

**TRANSMITTAL MEMORANDUM
DEPARTMENT OF REVENUE RULES**

PURPOSE:

This transmittal memorandum contains changes to Department of Revenue Rules.

RULE CHAPTER TITLE:

Corporate Income Tax

RULE NUMBER: RULE TITLE

12C-1.0196	Research and Development Tax Credit
12C-1.051	Forms

SUMMARY:

The creation of Rule 12C-1.0196, F.A.C., provides: (1) the tax credit is available annually for tax years beginning on or after January 1, 2012; (2) that a target industry business must file an application with the Department annually to receive an allocation of the annual funds available for the tax credit; (3) that the Florida corporate income/franchise tax credit must be taken in the same tax year as the federal credit for increasing research activities is taken; (4) that a business taking the tax credit must provide a copy of the federal forms regarding the related federal tax credit with the business' Florida corporate income/franchise tax return; (5) how to calculate the Florida tax credit and examples of the calculations; (6) that the credit is limited to fifty percent of the Florida corporate income/franchise tax liability after all other tax credits are applied; (7) that any unused credit may be carried forward up to five tax years; and (8) the recordkeeping requirements for those businesses taking the tax credit.

The amendments to Rule 12C-1.051, F.A.C., adopt, by reference, the application for target industry businesses to apply for an Allocation for Research and Development Tax Credit for Corporate Income/Franchise Tax (Form F-1196).

FORMS AFFECTED:

F-1196	Allocation for Research and Development Tax Credit for Florida Corporate Income/Franchise Tax (R. 03/14)
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EFFECTIVE MARCH 12, 2014

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
CREATING RULE 12C-1.0196
AMENDING RULE 12C-1.051

12C-1.0196 Research and Development Tax Credit.

(1)(a)1. A research and development tax credit against Florida corporate income/franchise tax is provided in Section 220.196, F.S., to a target industry business that claims a valid research credit against federal corporate income tax for qualified research expenses as provided in section 41 of the Internal Revenue Code (26 U.S.C. s. 41). The target business enterprise must be a corporation, as defined in Section 220.03, F.S., and a target industry business, as defined in Section 288.106, F.S.

2. If the related federal corporate income tax credit for increasing research activities is not extended for a tax year, a target industry business will not be permitted to take the Florida research and development tax credit.

(b) “Qualified research expenses” include research expenses qualifying for the credit under section 41 of the Internal Revenue Code (26 U.S.C. s. 41) for in-house research expenses incurred in Florida or contract research expenses incurred in Florida. The term “qualified research expenses” does not include research conducted outside Florida or research expenses that do not qualify for a credit under 26 U.S.C. s. 41.

(c)1. The credit is available annually for tax years beginning on or after January 1, 2012.

and is based upon qualified research expenses in Florida allowed under section 41 of the Internal Revenue Code (26 U.S.C. s. 41).

2. Example: Tax credit applications approved for the 2012 calendar year were based upon qualified research expenses incurred during calendar year 2012 for tax years that began in 2012.

(2)(a) To receive an annual allocation of the annual funds available for granting tax credits to target industry businesses, an Allocation for Research and Development Tax Credit for Florida Corporate Income/Franchise Tax (Form F-1196, incorporated by reference in Rule 12C-1.051, F.A.C.) must be filed with the Department on or after March 20 of each year and on or before December 31 of that same year. The application is available on the Department's website at www.myflorida.com/dor/. Taxpayers required to file returns and remit payments by electronic means pursuant to Section 213.755, F.S., and Rule Chapter 12-24, F.A.C., must apply online using the Department's website. When the completed application is submitted online, a confirmation number will be provided to confirm receipt of the application.

(b) Businesses needing assistance with the Allocation for Research and Development Tax Credit for Florida Corporate Income/Franchise Tax may call the Department at (800) 352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time. Persons with hearing or speech impairments may call the Florida Relay Service at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

(c) Applications filed with the Department on or after March 20 of each year will be accepted by the Department until December 31 of that year, or until the annual appropriation has been completely allocated, whichever occurs first. Credits will be allocated by the Department in the order in which completed applications are received. Beginning April 1 of each year, the Department will notify eligible taxpayers by letter of the amount of credit that is allocated to

them and the tax year in which the target industry business may claim the credit on its Florida corporate income/franchise tax return.

(3) A corporation that has received a research credit against federal corporate income tax solely by virtue of its membership in a partnership that has earned a federal credit for increasing research activities may apply for the Florida research and development tax credit. For purposes of 26 U.S.C. s. 41, the research expenses are apportioned among the partners during the taxable year and are treated as paid or incurred directly by the partners rather than by the partnership.

(4) A federal research credit must be taken on the federal return filed by the target industry business for the same tax year in which the Florida research and development credit is taken. The amount taken as a Florida research and development credit must be added to taxable income prior to computing the Florida corporate income/franchise tax due. The Florida research and development credit is limited to fifty percent (50%) of the Florida corporate income/franchise tax liability after all other credits are applied in the order provided in Section 220.02(8), F.S. A copy of federal Form 6765 (Credit for Increasing Research Activities) and a copy of federal Form 3800 (General Business Credit) must be attached to the Florida corporate income/franchise tax return on which the Florida research and development credit is taken. In the case of a corporate partner of a partnership that has earned a federal credit for increasing research activities, a copy of federal Form 1065, Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.), and a copy of federal Form 3800 must be attached to the Florida corporate income/franchise tax return on which the Florida research and development credit is taken.

(5)(a) Any unused credits may be carried forward for up to five (5) tax years. Carryover credits may be used in a subsequent year when the Florida corporate income/franchise tax for such year exceeds the credit for such year after applying the other credits and unused carryovers

in the order provided in Section 220.02(8), F.S. A taxpayer may not transfer or sell its credit or its right to apply for a credit to another taxpayer.

(b) Example: A taxpayer is allocated a Florida research and development credit of \$30,000 for its tax year beginning in 2012 and all requirements of Section 220.196, F.S., are met for the taxpayer to earn the full \$30,000 allocation. Its Florida corporate income/franchise tax liability after all other applicable credits are applied is \$50,000. The \$30,000 Florida research and development credit that the taxpayer is allocated for tax year 2012 is more than 50 percent of its tax liability for tax year 2012. Therefore, the taxpayer is limited to a Florida research and development credit of \$25,000 ($\$50,000 \times .50$) for tax year 2012, and the remaining \$5,000 of Florida research and development credit may be carried forward for up to five tax years.

(6)(a)1. The Florida research and development tax credit is equal to ten percent (10%) of the amount of qualified research expenses incurred in Florida and allowed under section 41 of the Internal Revenue Code (26 U.S.C. s. 41) that exceeds the base amount. The base amount is defined as “the average of the qualified research expenses incurred in Florida for the four tax years preceding the tax year for which the credit is determined.” The four taxable years used to compute the base amount must end before the calendar year for which the qualified research expenses are determined.

2. Example: A taxpayer with a fiscal year end of June 30, 2013, that applies for the Florida research and development credit based upon the qualified research expenses incurred during calendar year 2012 will use the following taxable years for its base amount: taxable years ended June 30, 2011; June 30, 2010; June 30, 2009; and June 30, 2008.

(b)1. Target industry businesses that have not been in existence for at least four tax years prior to the tax year in which the Florida research and development credit is claimed must reduce

the amount of the credit by twenty-five percent (25%) for each year of the past four tax years that the corporation did not exist.

2. Example: A calendar year taxpayer is incorporated on January 1, 2009. The taxpayer applies for the Florida research and development credit for its tax year beginning January 1, 2012; its Florida qualified research expenses for calendar year 2012 equal \$250,000. The taxpayer's Florida qualified research expenses for its base amount are as follows:

Tax year 2008: \$0, as Taxpayer did not exist.

Tax year 2009: \$175,000

Tax year 2010: \$200,000

Tax year 2011: \$225,000

The average of the Florida qualified research expenses for the 4 taxable years preceding 2012 equals \$150,000 $((\$0 + \$175,000 + \$200,000 + \$225,000) \div 4)$. The excess Florida qualified research expenses over the base amount equal \$100,000 $(\$250,000 - \$150,000)$. The tentative Florida research and development credit is \$10,000 $(\$100,000 \times .10)$. However, since the taxpayer was not in existence for at least 4 taxable years immediately preceding tax year 2012, the Florida research and development credit is reduced by 25 percent for each taxable year the taxpayer did not exist. Therefore, the taxpayer's Florida research and development credit for tax year 2012 is reduced by 25 percent to \$7,500 $(\$10,000 - \$2,500)$.

(7) Every taxpayer claiming a Florida research and development credit must retain documentation that substantiates and supports the credit, a copy of the letter received from the Department granting the credit, and a schedule reconciling all credit carryovers until tax imposed by Chapter 220, F.S., may no longer be determined and assessed under Section 95.091(3), F.S., or under Section 220.23, F.S. Documentation to substantiate and support the credit includes

records or other evidence of the amount of qualified Florida research expenses incurred for in-house research or for contract research expenses, that those expenses qualified under 26 U.S.C. s. 41, and that the federal credit was claimed.

Rulemaking Authority 213.06(1), 220.196(4), 220.51 FS. Law Implemented 220.196 FS.

History—New 3-12-14.

12C-1.051 Forms.

(1)(a) The following forms and instructions are used by the Department in its administration of the corporate income tax and franchise tax. These forms are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
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(2) through (11) No change.

(12) F-1196	<u>Allocation for Research and Development Tax Credit</u> <u>for Florida Corporate Income/Franchise Tax (R. 03/14)</u>	<u>03/14</u>
	<u>(http://www.flrules.org/Gateway/reference.asp?No=Ref-03779)</u>	

(12) through (13) Renumber as (13) through (14) No change.

Rulemaking Authority 213.06(1), 220.192(7), 220.193(4), 220.196(4), 220.51, 1002.395(13) FS.

Law Implemented 119.071(5), 212.08(5)(p), 213.755(1), 220.11, 220.12, 220.13(1), (2), 220.14, 220.15, 220.16, 220.181, 220.182, 220.183, 220.184, 220.1845, 220.185, 220.186, 220.1875, 220.1895, 220.1896, 220.1899, 220.19, 220.191, 220.192, 220.193, 220.194, 220.195, 220.196, 220.21, 220.211, 220.22, 220.221, 220.222, 220.23, 220.24, 220.241, 220.31, 220.32, 220.33, 220.34, 220.41, 220.42, 220.43, 220.44, 220.51, 220.721, 220.723, 220.725, 220.737, 220.801,

220.803, 220.805, 220.807, 220.809, 221.04, 624.5105, 624.51055, 1002.395 FS. History–New
9-26-77, Amended 12-18-83, Formerly 12C-1.51, Amended 12-21-88, 12-31-89, 1-31-91, 4-8-
92, 12-7-92, 1-3-96, 3-18-96, 3-13-00, 6-19-01, 8-1-02, 6-19-03, 3-15-04, 9-24-04, 6-28-05, 5-1-
06, 4-5-07, 1-1-08, 1-27-09, 1-11-10, 4-26-10(12)(a),(b), 4-26-10(13)(a),(b), 6-28-10, 1-12-11,
6-6-11, 1-25-12, 1-17-13, 3-12-14.