

5141

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to the qualified solar manufacturer facilities and operations credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 210 of the tax law is amended by adding a new
2 subdivision 12-H to read as follows:
3 12-H. QUALIFIED SOLAR MANUFACTURER FACILITIES AND OPERATIONS CREDIT.
4 (A) A TAXPAYER THAT IS PRINCIPALLY ENGAGED IN THE MANUFACTURING OF SOLAR
5 ENERGY EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAG-
6 GRAPH (B) OF THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX
7 IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM
8 OF THE AMOUNTS SPECIFIED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION
9 SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVISION. FOR THE
10 PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANU-
11 FACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE
12 ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH
13 ELECTRICITY. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT QUALI-
14 FIES FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETERMINED BY
15 THE COMMISSIONER AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF
16 THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.
17 (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE MORE THAN TWENTY FULL-TIME
18 EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF RESEARCH
19 AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE
20 HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS
21 THREE PERCENT DURING ITS TAXABLE YEAR.
22 (C) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER
23 CENTUM OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF
24 RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARA-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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GRAPH (B) OF SUBDIVISION TWELVE OF THIS SECTION THAT IS ACQUIRED BY THE TAXPAYER BY PURCHASE AS DEFINED IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH PERCENTAGE OF THE (I) COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND PRODUCTS,

(II) THE COSTS OR EXPENSES ASSOCIATED WITH QUALITY CONTROL OF THE RESEARCH AND DEVELOPMENT OR MANUFACTURING OPERATIONS,

(III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROCESSES,

(IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF MATERIALS AND PRODUCTS RESULTING FROM THE QUALIFIED MANUFACTURING ACTIVITIES OF AN ELIGIBLE TAXPAYER.

(V) THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

(D) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY THE TAXPAYER IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOWANCE FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

(E) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBDIVISION FOR FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY THIS SUBDIVISION TO A TAXPAYER EXCEED TWENTY-FIVE MILLION DOLLARS PER YEAR.

(F) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 2. Section 606 of the tax law is amended by adding a new subsection (tt) to read as follows:

(TT) QUALIFIED SOLAR MANUFACTURER FACILITIES AND OPERATIONS CREDIT.

(1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSISTING OF ONE OR MORE TAXPAYERS THAT IS PRINCIPALLY ENGAGED IN THE MANUFACTURING OF SOLAR

1 ENERGY EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARA-
2 GRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX
3 IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM
4 (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE
5 AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION
6 SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE
7 PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANU-
8 FACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE
9 ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH
10 ELECTRICITY. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT QUALI-
11 FIES FOR ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE
12 COMMISSIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF
13 THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

14 (2) AN ELIGIBLE ENTITY SHALL (I) HAVE MORE THAN TWENTY FULL-TIME
15 EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF RESEARCH
16 AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE
17 HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS
18 THREE PERCENT DURING ITS TAXABLE YEAR.

19 (3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER
20 CENTUM OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES
21 INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING
22 PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION
23 TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED BY PURCHASE AS DEFINED
24 IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE
25 DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS
26 PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH
27 PERCENTAGE OF THE (I) COST OR OTHER BASIS FOR FEDERAL INCOME TAX
28 PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND
29 PRODUCTS,

30 (II) THE COSTS OR EXPENSES ASSOCIATED WITH QUALITY CONTROL OF THE
31 RESEARCH AND DEVELOPMENT OR MANUFACTURING OPERATIONS,

32 (III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROC-
33 ESSES,

34 (IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF
35 MATERIALS AND PRODUCTS RESULTING FROM THE ACTIVITIES OF AN ELIGIBLE
36 TAXPAYER AS LONG AS SUCH ACTIVITIES FALL UNDER THE ACTIVITIES LISTED IN
37 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF
38 THE PUBLIC AUTHORITIES LAW.

39 (V) THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS
40 ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCU-
41 LATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

42 (4) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM
43 OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY
44 THE ENTITY IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE
45 TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES
46 ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS
47 ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT
48 DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING
49 ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVER-
50 TISING OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED
51 WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING
52 FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOW-
53 ANCE FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND
54 FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT
55 ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE
56 CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR

1 CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. THE COSTS,
2 EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED
3 UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER
4 CREDIT ALLOWED UNDER THIS ARTICLE.

5 (5) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBSECTION FOR
6 FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY
7 THIS SUBDIVISION TO A TAXPAYER EXCEED FIFTEEN MILLION DOLLARS PER YEAR.

8 (6) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY
9 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
10 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN
11 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
12 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

13 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
14 of the tax law is amended by adding a new clause (xxxiii) to read as
15 follows:

16 (XXXIII) CREDIT FOR	AMOUNT OF CREDIT UNDER
17 QUALIFIED SOLAR	SUBDIVISION TWELVE-H OF
18 MANUFACTURER FACILITIES	SECTION TWO HUNDRED TEN
19 AND OPERATIONS CREDIT	
20 UNDER SUBSECTION (TT)	

21 S 4. This act shall take effect immediately and shall apply to taxable
22 years commencing on or after January 1, 2013.