1.) Personal Income tax,
 - 2.) Corporate Net Income tax, or
 - 3.) Capital Stock/ Foreign Franchise tax.
- b. A buyer may not carry over, carry back, obtain a refund of, or assign the R&D tax Credit. The buyer must claim the credit in the taxable year in which the approval to assign the R&D Tax Credit is made.
- c. The buyer is required to notify the Department of Revenue of the seller of the R&D Tax Credit in compliance with procedures specified by the Department of Revenue.

C. Program Requirements and Conditions

The following program conditions apply to prospective R&D Tax Credit sellers, buyers, facilitators or middlemen, and anyone else involved with the program and its workings. If any questions arise that are not covered by these provisions, those questions should be directed to the DCED, Technology Investment Office.

1. At the time of application for approval to assign R&D Tax Credits, the seller business should be prepared to identify the specific R&D Tax Credits to be assigned (issue date, amounts, etc.), provide information identifying the buyer to the satisfaction of DCED and the PA Department of Revenue, and disclose the selling price of the R&D Tax Credits being assigned.
2. If a business selling R&D Tax Credits is selling credits to more than one buyer or credits from more than one issue date or “class or vintage”, a separate application should be submitted to DCED for approval to assign credits for each separate buyer or separate “class or vintage” of R&D Tax Credits.
3. DCED is considering various options to facilitate the arrangements between sellers and buyers to complete the sale of R&D Tax Credits. The assistance options available to prospective sellers and buyers may change over time. Prospective sellers or buyers may wish to contact the DCED, Technology Investment Office to learn about any such facilitation services before finalizing arrangements on their own or through private, non-profit, or other facilitators. Sellers and buyers of R&D Tax Credits may be surveyed or requested to provide information on how their R&D Tax Credit assignment transaction was arranged. This might include information on any facilitation services used, any fees or charges involved with such services, or other details of the transaction.
4. R&D Tax Credits may only be assigned once. Once an assignment is approved, it is final, and the seller’s right to claim the credit is terminated. Buyers may not resell or reassign the R&D Tax Credits.
5. R&D Tax Credits are subject to elimination or reduction if it is subsequently determined by the Department of Revenue that the seller was not entitled to the R&D Tax Credit in whole or in part during the tax year in which it was claimed by the seller. In such event, the seller of the R&D Tax Credit would be required to pay additional taxes, interest, and penalties by reason of the elimination or reduction in the amount of the R&D Tax Credit that it has sold. The Department of Revenue has determined that it will not seek recovery of a disallowed credit from a good faith purchaser of the credit who has paid value to the seller.
6. The date of receipt of the application form by DCED will be recorded by the DCED Technology Investment Office. This date will be used to determine the official Date of Approval for the assignment of the R&D Tax Credits. If the seller and buyer agree that the tax credits being assigned are to be used for a specific taxable calendar or fiscal year, **the submission of the application should be timed so that DCED receives it on or before the last business day of the taxable calendar or fiscal year for which the tax credit will be used.** For example, for the tax credit to be used by the buyer for the 2004 calendar taxable year, the application must be received by the DCED Technology Investment Office on or before the last business day of the 2004 calendar year, which is December 30, 2004.

Section II – Application

Prospective applicants should use the 2-page application form on the following pages. Completed Applications, including all required signatures, should be submitted to:

PA Department of Community & Economic Development
Technology Investment Office
ATTN: R&D Tax Credit Transfer Program
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

For specific questions on this program contact the Technology Investment Office in DCED at (717) 787-4147.

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Pennsylvania Research and Development Tax Credit Assignment Program

Application to Assign Research & Development Tax Credits

Application Number: _____

Date Received: _____
(To be filled in by DCED)

Note: This date may be used to determine in which taxable year the assigned tax credit may be claimed by the buyer.

1. Prospective Seller or Assignor Identification:

Name: _____

Address: _____

Other Contact Information:

Telephone: _____ () _____

FAX: _____ () _____

E-mail Address or other: _____

Please use the same name and address as is on record with the PA Department of Revenue unless that on-file information has been changed and is no longer valid.

Taxpayer Identification (SSN or Box Number): _____

Date of Issue or Approval of Tax Credits to be Transferred or Assigned: _____

Amount of Approved R&D Tax Credit to be Transferred or Assigned from the listed Issue or approval Date: \$ _____

Signature and Business Title of Prospective Assignor:

Signature: _____

Printed Name: _____

Printed Title or Affiliation to the Business: _____

2. Prospective R&D Tax Credit Buyer or Assignee:

Name: _____

Address: _____

Other Contact Information:

Telephone: () _____

FAX: () _____

E-mail Address or other: _____

Please use the same name and address as is on record with the PA Department of Revenue unless that on-file information has been changed and is no longer valid.

Taxpayer Identification (SSN or Box Number): _____

3. Information on the R&D Tax Credit Assignment:

Dollar Amount agreed upon to complete the transfer or assignment: \$ _____

Were the services of any agent(s) or facilitator(s) used to arrange this prospective R&D Tax Credit Transfer? _____

If the services of any agent(s) or facilitator(s) were used, please identify the agent(s) or facilitator(s):

What, if any, fee or commission was, or is being, paid to each agent(s) or facilitator(s) listed above?

4. Definitions

Assignor – Business to which the R&D Tax Credits were originally issued or approved, and which is applying to assign those credits.

Assignee – Entity that is purchasing the R&D Tax Credit from the Assignor and to which the R&D Tax Credit is to be assigned.

Buyer – Entity that is purchasing the R&D Tax Credit from the Assignor.

DCED – The Pennsylvania Department of Community & Economic Development

Facilitator – Some person, business, or organization acting to facilitate the arrangements between seller(s) and buyer(s) to complete the sale of R&D Tax Credits.

Seller – Same as Assignor.