

**NOTICE OF RULE MAKING**

**Arizona Commerce Authority Rule Notice of Rule Making No. 23-03**

**1. Rule(s):**

University Research & Development (R&D) Income Tax Credit

**2. Preamble.**

A. A.R.S. §§ 41-1507.01

B. The proposed Rules will govern the University Research and Development (R&D) Income Tax Credit program.

**3. The exact wording of the rule.**

See attached.

**4. The name and contact information of agency personnel with whom persons may communicate regarding the rule.**

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100 North 7<sup>th</sup> Avenue, Suite 400  
Phoenix, AZ 85007  
Phone: 602-845-1221  
Fax: 602-845-1201  
Email: [cindyg@azcommerce.com](mailto:cindyg@azcommerce.com)

**5. Where written submissions on the proposed rule may be inspected (by appointment only).**

Arizona Commerce Authority  
100 North 7<sup>th</sup> Avenue, Suite 400  
Phoenix, Arizona 85007

**6. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.**

Written submissions may be made within thirty (30) days after the date of posting of the Notice of Rule Making. Written submissions should be directed to:

Attention: University Research and Development (R&D) Income Tax Credit Program Guidelines  
Arizona Commerce Authority  
100 North 7<sup>th</sup> Avenue, Suite 400  
Phoenix, Arizona 85007



Submissions also may be transmitted electronically within the same time period by directing the submission to:

Attention: University Research and Development (R&D) Income Tax Credit Program Guidelines  
[cindyg@azcommerce.com](mailto:cindyg@azcommerce.com)

No hearing to receive oral comments has been scheduled at this time.

**7. Any known timetable for agency decisions or other action in the proceeding.**

None at this time.

**8. The date of posting the Notice of Rule Making.**

May 17, 2023.

**9. The deadline for the Authority to file a notice of adoption of the rule.**

No later than 180 days from May 17, 2023.



## **UNIVERSITY RESEARCH & DEVELOPMENT INCOME TAX CREDIT**

### **SECTION 1. OVERVIEW**

The Research and Development (“R&D”) Tax Credit program (A.R.S. §§ 41-1507, 43-1168, and § 43-1074.01) provides an Arizona income tax credit for increased research and development activities conducted in this state, including research conducted at a state university and funded by the taxpayer. The goal of the program is to encourage Arizona businesses to continue investing in research and development activities. The R&D Program has nonrefundable components and a refundable component.

The University R&D Tax Credit Program, established pursuant to A.R.S. § 41-1507.01, provides an additional nonrefundable Arizona income tax credit for qualifying basic research payments made during a taxable year to one or more of the universities under the jurisdiction of the Arizona Board of Regents: Arizona State University, Northern Arizona University and the University of Arizona.

The additional credit is not refundable. Information on the refundable tax credit program is available at (<https://www.azcommerce.com/incentives/research-development/rd-refundable-tax-credit/>)

The contents of these Rules and Guidelines pertain to the non-refundable University R&D tax credit program.

### **SECTION 2. EXPLANATION OF ADDITIONAL TAX CREDIT**

The University R&D tax credit is an additional income tax credit for taxpayers qualifying for the general Arizona R&D nonrefundable income tax credit.

The additional credit is equal to 10% of the excess, if any, of the “Basic research payments” made by a taxpayer in a taxable year over the taxpayer’s “Qualified organization base period amount” for the taxable year.

The total amount of tax credits available under this program is \$10,000,000 in any calendar year.

The tax credit is allowed in an amount computed pursuant to A.R.S. 43-1168.

The general R&D tax credit is administered exclusively by the Arizona Department of Revenue (“Revenue”). Additional information is available at: <https://azdor.gov/forms/tax-credits-forms/credit-increased-research-activities-corporations>

Revenue also administers the University R&D Tax Credit.<sup>1</sup> However, before a taxpayer can apply to Revenue for University R&D tax credits or otherwise claim such tax credits, a taxpayer must first apply for a certification of research payments from the Arizona Commerce Authority (“Authority”).

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<sup>1</sup> For Revenue’s Guidelines pertaining to the University R&D tax credit, see <https://www.azdor.gov/TaxCredits/UniversityResearchDevelopmentTaxCredit.aspx>

### **SECTION 3. ELIGIBILITY REQUIREMENTS**

- A. A taxpayer may be eligible for an additional income tax credit if:
1. Taxpayer meets the eligibility requirements of A.R.S. §§ 41-1507.01 and 43-1074.01 or 43-1168.
  2. The taxpayer made basic research payments during the taxable year to a university under the jurisdiction of the Arizona Board of Regents.
  3. Following the end of the taxpayer's tax year, taxpayer submits an Application to the Authority when sufficient cap is available under A.R.S. § 41-1507.01(B) and receives a Certificate of Approval.
  4. Taxpayer complies with the E-Verify requirement set forth in A.R.S. § 23-214(B). Taxpayer remits a nonrefundable processing fee equal to 1% of the additional tax credit approved.
  5. Taxpayer applies to Revenue for certification of additional income tax credits for research activities involving basic research payments to a university after receiving a Certificate of Approval from the Authority.

### **SECTION 4. SUBMITTAL AND APPLICATION PROCESSING**

- A. All Applications must be submitted through the Authority's electronic application system
- B. The Application must include:
1. The taxpayer's name, address, taxpayer identification number and NAICS Code
  2. Name and contact information of an individual who may be contacted with regard to the Application
  3. A general description of the taxpayer's business and the research activities contemplated by the taxpayer
  4. The amount of the additional income tax credit the taxpayer will be requesting from Revenue
  5. Revenue Form 346 detailing the requested additional income tax credit
  6. Revenue Form 285B authorizing the Authority to obtain confidential taxpayer information from Revenue
  7. Copy of each university contract for increased research activities
  8. Copy of receipts for the basic research payments made to each university contract submitted
  9. Any other information required by the Authority.
- C. The Authority shall accept an initial batch of applications for tax credits for a thirty-day period, beginning on the second Monday of January of each calendar year beginning in 2024 (e.g., January 8, 2024, January 13, 2025, etc.). Applications will undergo a competitive evaluation process. The Authority, through the electronic application system, will date and time stamp each application on the date of receipt.
- D. Thereafter, any remaining tax credits shall be awarded on a first-come-first-served basis.
- E. Following the review of each Application the Authority shall:
- a. Issue the taxpayer a letter certifying the basic research payments; or
  - b. Notify the taxpayer of the denial of the certification with an explanation of the basis for the denial.

**SECTION 5. LIMITATIONS AND CALENDAR YEAR CAP**

- A. The Authority may not certify Applications exceeding a total of \$10 million per calendar year. Once the \$10 million certification “cap” is reached, no additional research payments may be certified by the Authority.
- B. A taxpayer seeking certification of research payments must submit an Application to the ACA following the end of the taxpayer’s tax year. A taxpayer with a tax year that begins in one calendar year and ends in another calendar year must submit an Application for certification for the calendar year’s “cap” that pertains to the beginning of the taxpayer’s tax year. If a taxpayer realizes that basic research payments occurred within a taxable year that would have made the taxpayer eligible to apply for credits but the tax return for that taxable year has been filed, the taxpayer may still apply for the credit for that taxable year. An Application for a prior taxable year will be considered if there is still credit available under the “cap” for that calendar year. (The taxpayer will only be able to use a credit approved for a prior taxable year if an amended return can be filed with Revenue for that taxable year within the statute of limitations period.)

**SECTION 6. COMPETITIVE PROCESS**

- A. The applications for additional tax credits that exceed the Calendar year cap will be certified based on a competitive process to the extent that the aggregate tax credits applied for exceed the amount of tax credits allocated for the tax year.
- B. Recommendations regarding priority for issuing the certifications for tax credits in a competitive process will be established by a panel of judges, which may include Authority staff and non-Authority staff, who will review applications and establish such recommendations. The judges will evaluate applications based on factors set forth in D of this Section. Final decisions regarding priority for award will be determined by the Authority’s CEO.
- C. The authority shall establish the time and manner of the competitive process used in issuing the certifications. In determining which applications will be issued certifications, the Authority or its designee shall evaluate among all applicants for certification of basic research payments, the relative impact of the research activities involving payments to a university from the standpoint of furthering one or more of the following considerations:
  - 1. Expanding Cluster industries.
  - 2. Diversifying and strengthening this state’s economy.
  - 3. Advancing technological commercialization.
  - 4. Enhancing long-term quality job creation.
  - 5. Aligning research with university strategic plans.
- D. Any information gathered from a business for a competitive process is confidential and may not be disclosed to the public except that the information must be transmitted to Revenue.
- E. The Authority may adopt more detailed administrative procedures, outside its Rules process, consistent with these Rules and applicable law, to implement the provisions of this Section. Such procedures will be posted on the Authority’s website.

**SECTION 7. DEFINITIONS AND PROGRAM TERMS**

1. “Application” means the electronic application system form and all required uploads.
2. “Basic research payments” means as described in Internal Revenue Code (IRC) § 41(e)(2)
3. “Calendar year cap” or “cap” means the tax credit amount prescribed by A.R.S. § 41-1507.01 for allocation in a specific calendar year.
4. “Certificate of Approval” means a document issued by the Authority to the eligible taxpayer after review and approval of an Application. The Certificate of Approval includes, at a minimum, the taxpayer’s name, and maximum additional tax credit amount and the Calendar year cap affected.
5. “Cluster industries” means concentrations of firms across several industries that share common economic foundation needs.
6. “Qualified organization base period amount” means as described in Internal Revenue Code § 41(e)(3)