Tax Alert

Qualifying Therapeutic Discovery Project Credits and Grants

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The enactment on March 23, 2010 of the *Patient Protection and Affordable Care Act of 2010* established a 50% nonrefundable tax credit for qualified investments in qualifying therapeutic discovery projects of eligible taxpayers. The Secretary of the Treasury will, upon application by a taxpayer, provide the taxpayer with a grant of 50% of the qualified investment in lieu of the tax credit.

The credits and grants are available only with respect to investments made in a taxable year beginning in 2009 or 2010 by employers with 250 or fewer employees. The total amount of credits and grants allocated to the program may not exceed $1 billion for this two-year period.

The Tax Credit

The qualifying therapeutic discovery project credit for any taxable year is an amount equal to 50% of the qualified investment for such taxable year with respect to any qualifying therapeutic discovery project of an eligible taxpayer. A qualifying therapeutic discovery project is a project which is designed:

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

The qualified investment for any taxable year is the aggregate amount of the costs paid or incurred in that taxable year for expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project. Only amounts certified by the Secretary of the Treasury as eligible for the credit are considered qualified investments. The qualified investment does not include certain remuneration costs, interest expenses, facility maintenance expenses, service costs or any other expenditure determined by the Secretary of Treasury as appropriate to exclude.

Furthermore, the Secretary of Treasury is to take into consideration, when making its certification determinations, only those projects that show reasonable potential to:

- Result in new therapies to treat areas of unmet medical need or to prevent, detect or treat chronic or acute diseases and conditions,
- To reduce long-term health care costs in the U.S., or
- To significantly advance the goal of curing cancer within the next 30 years.

The Secretary will also take into consideration which projects have the greatest potential to create and sustain high quality, high paying jobs in the U.S. and to advance U.S. competitiveness in the fields of life, biological, and medical sciences.

The Secretary is to establish a program to consider and award the certifications for the credits on or before May 21, 2010. Each applicant for certification is to submit its application in the manner the Secretary specifies, and the Secretary is to take action to approve or deny the application within 30 days of the submission.

Companies may not claim the therapeutic discovery project credit for any investment for which bonus depreciation is allowed. In addition, with certain exceptions, expenditures included in the amount of the credit are nondeductible. Lastly, taxpayers may not include any expenses accounted for under the credit as expenses under the section 41 research credit or the section 45C orphan drug credit.

The Grant in Lieu of the Tax Credit

A company may elect to receive a grant in lieu of the preceding tax credit in the amount of 50% of the qualified investment. The company must still submit an application for certification which must contain the information specified by the Secretary of Treasury. The Secretary is then to pay the grant within 30 days of the date of the application for such certification or the date the qualified investment is made, whichever is later. The grant is not includible in the recipient's income for federal income tax purposes.

Certain organizations are ineligible to receive the grant, including governmental organizations, tax-exempt entities, and certain partnerships or other pass-through entities.

Additional guidance is expected to be released on or before May 21, 2010. For more information, contact Michael Solomon at (415) 875-2379 or Melinda Vance at (650) 335-7219.