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

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2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. KOLB, BARCLAY, FINCH, TOWNSEND, OAKS, HAWLEY, GIGLIO, McKEVITT, ERRIGO -- Multi-Sponsored by -- M. of A. BACALLES, BUTLER, CALHOUN, CORWIN, CROUCH, P. LOPEZ, O'MARA, QUINN, TOBACCO, WALKER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing a manufacturing wage credit

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

Section 1. The tax law is amended by adding a new section 30 to read as follows:

S 30. MANUFACTURING WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS AN INDUSTRIAL OR MANUFACTURING BUSINESS (IMB), OR WHICH IS A SOLE PROPRIETOR OF AN IMB OR A MEMBER OF A PARTNERSHIP WHICH IS AN IMB, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS HEREINAFTER PROVIDED.

(B) DEFINITIONS.

(1) THE TERM "INDUSTRIAL OR MANUFACTURING BUSINESS" SHALL MEAN A BUSINESS WHICH DURING THE TAXABLE YEAR IS PRINCIPALLY ENGAGED IN ACTIVITIES DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(2) THE TERM "EMPLOYMENT INCREASE YEAR" SHALL MEAN THE TAXABLE YEAR IN WHICH THE INCREASE IN EMPLOYMENT FOR WHICH THIS CREDIT IS CLAIMED OCCURS.

(3) THE TERM "BASE YEAR" SHALL MEAN THE TAXABLE YEAR IMMEDIATELY PRECEDING THE EMPLOYMENT INCREASE YEAR.

(4) THE TERM "EMPLOYMENT INCREASE LEVEL" SHALL MEAN THE DIFFERENCE BETWEEN THE EMPLOYMENT NUMBER IN THE EMPLOYMENT INCREASE YEAR AND THE EMPLOYMENT NUMBER IN THE BASE YEAR. IF EMPLOYMENT INCREASE LEVEL IS LESS THAN ZERO IN ANY TAXABLE YEAR, IT SHALL BE ASSUMED TO BE ZERO.

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

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(5) THE TERM "EMPLOYMENT NUMBER" SHALL MEAN THE AVERAGE NUMBER OF INDIVIDUALS, EXCLUDING GENERAL EXECUTIVE OFFICERS (IN THE CASE OF A CORPORATION), EMPLOYED FULL TIME BY THE TAXPAYER FOR AT LEAST ONE-HALF OF THE TAXABLE YEAR. SUCH NUMBER SHALL BE COMPUTED BY DETERMINING THE NUMBER OF SUCH INDIVIDUALS EMPLOYED BY THE TAXPAYER ON THE THIRTY-FIRST DAY OF MARCH, THE THIRTIETH DAY OF JUNE, THE THIRTIETH DAY OF SEPTEMBER AND THE THIRTY-FIRST DAY OF DECEMBER DURING THE APPLICABLE TAXABLE YEAR, ADDING TOGETHER THE NUMBER OF SUCH INDIVIDUALS DETERMINED TO BE SO EMPLOYED ON EACH OF SUCH DATES AND DIVIDING THE SUM SO OBTAINED BY THE NUMBER OF SUCH DATES OCCURRING WITHIN SUCH APPLICABLE TAXABLE YEAR. SUCH NUMBER SHALL NOT INCLUDE INDIVIDUALS EMPLOYED WITHIN THE IMMEDIATELY PRECEDING SIXTY MONTHS BY A RELATED PERSON TO THE TAXPAYER, AS SUCH TERM "RELATED PERSON" IS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE.

(6) THE TERM "TOTAL WAGES" SHALL MEAN THE TOTAL SALARIES AND WAGES PAID TO EMPLOYEES INCLUDED IN THE CALCULATION OF THE EMPLOYMENT NUMBER IN THE EMPLOYMENT INCREASE YEAR.

(7) THE TERM "AVERAGE WAGES" SHALL MEAN TOTAL WAGES DIVIDED BY THE EMPLOYMENT NUMBER IN THE EMPLOYMENT INCREASE YEAR.

(C) APPLICATION OF THE CREDIT.

(1) THE AMOUNT OF CREDIT SHALL EQUAL THE PRODUCT OF TWO AND ONE-HALF PERCENT OF THE AVERAGE WAGES AND THE EMPLOYMENT INCREASE LEVEL.

(2) LENGTH OF CREDIT. THE CREDIT MAY BE ALLOWED IN THE EMPLOYMENT INCREASE YEAR AND THE FOUR TAXABLE YEARS IMMEDIATELY FOLLOWING THE EMPLOYMENT INCREASE YEAR, PROVIDED THAT IF THE EMPLOYMENT NUMBER IN ANY TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED IS LESS THAN THE EMPLOYMENT NUMBER IN THE EMPLOYMENT INCREASE YEAR, THE AMOUNT OF CREDIT MUST BE RECALCULATED BY SUBSTITUTING THE LOWER EMPLOYMENT NUMBER IN THE CURRENT TAXABLE YEAR FOR THE EMPLOYMENT NUMBER IN THE EMPLOYMENT INCREASE YEAR FOR THE PURPOSE OF CALCULATING THE EMPLOYMENT INCREASE LEVEL AND THIS LOWER EMPLOYMENT NUMBER SHALL BE DEEMED TO BE THE EMPLOYMENT NUMBER FOR THE EMPLOYMENT INCREASE YEAR FOR ANY FUTURE APPLICATION OF THIS CREDIT.

(D) 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: SUBDIVISION 41.

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

S 2. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. MANUFACTURING WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-NINE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. 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 THUS 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 ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

With respect to the following credit under this section:	The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is:
(I) Investment tax credit under subsection (a)	Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten
(II) Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B of section two hundred ten
(III) Empire zone wage tax credit under subsection (k)	Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six
(IV) Empire zone capital tax credit under subsection (l)	Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six
(V) Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
(VI) Credit for employment of persons with disabilities under subsection (o)	Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six
(VII) Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten

(VIII) Empire zone employment incentive credit under subsection (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
(IX) Alternative fuels credit under subsection (p)	Cost under subdivision twenty-four of section two hundred ten
(X) Qualified emerging technology company employment credit under subsection (q)	Applicable credit base under subdivision twelve-E of section two hundred ten
(XI) Qualified emerging technology company capital tax credit under subsection (r)	Qualified investments under subdivision twelve-F of section two hundred ten
(XII) Credit for purchase of an automated external defibrillator under subsection (s)	Cost of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six
(XIII) Low-income housing credit under subsection (x)	Credit amount under subdivision thirty of section two hundred ten or subsection (l) of section fourteen hundred fifty-six
(XIV) Credit for transportation improvement contributions under subsection (z)	Amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six
(XV) QEZE credit for real property taxes under subsection (bb)	Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six
(XVI) QEZE tax reduction credit under subsection (cc)	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen

(XVII) Green building credit under subsection (y)	Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six
(XVIII) Credit for long-term care insurance premiums under subsection (aa)	Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of section fourteen hundred fifty-six
(XIX) Brownfield redevelopment credit under subsection (dd)	Amount of credit under subdivision thirty-three of section two hundred ten or subsection (q) of section fourteen hundred fifty-six
(XX) Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)	Amount of credit under subdivision thirty-four of section two hundred ten or subsection (r) of section fourteen hundred fifty-six
(XXI) Environmental remediation insurance credit under subsection (ff)	Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six
(XXII) Empire state film production credit under subsection (gg)	Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten
(XXIII) Qualified emerging technology company facilities, operations and training credit under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
(XXIV) Security training tax credit under subsection (ii)	Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
(XXV) Credit for qualified fuel cell electric generating equipment expenditures under subsection (g-2)	Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of

	section fourteen hundred fifty-six
(XXVI) Empire state commercial production credit under subsection (jj)	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of section two hundred ten
(XXVII) Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision thirty-eight of section two hundred ten
(XXVIII) Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision thirty-nine of section two hundred ten
(XXIX) Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision forty of [subsection] SECTION two hundred ten
(XXX) Credit for companies who provide transportation to individuals with disabilities under subsection (oo)	Amount of credit under subdivision forty of section two hundred ten
(XXXI) MANUFACTURING WAGE CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF MANUFACTURING WAGE CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

S 4. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) MANUFACTURING WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-NINE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

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

S 5. This act shall take effect immediately and shall apply to taxable years commencing on and after the first of January next succeeding the date on which it shall have become a law; provided, however that the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to individuals with disabilities under subsection (oo) of section 606 of the tax law contained in section three of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, as amended and section 5 of chapter 522 of the laws of 2006, as amended, respectively; provided, however that effective immediately, the addi-

tion, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed by the department of taxation and finance and the department of health on or before such effective date.