S T A T E   O F   N E W   Y O R K

1892--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. MORELLE, PHEFFER, CARROZZA, CANESTRARI, P. RIVERA, HOYT, ALESSI -- Multi-Sponsored by -- M. of A. BENJAMIN, BOYLAND, CLARK, DESTITO, GALEF, KELLNER, KOON, MAGEE, SCARBOROUGH, SCHIMMINGER, SWEENEY -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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 emerging technology company capital tax credit, to repeal certain provisions of such law relating thereto; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative intent. The legislature hereby finds and declares that New York state's future economic prosperity is linked to the accelerated growth of companies in emerging technology fields. Entrepreneurs and companies just starting out dominate these rapidly growing segments of the economy. They are key players in translating scientific and technological research into commercial products with significant market and job-creation potential. However, entrepreneurs and start-up companies require large amounts of outside seed capital to prove a new concept and to fuel their growth.

The legislature further finds that there is not an adequate supply of seed funding for these entrepreneurial firms. Seed funds account for less than two percent of all venture capital investments. The largest source of seed funds is from angel investors, wealthy individuals willing to invest in new companies and new ideas, yet there has been a recent decline in the percentage of angel investments going to seed and start-up deals. Therefore, in order to enable entrepreneurs and young companies to flourish in New York it is necessary to increase the incen-

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

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tives available to angel investors and venture capitalists who provide seed and early-stage capital.

S 2. Subdivision 12-F of section 210 of the tax law is REPEALED and a new subdivision 12-F is added to read as follows:

12-F. QUALIFIED EMERGING TECHNOLOGY COMPANY CAPITAL TAX CREDIT. (1) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "QUALIFIED EMERGING TECHNOLOGY COMPANY" IS A PRIVATE COMPANY AS DEFINED IN SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW.

(B) "QUALIFIED INVESTMENT" IS THE INVESTMENT OF MONEY IN A QUALIFIED EMERGING TECHNOLOGY COMPANY IN EXCHANGE FOR ORIGINAL ISSUE CAPITAL STOCK OR OTHER OWNERSHIP INTEREST, PROVIDED THAT REPAYMENT OF THE INVESTMENT IS DEPENDENT ON THE SUCCESS OF THE BUSINESS OPERATIONS AND IS NOT SECURED BY A LIEN ON BUSINESS ASSETS OR A PERSONAL GUARANTY OF ANY PRINCIPAL OWNER, AND PROVIDED FURTHER THAT SUCH INVESTMENT IS NOT MADE BY OR ON BEHALF OF AN OWNER OF THE BUSINESS, INCLUDING, BUT NOT LIMITED TO, A STOCKHOLDER, PARTNER OR SOLE PROPRIETOR, OR ANY RELATED PERSON AS DEFINED IN SECTION 465(B)(3)(C) OF THE INTERNAL REVENUE CODE.

(C) "QUALIFIED SEED INVESTMENT" IS A QUALIFIED INVESTMENT IN A START-UP COMPANY OR A COMPANY THAT MAY NOT YET HAVE FULLY ESTABLISHED COMMERCIAL OPERATIONS TO ENABLE SUCH COMPANY TO CONDUCT RESEARCH TO PROVE A CONCEPT.

(D) "QUALIFIED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPITAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A VENTURE CAPITAL FUND, PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE QUALIFIED INVESTMENTS.

(E) "QUALIFIED SEED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPITAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A SEED CAPITAL FUND, AS DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE SEED CAPITAL INVESTMENTS, AS DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION.

(2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN SUBPARAGRAPHS (A), (B), (C) AND (D) OF THIS PARAGRAPH.

(A) TWENTY PERCENT OF A QUALIFIED INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(B) FORTY PERCENT OF A QUALIFIED SEED INVESTMENT, PROVIDED THAT TWENTY PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND TEN PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS SIX HUNDRED THOUSAND DOLLARS.

(C) TWENTY PERCENT OF A QUALIFIED FUND INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(D) TWENTY PERCENT OF A QUALIFIED SEED FUND INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED SEED FUND INVESTMENT CAN BE TAKEN AS CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED SEED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(3) IN NO EVENT SHALL THE CREDIT AND CARRYOVER OF SUCH CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR, IN THE AGGREGATE, 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 OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, OR IF ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF THE FINAL SENTENCE OF THIS PARAGRAPH, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAX FOR SUCH YEAR OR YEARS. IN ADDITION, THE AMOUNT OF SUCH CREDIT, AND CARRYOVERS OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE MAY NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER SECTION TWO HUNDRED NINE OF THIS ARTICLE COMPUTED WITHOUT REGARD TO ANY CREDIT PROVIDED FOR BY THIS SECTION.

S 3. Paragraph 1 of subsection (r) of section 606 of the tax law is REPEALED and a new paragraph 1 is added to read as follows:

(1) FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "QUALIFIED EMERGING TECHNOLOGY COMPANY" IS A PRIVATE COMPANY AS DEFINED IN SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW.

(B) "QUALIFIED INVESTMENT" IS THE INVESTMENT OF MONEY IN A QUALIFIED EMERGING TECHNOLOGY COMPANY IN EXCHANGE FOR ORIGINAL ISSUE CAPITAL STOCK OR OTHER OWNERSHIP INTEREST, PROVIDED THAT REPAYMENT OF THE INVESTMENT IS DEPENDENT ON THE SUCCESS OF THE BUSINESS OPERATIONS AND IS NOT SECURED BY A LIEN ON BUSINESS ASSETS OR A PERSONAL GUARANTY OF ANY PRINCIPAL OWNER, AND PROVIDED FURTHER THAT SUCH INVESTMENT IS NOT MADE BY OR ON BEHALF OF AN OWNER OF THE BUSINESS, INCLUDING, BUT NOT LIMITED TO, A STOCKHOLDER, PARTNER OR SOLE PROPRIETOR, OR ANY RELATED PERSON AS DEFINED IN SECTION 465 (B)(3)(C) OF THE INTERNAL REVENUE CODE.

(C) "QUALIFIED SEED INVESTMENT" IS A QUALIFIED INVESTMENT IN A START-UP COMPANY OR A COMPANY THAT MAY NOT YET HAVE FULLY ESTABLISHED COMMERCIAL OPERATIONS TO ENABLE SUCH COMPANY TO CONDUCT RESEARCH TO PROVE A CONCEPT.

(D) "QUALIFIED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPITAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A VENTURE CAPITAL FUND, PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE QUALIFIED INVESTMENTS.

(E) "QUALIFIED SEED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPITAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A SEED CAPITAL FUND, AS DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE SEED CAPITAL INVESTMENTS, AS DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION.

S 4. Paragraph 3 of subsection (r) of section 606 of the tax law is REPEALED, paragraph 2 of subsection (r), as added by section 2 of part I of chapter 407 of the laws of 1999, is renumbered paragraph 3 and amended to read as follows:

(3) (A) If the amount of the credit and carryovers of such credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of the tax imposed under section six hundred one computed without regard to any credit provided for by this section.

(B) In the case of a husband or wife who is required to file a separate return, the limitations provided for in [subparagraph (c)] SUBPARAGRAPHS (A), (C) AND (D) of paragraph [one] TWO of this subsection shall be [seventy-five] ONE HUNDRED FIFTY thousand dollars in lieu of [one hundred fifty] THREE HUNDRED thousand dollars, and [one hundred fifty] THE LIMITATIONS PROVIDED FOR IN SUBPARAGRAPH (B) OF PARAGRAPH TWO OF THIS SUBSECTION SHALL BE THREE HUNDRED thousand dollars in lieu of [three] SIX hundred thousand dollars, unless the spouse of the taxpayer has no credit allowable under this subsection for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(C) In the case of an estate or trust, the limitations provided for in paragraph [one] TWO of this subsection shall be reduced to an amount which bears the same ratio to [one hundred fifty] THREE HUNDRED thousand dollars and an amount which bears the same ratio to [three] SIX hundred thousand dollars as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

S 5. Subsection (r) of section 606 of the tax law is amended by adding a new paragraph 2 to read as follows:

(2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN SUBPARAGRAPHS (A), (B), (C) AND (D) OF THIS PARAGRAPH.

(A) TWENTY PERCENT OF A QUALIFIED INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(B) FORTY PERCENT OF A QUALIFIED SEED INVESTMENT, PROVIDED THAT TWENTY PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND TEN PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS SIX HUNDRED THOUSAND DOLLARS.

(C) TWENTY PERCENT OF A QUALIFIED FUND INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(D) TWENTY PERCENT OF A QUALIFIED SEED FUND INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED SEED FUND INVESTMENT CAN BE TAKEN AS CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED SEED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

S 6. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2010 and shall remain in effect until December 31, 2015, when upon such date the provisions of this act shall expire and be deemed repealed.