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CHAPTER 123

OREGON BUSINESS DEVELOPMENT DEPARTMENT

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FILING CAPTION: These rules apply to the Research and Development Tax Credit for Semiconductors.

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RULES:

123-401-0100, 123-401-0200, 123-401-0300, 123-401-0400, 123-401-0500, 123-401-0600

ADOPT: 123-401-0100

RULE TITLE: Purpose and Scope

NOTICE FILED DATE: 04/26/2024

RULE SUMMARY: This section outlines the purpose of the Research and Development Tax Credit for Semiconductors.

RULE TEXT:

(1) The 2023 Oregon Legislature passed chapter 298, Oregon Laws 2023 (Enrolled House Bill 2009), which establishes the Research and Development Tax Credit for Semiconductors. This is a new program to both recognize and further the important contributions of this industry to regional and national economies.

(2) These administrative rules specify elements of and provide guidance for the program developed by the Oregon Business Development Department pursuant to ORS 315.518 to 315.522 and sections 1, 5 to 8, and 12, chapter 289, Oregon Laws 2023 to administer the Research and Development Tax Credit for Semiconductors. To be eligible to claim this tax credit for tax year 2024, taxpayers had to submit a one-time registration form by December 1, 2023, and then apply for and obtain certification from the department. The same certification process is required annually for taxpayers seeking to claim the tax credit for subsequent tax years, but registration is not required.

(3) In administering this program and the certification process, the department will communicate and coordinate across state government as required or permitted by law, including sharing of information with the Oregon Department of Revenue.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: ORS 315.518 through 315.522, Oregon Laws 2023, chapter 298, section 5

ADOPT: 123-401-0200

RULE TITLE: Definitions

NOTICE FILED DATE: 04/26/2024

RULE SUMMARY: This section provides definitions for terms used as part of the Research and Development Tax Credit for Semiconductors.

RULE TEXT:

For the purposes of this division of administrative rules, in addition to definitions found in ORS 315.518 to 315.522, the following terms have the meanings set forth below:

- (1) "Act" means Oregon Laws 2023, chapter 298, sections 1 through 12 (Enrolled House Bill 2009)
- (2) "Application" means the form prescribed by the Oregon Business Development Department that a qualified semiconductor company must submit to the department to request certification.
- (3) "Authorized representative" means a Company's Chief Executive Officer, Chief Financial Officer, Controller, or another senior level financial officer of a company.
- (4) "Certification" means the written determination of eligibility by the department necessary for the taxpayer to claim the Research and Development Tax Credit for Semiconductors.
- (5) "Qualified semiconductor company" has the meaning given to that term in ORS 315.518(1).
- (6) "Research and Development Tax Credit for Semiconductors" means the tax credit allowed under ORS 315.518 to 315.522 and applicable administrative rules.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: ORS 315.518 - 315.522, Oregon Laws 2023, chapter 298, section 5

ADOPT: 123-401-0300

RULE TITLE: Taxpayer Eligibility

NOTICE FILED DATE: 04/26/2024

RULE SUMMARY: This section outlines eligible entities that may apply for the Research and Development Tax Credit for Semiconductors.

RULE TEXT:

To be eligible for certification required to claim the Research and Development Tax Credit for Semiconductors, a taxpayer must meet all of the following requirements as well as any additional requirements specified in statute or applicable administrative rules:

- (1) Be a qualified semiconductor company;
- (2) Incur qualified research expenses or basic research payments in Oregon, in the tax year for which the certification is being requested; and
- (3) Be subject to personal income taxes under ORS chapter 316 or corporate excise taxes under ORS chapter 317.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: ORS 315.518 - 315.522, Oregon Laws 2023, chapter 298, section 5

ADOPT: 123-401-0400

RULE TITLE: Certification Process

NOTICE FILED DATE: 04/26/2024

RULE SUMMARY: This section further defines the process to apply and be certified for the Research and Development Tax Credit for Semiconductors.

RULE TEXT:

(1) For the 2024 tax year, a taxpayer that submitted a valid registration form to the Oregon Business Development Department by December 1, 2023, and seeks to claim a Research and Development Tax Credit for Semiconductors for tax year 2024 must file a written application for certification with the department no later than October 15, 2024. For tax years 2025 through 2029, a taxpayer that seeks to claim the credit must file a written application for certification with the department no later than October 15 each calendar year for the tax year that begins or is deemed to begin in that calendar year. If the deadline falls on a Saturday or a legal holiday (per ORS 187.010), the deadline is the next business day.

(2) All eligible taxpayers, whether they file based on a calendar year, fiscal year or otherwise, must submit their application for certification to Business Oregon by the specified deadline each calendar year. An eligible taxpayer with a 52-53-week tax year that has two tax years beginning in the same calendar year should submit the application for the later tax year by the deadline in the following calendar year. (Example: An eligible taxpayer with a 52-53-week tax year has taxable years beginning Jan 1, 2025, and Dec 31, 2025. The certification application for the tax year beginning Dec 31, 2025, should be submitted by the 2026 calendar year deadline).

(3) The department provides a certification application form to taxpayers via its website. Certification application materials that the applicant must submit include the application form, along with supporting documentation, and the applicable fee.

(4) To be complete, the certification application must include, but is not limited to, the following:

- (a) A description of how the taxpayer meets the definition of a qualified semiconductor company, as defined in the Act;
- (b) A description of how proposed research and development activities for which the taxpayer seeks a tax credit under the Act will support the taxpayer in conducting a business or trade directly related to semiconductors;
- (c) An attestation that the proposed research and development activities for which the taxpayer seeks the credit will support the taxpayer in conducting trade or business directly related to semiconductors;
- (d) An attestation of the taxpayer's expected qualified research expenses and basic research payments in Oregon, each as documented in the taxpayer's documented internal financial projections, for the tax year;
- (e) A report of the taxpayer's qualified research expenses and basic research payments from the three (3) preceding tax years;
- (f) The amount of the potential tax credit for which the taxpayer is seeking certification;
- (g) Payment of the fee required under OAR 123-401-0500; and
- (h) Any other information required by the department.

(5) Certification application forms must be signed by the taxpayer or an authorized representative of the taxpayer.

(6) As part of its review of submitted materials, the department may require the taxpayer or the taxpayer's authorized representative to provide additional information.

(7) The department shall review all completed certification applications and determine the taxpayer's eligibility for certification for the Research and Development Tax Credit for Semiconductors.

(8) The department shall issue certifications to eligible taxpayers on or before November 15th of the calendar year in which the certification application is submitted.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: ORS 315.518 - 315.522, Oregon Laws 2023, chapter 298, section 5

ADOPT: 123-401-0500

RULE TITLE: Certification Fee

NOTICE FILED DATE: 04/26/2024

RULE SUMMARY: This section establishes an application fee for companies seeking Certification for the Research and Development Tax Credit for Semiconductors.

RULE TEXT:

(1) The Oregon Business Development Department is authorized to establish a fee for filing a written application for certification under ORS 315.522(4) adequate to recover the costs incurred by the department in reviewing the applications.

(2) The fee for companies applying for certification is \$3,000.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: ORS 315.518 - 315.522, Oregon Laws 2023, chapter 298, section 5

ADOPT: 123-401-0600

RULE TITLE: Calculation of Tax Credit Certified Amount

NOTICE FILED DATE: 04/26/2024

RULE SUMMARY: This section outlines the methodology the Department will use to determine any tax credit cap that needs to be established under the Research and Development Tax Credit for Semiconductors.

RULE TEXT:

(1) Pursuant to the Act, the Oregon Business Development Department may not certify a total amount of potential tax credits for all qualified semiconductor companies in excess of the limits in Oregon Laws 2023, chapter 298, section 8.

(2) In order to ensure availability of the Research and Development Tax Credit for Semiconductors for qualified semiconductor companies seeking Certification, the Oregon Business Development Department establishes annual caps for each tax year as follows:

(a) \$35 million for tax year 2024;

(b) \$38.25 million for tax year 2025;

(c) \$41.75 million for tax year 2026;

(d) \$44 million for tax year 2027;

(e) \$46 million for tax year 2028;

(f) \$50 million for tax year 2029.

(3) If the total amount of certified tax credits is less than the annual cap for a particular tax year in the first year of a biennium, the amount of the difference will be added to the cap amount for the second tax year of that same biennium. The maximum amount of credit that may be certified or claimed by any taxpayer is \$4,000,000 for the tax year.

(4) If the total amount of potential tax credits sought across all applications exceeds the total annual credit cap for a particular tax year, the department will reduce the certified credit amounts that exceed \$200,000 by a ratio necessary to keep the total certified amounts within the limits.

(5) Taxpayers may not claim a tax credit in excess of their certified credit amount.

(6) Certification of eligibility for a particular amount of tax credit by the department does not necessarily entitle a taxpayer to claim that amount of credit. The actual amount of credit a taxpayer is eligible to claim depends on the actual qualified research expenses and basic research payments incurred by the taxpayer in Oregon during the tax year, but in no event may the taxpayer claim more credit than the amount certified by the department.

(7) All tax credits claimed remain subject to audit by the Oregon Department of Revenue, as allowed by law.

(8) The Oregon Business Development Department may order the suspension or revocation of a credit as allowed under ORS 315.061.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: ORS 315.518 - 315.522, Oregon Laws 2023, chapter 298, section 5