



Ontario Tax Exemption for Commercialization (“OTEC”) Program

Information Guide

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Note:

This Information Guide is intended to provide general information about the OTEC program and may not be relied upon in order to determine eligibility or the amount of an anticipated tax refund under the OTEC program.

Those interested in the OTEC program should refer to the *Corporations Tax Act* (Ontario) and the *Taxation Act, 2007* (Ontario) and any applicable regulations (collectively, the “Act”). You may view the Act on the Government of Ontario e-Laws web site: www.e-laws.gov.on.ca

Copies of the Act may also be obtained from the Service Ontario Publications by calling (416) 326-5300 (or toll-free 1-800-668-9938) or you may purchase the Act via the Service Ontario Web site: www.publications.serviceontario.ca

Ontario Tax Exemption for Commercialization Program

Purpose of the OTEC Program

The purpose of the OTEC program is to support innovation in Ontario's economy by encouraging the commercialization of intellectual property, which is developed by qualifying Canadian universities and colleges. The OTEC program applies to newly established corporations operating businesses in priority areas by offering an exemption from Ontario's corporate income tax and corporate minimum tax ("Tax" or "Taxes") for the first ten taxation years of the corporation applicant (the "Applicant").

The OTEC program is jointly administered by the Minister of Research and Innovation and the Minister of Revenue. In general terms, the Minister of Research and Innovation administers the eligibility aspects of the program, assesses whether the Applicant's intellectual property and business activities meet the criteria and issues Certificates of Eligibility. The Applicant then includes the Certificate of Eligibility with a Tax refund application to the Minister of Revenue, who administers the Tax refund aspects of the OTEC program.

OTEC Program Eligibility Overview

In addition to other requirements described in the Act, Applicants that meet the following criteria may be eligible for a Tax refund under the OTEC program:

- The Applicant must be a corporation incorporated after March 24, 2008 and before March 25, 2012 and not formed as a result of an amalgamation or merger of two or more corporations.
- Generally, the Applicant must not be associated or related, as those terms are defined in the *Income Tax Act* (Canada), at any time with any other corporation, unless the other corporation is itself a qualifying institute.
- If the Applicant was a member of a partnership during the taxation year or a previous taxation year, then throughout that time every other member of the partnership must have been a qualifying institute.
- If the Applicant was a member of a joint venture during the taxation year or a previous taxation year, then throughout that time every other member of the joint venture must have been a qualifying institute.
- The Applicant has never been a beneficiary of a trust.
- The Applicant has never operated all or part of a business that was previously operated by another corporation.

- The Applicant has never operated all or part of a business that was previously operated by a person or entity that is not a corporation, unless the business was operated by the person or entity for a period of not more than 90 days before the Applicant was incorporated.
- All or substantially all of the Applicant's revenue must be from one or more eligible commercialization businesses, each of which is engaged in one of the following:
 - an advanced health technologies business;
 - a bio-economy business; or
 - certain telecommunications, computer or digital technologies businesses.
- The sole purpose of the Applicant's eligible commercialization business must be, in the opinion of the Minister of Research and Innovation:
 - the sale of property that derives more than 50 per cent of its value from eligible intellectual property;
 - the sale of property an essential element of which is eligible intellectual property; or
 - the licensing of computer programs that are eligible intellectual property.
- The eligible intellectual property must:
 - have been developed during the course of employment or academic study at a qualifying institute, which includes a university in Ontario, a college of applied arts and technology in Ontario, and certain Canadian universities and colleges located outside Ontario;
 - have been disclosed to the qualifying institute where the research was conducted in a timely manner and not later than the required time in accordance with the qualifying institute's intellectual property disclosure policy, if the institute had such a policy;
 - have been owned, legally or beneficially, only by (a) the qualifying institute where it was developed; (b) one or more individuals who created the property, each of whom was an employee or a student of the qualifying institute where the research was conducted at the time the intellectual property was created; (c) the Applicant; or (d) a combination of those described in (a), (b) and (c); and
 - be any of the following:
 - the subject of a patent issued under the *Patent Act* (Canada);
 - the subject of a patent application by the persons described in (a) to (d) in the bullet above and for which a patent is issued by the last day of the qualifying corporation's tenth taxation year; or
 - the copyright in a computer program that in the opinion of the Minister of Research and Innovation constitutes a technological advancement at the time the computer program is completed.

How the OTEC Program Works

Preliminary Determination

Prior to submitting an application under the OTEC program, the Applicant may apply to the Minister of Research and Innovation for a **preliminary, non-binding determination** on whether (i) its proposed business would be an eligible commercialization business; (ii) a particular property is eligible intellectual property; or (iii) a particular institute is a qualifying institute. The request can be made at any time before the end of the corporation's first taxation year using the form approved by the Minister of Research and Innovation. For further instructions, please see the OTEC **Preliminary Determination Application Form**. The instructions and form can be found on the OTEC program website: www.ontario.ca/innovation.

Application for Certificate of Eligibility

For **each taxation year** that the Applicant seeks a Tax refund under the OTEC program, it must, after **the end of** the particular taxation year, apply to the Minister of Research and Innovation for a **Certificate of Eligibility** and then include such Certificate with a Tax refund application to the Minister of Revenue.

In order to receive a Certificate of Eligibility, the Minister of Research and Innovation must be satisfied that the Applicant carried on an eligible commercialization business during the particular taxation year. The following information provides an outline of the criteria that an Applicant must meet, but is not intended to be an exhaustive list. Please refer to the Act for the OTEC program requirements.

Eligible Commercialization Business

For the purpose of the OTEC program, an Applicant is engaged in an **eligible commercialization business** if it is conducting an active business in one or more of the following areas:

- An **advanced health technology** business that is primarily engaged in using technology either:
 - in the development of assistive medical devices, pharmaceutical drugs, regenerative medicine, biologics, medical procedures or surgical procedures; or
 - in human tissue engineering.
- A **bioeconomy business** that is primarily engaged in:
 - the production of biofuel, biogas, or bioplastics; or

- the development of technology or processes that enable the use of wind, water, a biomass resource, hydrogen, biofuel, biogas, landfill gas, solar energy, geothermal energy, tidal forces or thermal waste as a source of energy.
- A **telecommunications, computer or digital technologies production business** that is primarily engaged in one of the activities described in certain categories provided under the North American Industry Classification System (NAICS-2007) published by Statistics Canada (more information about NAICS-2007 can be found at the Statscan Web site: www.statcan.gc.ca/subjects-sujets/standard-norme/naics-scian/2007/list-liste-eng.htm)
 - Category (3341) – The manufacturing of computers and computer peripheral equipment, such as digital computer manufacturing and computer terminal manufacturing.
 - Category (3342) – Communications equipment manufacturing, such as telephone apparatus manufacturing, radio and television broadcast equipment manufacturing, and satellite communications equipment manufacturing.
 - Category (3344) – Semiconductor and other electronic component manufacturing, such as semiconductor device manufacturing, electronic resistor manufacturing, and bare printed circuit board manufacturing.
 - Category (5112) – Software publishing/publishers.

In addition to meeting the above eligibility criteria, the Minister of Research and Innovation must be of the opinion that the **sole purpose** of the business is one the following:

- the sale of property that derives more than 50 per cent of its value from eligible intellectual property;
- the sale of property an essential element of which is eligible intellectual property; or
- the licensing of computer programs that are eligible intellectual property.

Requirements for the Intellectual Property

Under the OTEC Program, the **intellectual property being commercialized** must have been developed in the course of employment or academic study at **a qualifying institute** by one or more individuals. In general, the term “qualifying institute” means:

- a university in Ontario whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the Government of Ontario;
- a college of applied arts and technology in Ontario whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the Government of Ontario; or

- a college or university in Canada but outside Ontario whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the government of a province, other than an elementary or secondary school.

The Applicant must obtain from the qualifying institute, where the research was conducted, confirmation that ***the intellectual property was disclosed to the institute*** in a timely manner and not later than the required time in accordance with the institute's intellectual property disclosure policy, if the institute had such a policy.

The intellectual property can only have been owned, legally or beneficially, by the following persons or entities:

- the qualifying institute;
- the individual or individuals who created the property, each of whom was an employee or a student of the qualifying institute where the research was conducted at the time the intellectual property was created (the "Creators");
- the Applicant; or
- any combination of those described above.

The intellectual property must be:

- the subject of a patent issued under the *Patent Act* (Canada);
- the subject of a patent application by the qualifying institute, any of the Creators, or the Applicant, and a patent is issued pursuant to that application by the last day of the qualifying corporation's tenth taxation year; or
- a copyright in a computer program that in the opinion of the Minister of Research and Innovation constitutes a technological advancement at the time the computer program is completed.

Review of the Application by the Minister of Research and Innovation

The Minister of Research and Innovation will review a completed application, together with the information furnished by the Applicant, to determine whether the OTEC program eligibility criteria have been met. Note that the information required to be furnished by the Applicant may include copies of documents and other information to enable the Minister of Research and Innovation to assess the application.

If the Minister of Research and Innovation is satisfied that the Applicant meets the OTEC program eligibility criteria for the taxation year, the Minister of Research and Innovation will issue a Certificate of Eligibility for that taxation year. The Minister of Research and Innovation may decide not to issue or may revoke the Certificate of Eligibility, in which case the decision of the Minister of Research and Innovation is final.

Application to the Minister of Revenue for a Tax Refund

The Minister of Revenue is responsible for receiving and administering applications for Tax refunds.

To apply under the OTEC program for a refund of Tax paid, an Applicant must submit the following items on or before the end of the third taxation year ending after the taxation year for which the Certificate of Eligibility was granted:

- an application in a form approved by the Minister of Revenue;
- the Certificate of Eligibility issued to the Applicant by the Minister of Research and Innovation to the Applicant for the taxation year;
- proof that will satisfy the Minister of Revenue that all a Tax payable by the Applicant for the taxation year has been paid; and
- any other information or records that the Minister of Revenue might request to determine if the Applicant is a qualifying corporation for the taxation year.

Qualifying Corporation Considerations

The following conditions should be satisfied respecting qualifying corporation matters:

- that the Applicant was incorporated between March 25, 2008 and March 24, 2012, and was not formed as a result of an amalgamation or merger;
- that the Applicant's income as computed for the purposes of section 3 of the *Income Tax Act (Canada)* was greater than zero for the taxation year under consideration, and that all or substantially all of its gross revenue was from one or more eligible commercialization businesses, and that all or substantially all amounts received or receivable by it on the disposition of capital property was from the disposition of capital property in the ordinary course of an eligible commercialization business;
- that if the Applicant was a member of a partnership or joint venture for any period of time during the taxation year or a previous taxation year, every other member of the partnership or joint venture was a qualifying institute throughout that period of time;
- that the Applicant has never been the beneficiary of a trust;
- that the Applicant has never operated all or part of a business that was previously operated by another corporation;
- that if the Applicant has ever operated all or part of a business that was previously operated by a person or entity that is not a corporation, the business was not operated by the person or entity for a period of more than 90 days before the applicant was incorporated;

- that the Applicant has claimed the maximum amount of all deductions and allowances to which it is entitled under the *Corporations Tax Act* or *Taxation Act, 2007* (Ontario) and *Income Tax Act (Canada)* in computing its income and taxable income for the taxation year and for each of its previous taxation years;
- that the Applicant has never been, at any time since it was incorporated, associated with another corporation within the meaning of section 256 of the *Income Tax Act* (Canada) if paragraphs 256 (1) (c), (d) and (e) of that Act were read without reference to “other than a specified class”;
- that the Applicant has never been, at any time since it was incorporated, related to another corporation within the meaning of section 251 of the *Income Tax Act* (Canada);
- that control of the Applicant has not been acquired directly or indirectly in any manner commencing March 25, 2012 and ending at the end of the Applicant’s 10th taxation year;
- that the Applicant has not, during the taxation year or a previous taxation year, sold all or substantially all of the property used in carrying on an eligible commercialization business.

Review of the Application by the Minister of Revenue

The Minister of Revenue will review the application to determine whether the Applicant qualifies for the Tax refund. The Minister of Revenue will need to be satisfied that:

- the Applicant has claimed the maximum amount of all deductions and allowances to which it is entitled under the Act and the *Income Tax Act* (Canada) in computing its income and taxable income for the taxation year and all previous taxation years;
- the Minister of Research and Innovation has not notified the Applicant that it is ineligible to receive the Certificate of Eligibility or that the Minister of Research and Innovation has not revoked such a Certificate;
- the Applicant is a qualifying corporation;
- the Applicant has not been associated with, or related to, any other corporations, other than a qualifying institute;
- the control of the Applicant has not been acquired during the period commencing March 25, 2012 and ending at the end of the Applicant’s tenth taxation year after incorporation;
- during the taxation year and previous taxation years, the Applicant did not sell all or substantially all of the property it used in carrying on an eligible commercialization business; and

- the Applicant has paid all Taxes payable for the taxation year.

If the Minister of Revenue is of the opinion that the criteria listed above have been satisfied, the Minister of Revenue may notify the Applicant and pay a Tax refund under the OTEC Program, without interest, to the Applicant. The amount of the Tax refund will be determined by the Minister of Revenue based upon the Applicant's most recent assessment of Tax payable for the taxation year for which the Certificate of Eligibility has been obtained.

If the Minister of Revenue is of the opinion that the Applicant is not eligible for a refund, the Minister of Revenue will send a notice of determination to the Applicant with the reasons for the determination.

The Minister of Revenue may subsequently make adjustments to the amount of the Tax refund if the amount of Tax payable or paid for the year changes. If the Minister of Revenue adjusts the amount of the Tax refund, or subsequently determines that the Applicant was not entitled to the Tax refund previously paid, it shall send a revised notice of determination to the Applicant.

If it is determined that the Applicant received the Tax refund to which it was not entitled, the Applicant must repay the amount to which it was not entitled, with interest commencing on the day that amount was paid to the Applicant and ending on the day it is repaid to the Minister of Revenue.

Comments or Questions about the OTEC Program

The Minister welcomes any comments on the OTEC Program and the legislation that governs the OTEC Program.

If you have questions about the OTEC Program, the application form or how to obtain a Certificate of Eligibility, see the OTEC Program Web site at www.ontario.ca/innovation or please contact the Ministry of Research and Innovation at:

Ministry of Research and Innovation
Outreach, Promotion and Business Development Branch
Research and Commercialization Division
18th Floor
56 Wellesley Street West
Toronto ON M7A 2E7

Tel: (416) 327-6629
Fax: (416) 326-9654
E-mail: otec_admin@ontario.ca

For information concerning incorporation in either a Provincial or a Federal Jurisdiction, contact either of the following.

Ministry of Government Services
Companies and Personal Properties Security Branch

Suite 200
393 University Avenue,
Toronto ON M5G 2M2
(416) 314-8880 or 1 800 361-3223

Companies and Personal Properties Security Branch Web site:
www.ontario.ca/en/services_for_business/STEL02_163189

Industry Canada

Corporations Canada
9th Floor
Jean Edmonds Towers South
365 Laurier Avenue West
Ottawa ON K1A 0C8
Tel: (416) 954-2714 (Toronto Office) or 1 866 333-5556

Corporations Canada Web site:
www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/Home

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