

STATE OF NEW YORK

4420

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. SCHIMMINGER, JAFFEE, MAGNARELLI, BLAKE, STIRPE, RIVERA, ENGLEBRIGHT, SKARTADOS -- Multi-Sponsored by -- M. of A. ABBATE, COOK, SOLAGES, THIELE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the creation of a biotechnology research and development investment tax credit

The People of the State of New York, represented in Senate and Assembly, 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 § 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,

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

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1 shall be allowed a credit against such tax, pursuant to the provisions
2 referenced in subdivision (d) of this section, to be computed as herein-
3 after provided.

4 (2) The amount of the credit shall be the product (or pro rata share
5 of the product, in the case of a member of a partnership) of fifteen
6 percent and the qualified Bio/Med research and development costs paid or
7 incurred in the state. The credit shall be allowed for the taxable year
8 in which the qualified Bio/Med research and development activity occurs.
9 If the amount of the credit is at least one million dollars but less
10 than five million dollars, the credit shall be claimed over a two year
11 period beginning in the first taxable year in which the credit may be
12 claimed and in the next succeeding taxable year, with one-half of the
13 amount of credit allowed being claimed in each year. If the amount of
14 the credit is at least five million dollars, the credit shall be claimed
15 over a three year period beginning in the first taxable year in which
16 the credit may be claimed and in the next two succeeding taxable years,
17 with one-third of the amount of the credit allowed being claimed in each
18 year.

19 (3) No qualified Bio/Med research and development costs used by a
20 taxpayer either as the basis for the allowance of the credit provided
21 for under this section or used in the calculation of the credit provided
22 for under this section shall be used by such taxpayer to claim any other
23 credit allowed pursuant to this chapter.

24 (c) Cross-references. For application of the credit provided for in
25 this section, see the following provisions of this chapter:

26 (1) article 9-A: section 210-B: subdivision 49.

27 (2) article 22: section 606: subsection (ccc).

28 (d) Allocation of credit. (1) The aggregate amount of tax credits
29 allowed under this section, subdivision forty-nine of section two
30 hundred ten-B and subsection (ccc) of section six hundred six of this
31 chapter in any calendar year shall be fifty million dollars in two thou-
32 sand seventeen, and each succeeding year up to and including two thou-
33 sand twenty.

34 (2) For the period two thousand eighteen through two thousand twenty-
35 one, in addition to the amount of credit established in paragraph one of
36 this subdivision, a taxpayer shall be allowed a credit equal to the
37 product (or pro rata share of the product, in the case of a member of a
38 partnership) of five percent and the amount of the qualified Bio/Med
39 research and development costs by a qualified Bio/Med company in one of
40 the counties specified in this paragraph. For purposes of this addi-
41 tional credit, the services must be performed or the personal property
42 must be installed in one or more of the following counties: Albany,
43 Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango,
44 Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin,
45 Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Living-
46 ston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario,
47 Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie,
48 Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins,
49 Ulster, Warren, Washington, Wayne, Wyoming, or Yates. The aggregate
50 amount of tax credits allowed pursuant to the authority of this para-
51 graph shall be ten million dollars each year during the period two thou-
52 sand eighteen through two thousand twenty-one of the annual allocation
53 made available to the program pursuant to this subdivision. If the total
54 amount of allocated credits applied for under this paragraph in any year
55 exceeds the aggregate amount of tax credits allowed for such year under
56 this paragraph, such excess shall be treated as having been applied for

1 on the first day of the next year. If the total amount of allocated tax
2 credits applied for under this paragraph at the conclusion of any year
3 is less than ten million dollars, the remainder shall be treated as part
4 of the annual allocation made available to the program pursuant to
5 subdivision (d) of this section. However, in no event may the total of
6 the credits allocated under this paragraph exceed ten million dollars in
7 any year during the period two thousand eighteen through two thousand
8 twenty-one.

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

11 49. Bio/Med research and development investment credit. A taxpayer
12 shall be allowed a credit, to be computed as provided in section twen-
13 ty-four-b of this chapter, against the tax imposed by this article. In
14 no event shall the credit allowed under this subdivision for any taxable
15 year reduce the tax due for such year to less than the amount prescribed
16 in paragraph (d) of subdivision one of section two hundred ten of this
17 article. However, if the amount of credit allowed under this subdivision
18 for any taxable year reduces the tax to such amount or if the taxpayer
19 otherwise pays tax based on the fixed dollar minimum amount, any amount
20 of credit thus not deductible in such taxable year shall be treated as
21 an overpayment of tax to be credited in accordance with the provisions
22 of section one thousand eighty-six of this chapter. Provided, however,
23 the provisions of subsection (c) of section one thousand eighty-eight of
24 this chapter notwithstanding, no interest shall be paid thereon.

25 § 3. Section 606 of the tax law is amended by adding a new subsection
26 (ccc) to read as follows:

27 (ccc) Bio/Med research and development investment credit. A taxpayer
28 shall be allowed a credit, to be computed as provided in section twen-
29 ty-four-b of this chapter, against the tax imposed by this article. If
30 the amount of the credit allowed under this subsection for any taxable
31 year shall exceed the taxpayer's tax for such year, the excess shall be
32 treated as an overpayment of tax to be credited or refunded in accord-
33 ance with the provisions of section six hundred eighty-six of this arti-
34 cle, provided, however, that no interest shall be paid thereon.

35 § 4. This act shall take effect immediately.