

4138

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I N   S E N A T E

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Introduced by Sens. RANZENHOFER, ORTT -- 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 creation of a biotech-  
nology research and development investment tax credit

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

1     Section 1. The tax law is amended by adding a new section 24-b to read  
2     as follows:  
3     S 24-B. BIOSCIENCE AND MEDICAL TECHNOLOGY (BIO/MED) RESEARCH AND  
4     DEVELOPMENT TAX CREDIT. (A) DEFINITIONS. AS USED IN THIS SECTION, THE  
5     FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
6     (1) "QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS" MEANS QUALIFIED  
7     RESEARCH EXPENSES AND BASIC RESEARCH PAYMENTS AS DEFINED IN SECTIONS 41  
8     (B) AND (E) OF THE INTERNAL REVENUE CODE, EXCEPT IT DOES NOT INCLUDE  
9     EXPENSES INCURRED FOR QUALIFIED RESEARCH OR BASIC RESEARCH CONDUCTED  
10    OUTSIDE OF NEW YORK STATE, FOR PURPOSES OF DEVELOPING A PRODUCT OR PHAR-  
11    MACEUTICAL, INSTRUMENT, APPARATUS, MACHINE, CONTRIVANCE, IMPLANT OR  
12    OTHER SIMILAR OR RELATED ARTICLE, INCLUDING A COMPONENT PART OR ACCESSO-  
13    RY THAT ARE APPLICABLE TO THE PREVENTION, TREATMENT OR CURE OF A DISEASE  
14    OR CONDITION OF HUMAN BEINGS.  
15    (2) "QUALIFIED BIO/MED COMPANY" IS A CORPORATION, PARTNERSHIP, LIMITED  
16    PARTNERSHIP OR OTHER ENTITY WHICH IS ENGAGED IN THE PRODUCTION OF A  
17    PRODUCT OR PHARMACEUTICAL, INSTRUMENT, APPARATUS, MACHINE, CONTRIVANCE,  
18    IMPLANT OR OTHER SIMILAR OR RELATED ARTICLE, INCLUDING A COMPONENT PART  
19    OR ACCESSORY THAT ARE APPLICABLE TO THE PREVENTION, TREATMENT OR CURE OF  
20    A DISEASE OR CONDITION OF HUMAN BEINGS.  
21    (B) (1) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A QUALIFIED BIO/MED  
22    COMPANY, SOLE PROPRIETOR OR A MEMBER OF A PARTNERSHIP, AND WHICH IS  
23    SUBJECT TO TAX UNDER ARTICLES NINE-A OR TWENTY-TWO OF THIS CHAPTER,  
24    SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS

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

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REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS HEREIN-AFTER PROVIDED.

(2) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF FIFTEEN PERCENT AND THE QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS PAID OR INCURRED IN THE STATE. THE CREDIT SHALL BE ALLOWED FOR THE TAXABLE YEAR IN WHICH THE QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT ACTIVITY OCCURS. IF THE AMOUNT OF THE CREDIT IS AT LEAST ONE MILLION DOLLARS BUT LESS THAN FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED OVER A TWO YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH THE CREDIT MAY BE CLAIMED AND IN THE NEXT SUCCEEDING TAXABLE YEAR, WITH ONE-HALF OF THE AMOUNT OF CREDIT ALLOWED BEING CLAIMED IN EACH YEAR. IF THE AMOUNT OF THE CREDIT IS AT LEAST FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED OVER A THREE YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH THE CREDIT MAY BE CLAIMED AND IN THE NEXT TWO SUCCEEDING TAXABLE YEARS, WITH ONE-THIRD OF THE AMOUNT OF THE CREDIT ALLOWED BEING CLAIMED IN EACH YEAR.

(3) NO QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS USED BY A TAXPAYER EITHER AS THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION OR USED IN THE CALCULATION OF THE CREDIT PROVIDED FOR UNDER THIS SECTION SHALL BE USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THIS CHAPTER.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9-A: SECTION 210-B: SUBDIVISION 49.

(2) ARTICLE 22: SECTION 606: SUBSECTION (CCC).

(D) ALLOCATION OF CREDIT. (1) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SECTION, SUBDIVISION FORTY-NINE OF SECTION TWO HUNDRED TEN-B AND SUBSECTION (CCC) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY CALENDAR YEAR SHALL BE FIFTY MILLION DOLLARS IN TWO THOUSAND SIXTEEN, AND EACH SUCCEEDING YEAR UP TO AND INCLUDING TWO THOUSAND NINETEEN.

(2) FOR THE PERIOD TWO THOUSAND SIXTEEN THROUGH TWO THOUSAND NINETEEN, IN ADDITION TO THE AMOUNT OF CREDIT ESTABLISHED IN PARAGRAPH ONE OF THIS SUBDIVISION, A TAXPAYER SHALL BE ALLOWED A CREDIT EQUAL TO THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF FIVE PERCENT AND THE AMOUNT OF THE QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS BY A QUALIFIED BIO/MED COMPANY IN ONE OF THE COUNTIES SPECIFIED IN THIS PARAGRAPH. FOR PURPOSES OF THIS ADDITIONAL CREDIT, THE SERVICES MUST BE PERFORMED OR THE PERSONAL PROPERTY MUST BE INSTALLED IN ONE OR MORE OF THE FOLLOWING COUNTIES: ALBANY, ALLEGANY, BROOME, CATTARAUGUS, CAYUGA, CHAUTAUQUA, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, CORTLAND, DELAWARE, DUTCHESS, ERIE, ESSEX, FRANKLIN, FULTON, GENESEE, GREENE, HAMILTON, HERKIMER, JEFFERSON, LEWIS, LIVINGSTON, MADISON, MONROE, MONTGOMERY, NIAGARA, ONEIDA, ONONDAGA, ONTARIO, ORLEANS, OSWEGO, OTSEGO, RENSSELAER, SARATOGA, SCHENECTADY, SCHOHARIE, SCHUYLER, SENECA, ST. LAWRENCE, STEUBEN, SULLIVAN, TIOGA, TOMPKINS, ULSTER, WARREN, WASHINGTON, WAYNE, WYOMING, OR YATES. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED PURSUANT TO THE AUTHORITY OF THIS PARAGRAPH SHALL BE TEN MILLION DOLLARS EACH YEAR DURING THE PERIOD TWO THOUSAND SIXTEEN THROUGH TWO THOUSAND NINETEEN OF THE ANNUAL ALLOCATION MADE AVAILABLE TO THE PROGRAM PURSUANT TO THIS SUBDIVISION. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR UNDER THIS PARAGRAPH IN ANY YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS PARAGRAPH, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE NEXT YEAR. IF THE TOTAL AMOUNT OF ALLOCATED TAX CREDITS

1 APPLIED FOR UNDER THIS PARAGRAPH AT THE CONCLUSION OF ANY YEAR IS LESS  
2 THAN TEN MILLION DOLLARS, THE REMAINDER SHALL BE TREATED AS PART OF THE  
3 ANNUAL ALLOCATION MADE AVAILABLE TO THE PROGRAM PURSUANT TO SUBDIVISION  
4 (D) OF THIS SECTION. HOWEVER, IN NO EVENT MAY THE TOTAL OF THE CREDITS  
5 ALLOCATED UNDER THIS PARAGRAPH EXCEED TEN MILLION DOLLARS IN ANY YEAR  
6 DURING THE PERIOD TWO THOUSAND SIXTEEN THROUGH TWO THOUSAND NINETEEN.

7 S 2. Section 210-B of the tax law is amended by adding a new subdivi-  
8 sion 49 to read as follows:

9 49. BIO/MED RESEARCH AND DEVELOPMENT INVESTMENT CREDIT. A TAXPAYER  
10 SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION 24-B OF  
11 THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. IN NO EVENT SHALL  
12 THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCE  
13 THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARA-  
14 GRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE.  
15 HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY  
16 TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT OR IF THE TAXPAYER OTHERWISE  
17 PAYS TAX BASED ON THE FIXED DOLLAR MINIMUM AMOUNT, ANY AMOUNT OF CREDIT  
18 THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAY-  
19 MENT OF TAX TO BE CREDITED IN ACCORDANCE WITH THE PROVISIONS OF SECTION  
20 ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE  
21 PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF  
22 THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

23 S 3. Section 606 of the tax law is amended by adding a new subsection  
24 (ccc) to read as follows:

25 (CCC) BIO/MED RESEARCH AND DEVELOPMENT INVESTMENT CREDIT. A TAXPAYER  
26 SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION 24-B OF  
27 THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. IF THE AMOUNT OF  
28 THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL  
29 EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS  
30 AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE  
31 PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED,  
32 HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

33 S 4. This act shall take effect immediately.