

5141--A

2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011

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Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the qualified solar and energy storage 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 AND ENERGY STORAGE MANUFACTURER FACILITIES AND  
4     OPERATIONS CREDIT. (A) A TAXPAYER THAT IS WHOLE OR PART OF AN ENTITY  
5     THAT SERVES AS THE PRINCIPAL OPERATOR OF A FACILITY PRIMARILY FUNCTION-  
6     ING TO FABRICATE SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT AND  
7     THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF THIS SUBDI-  
8     VISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-  
9     CLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPEC-  
10    IFIED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION ATTRIBUTABLE TO THE  
11    TAXPAYER SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVI-  
12    SION. FOR THE PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL  
13    MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED  
14    TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE  
15    FOR SUCH ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS  
16    AND DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY  
17    TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED  
18    FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY  
19    ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL,  
20    THERMAL OR OTHER DEMONSTRABLE MEANS SINGLY OR IN COMBINATION. THE  
21    DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIP-

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

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MENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETERMINED BY THE COMMISSIONER AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

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

(C) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER CENTUM OF THE ATTRIBUTABLE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES OF RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARAGRAPH (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) ATTRIBUTABLE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND PRODUCTS,

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

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

(IV) ATTRIBUTABLE 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 ATTRIBUTABLE EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND ATTRIBUTABLE 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 SUBDI-

VISION 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 (uu) to read as follows:

(UU) QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND OPERATIONS CREDIT. (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSISTING OF ONE OR MORE TAXPAYERS THAT SERVES AS THE PRINCIPAL OPERATOR OF A FACILITY PRIMARILY FUNCTIONING TO FABRICATE SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS AND DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL, THERMAL OR OTHER MEANS SINGLY OR IN COMBINATION. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE COMMISSIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

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

(3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER CENTUM OF THE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED 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 SIMILAR 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 ACTIVITIES OF AN ELIGIBLE TAXPAYER AS LONG AS SUCH ACTIVITIES FALL UNDER THE ACTIVITIES LISTED IN

1 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF  
2 THE PUBLIC AUTHORITIES LAW.

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

6 (4) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM  
7 OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY  
8 THE ENTITY IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE  
9 TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES  
10 ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS  
11 ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT  
12 DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING  
13 ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVER-  
14 TISING OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED  
15 WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING  
16 FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOW-  
17 ANCE FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND  
18 FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT  
19 ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE  
20 CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR  
21 CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. THE COSTS,  
22 EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED  
23 UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER  
24 CREDIT ALLOWED UNDER THIS ARTICLE.

25 (5) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBSECTION FOR  
26 FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY  
27 THIS SUBDIVISION TO A TAXPAYER EXCEED TWENTY-FIVE MILLION DOLLARS PER  
28 YEAR. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A  
29 NEW YORK S CORPORATION, THEN THE CAP IMPOSED BY THIS PARAGRAPH SHALL BE  
30 APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL  
31 THE PARTNERS, SHAREHOLDERS, OR OTHER MEMBERS OF EACH SUCH ENTITY IN THE  
32 TAXABLE YEAR DOES NOT EXCEED TWENTY-FIVE MILLION DOLLARS PER YEAR FOR UP  
33 TO FOUR CONSECUTIVE TAXABLE YEARS.

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

39 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
40 of the tax law is amended by adding a new clause (xxxiv) to read as  
41 follows:

42 (XXXIV) CREDIT FOR	AMOUNT OF CREDIT UNDER
43 QUALIFIED SOLAR AND ENERGY STORAGE	SUBDIVISION TWELVE-H OF
44 MANUFACTURER FACILITIES	SECTION TWO HUNDRED TEN
45 AND OPERATIONS CREDIT	
46 UNDER SUBSECTION (UU)	

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