

NEWSSTAND

Client Advisory – Therapeutic Discovery Project Tax Credit and Cash Grants in the Patient Protection and Affordable Care Act of 2010

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The Patient Protection and Affordable Care Act of 2010 (the “Act”) was signed into law (P.L. 111-148) by the President on March 23, 2010. As part of the major reform of the U.S. health system, the Act creates a new investment tax credit and cash grant program for certain drug development or other medical advances by taxpayers not employing more than 250 employees. The credits and grants are available for a “qualifying therapeutic discovery project” and are referred to in this Advisory as “QTDP Credit” and “QTDP Grant”. The QTDP Credit is in the amount of 50% of the certified costs incurred in 2009 and 2010 of a qualifying therapeutic discovery project. QTDP Grants are also available to qualifying therapeutic discovery projects in lieu of the QTDP Credit. These provisions are contained in new Section 48D of the Internal Revenue Code. This Client Advisory highlights the basics of the new QTDP Credit and QTDP Grant.

Qualifying therapeutic discovery projects

A “qualifying therapeutic discovery project” is a project which is designed to develop a product, process, or therapy to diagnose, treat, or prevent diseases and afflictions by: (1) conducting pre-clinical activities, clinical trials, clinical studies, and research protocols, or (2) by developing technology or products designed to diagnose diseases and conditions, including molecular and companion drugs and diagnostics, or to further the delivery or administration of therapeutics. Projects must have the potential to result in new therapies, reduce long-term health care costs, or cure cancer within 30 years. Additionally, in awarding QTDP Credits and QTDP Grants the IRS will take into consideration the project’s potential to: (1) create and sustain (directly or indirectly) high quality, high paying jobs in the United States, and (2) advance the United States’ competitiveness in the fields of life, biological, and medical sciences.

Amount of the Therapeutic Discovery Credit

The QTDP Credit is equal to 50% of the expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project other than: (1) remuneration for a chief executive officer or any other employee being among the 4 highest compensated officers for the taxable year; (2) interest expense; (3) facility maintenance expense; (4) indirect costs (e.g., general and administrative costs) that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function; and (5) any other expenditure as determined by the IRS as appropriate to carry out the purposes of the provision. A QTDP Credit application must be filed and the credit amount must be certified by the IRS. The IRS must publicly disclose the identity of the applicant and the amount of the

credit applied for. The nationwide maximum amount of QTDP Credits that can be allocated is \$1 billion for the 2-year period beginning with 2009. The tax basis of depreciable property expenditures which qualified for the QTDP Credit must be reduced by the amount of the QTDP Credit. QTDP Credit is not allowed for any expenditures for which bonus depreciation, research tax credit or the orphan drug tax credit is allowed.

Therapeutic Discovery Grants

In lieu of the QTDP Credit, QTDP Grants are available in the same amount as the QTDP Credits to taxpayers making qualified investments in a qualifying therapeutic discovery project. These grants are useful for companies engaged in therapeutic discovery projects that are not yet generating sufficient profits to incur tax payments. A taxpayer's application for a QTDP Grant must be received before January 1, 2013. The IRS must pay the QTDP Grant within 30 days of the application for the grant or within 30 days of the date the qualified investment is made, whichever is later. The IRS must publicly disclose the identity of the applicant and the amount of the grant applied for. The QTDP Grants are not includible in the taxpayer's gross income.

The provision applies to expenditures paid or incurred after December 31, 2008, in taxable years beginning after December 31, 2008.

Note that this Client Advisory highlights only a few of the changes made by the Act that may affect your business planning. If you have any questions regarding the tax law changes summarized in this Advisory or other provisions of the Act, and how these changes and provisions may affect your business, please contact one of the following members of our Tax Department listed below.

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