

2818

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. SCHIMMINGER, TOWNS, HOYT, MAGNARELLI -- Multi-Sponsored by -- M. of A. DeMONTE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing for direct private assistance to emerging technology companies through the trading of their existing but unused research and development credits and their existing but unused net operating loss deductions to existing corporations and partnerships in return for private assistance

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Small New York Based High-Technology Business Investment Tax Credit
3 Act".
4 S 2. The tax law is amended by adding a new section 212 to read as
5 follows:
6 S 212. CORPORATION BUSINESS TAX BENEFIT CERTIFICATE TRANSFER PROGRAM.
7 1. (A) THE DEPARTMENT SHALL ESTABLISH A CORPORATION BUSINESS TAX BENEFIT
8 CERTIFICATE TRANSFER PROGRAM TO ALLOW NEW OR EXPANDING EMERGING TECHNOLOGY
9 AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING UNUSED AMOUNTS OF
10 RESEARCH AND DEVELOPMENT TAX CREDITS OTHERWISE ALLOWABLE PURSUANT TO
11 SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO
12 HUNDRED TEN OF THIS ARTICLE, WHICH CANNOT BE APPLIED FOR THE CREDIT'S
13 TAX YEAR, AND UNUSED NET OPERATING LOSS CARRYOVERS PURSUANT TO PARAGRAPH
14 (F) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE TO
15 SURRENDER THOSE TAX BENEFITS FOR USE BY OTHER CORPORATIONS ESTABLISHED
16 UNDER THE BUSINESS CORPORATION LAW AND SUBJECT TO THE PROVISIONS OF THIS
17 ARTICLE IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE PROVIDED
18 THOSE TAXPAYERS OR EXPANDING EMERGING TECHNOLOGY AND BIOTECHNOLOGY
19 COMPANIES. SUCH TAXPAYERS SHALL BE PROVIDED WITH A CORPORATION BUSINESS
20 TAX BENEFIT CERTIFICATE TO BE DEVELOPED BY THE COMMISSIONER.

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

LBD03951-01-9

1 (B) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF ECONOMIC
2 DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICATIONS BY NEW OR EXPANDING
3 EMERGING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING
4 UNUSED BUT OTHERWISE ALLOWABLE CARRYOVERS OF RESEARCH AND DEVELOPMENT
5 TAX CREDITS AND OTHERWISE ALLOWABLE NET OPERATING LOSS CARRYOVERS PURSU-
6 ANT TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF
7 SECTION TWO HUNDRED TEN OF THIS ARTICLE AND PARAGRAPH (F) OF SUBDIVISION
8 NINE OF SECTION TWO HUNDRED EIGHT, RESPECTIVELY, TO SURRENDER THOSE TAX
9 BENEFITS IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE MADE TO A
10 CORPORATION FILING PURSUANT TO THIS ARTICLE, WHICH HAS OBTAINED A CORPO-
11 RATION BUSINESS TAX BENEFIT CERTIFICATE IN AN AMOUNT EQUAL TO AT LEAST
12 SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE SURRENDERED TAX BENEFITS.

13 (C) THE COMMISSIONER SHALL CALCULATE THE VALUE OF THE NET OPERATING
14 LOSS CARRYOVER FOR PURPOSES OF THE BENEFIT CERTIFICATE EQUAL TO THE
15 AMOUNT OF THE CARRYOVER TIMES THE APPLICABLE BUSINESS ALLOCATION
16 PERCENTAGE AND TAX RATE OF THE EMERGING TECHNOLOGY OR BIOTECHNOLOGY
17 COMPANY.

18 (D) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF ECONOMIC
19 DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICATIONS BY TAXPAYERS PURSUANT
20 TO THE PROVISIONS OF THIS ARTICLE TO ACQUIRE SURRENDERED TAX BENEFITS
21 APPROVED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, WHICH SHALL BE
22 ISSUED IN THE FORM OF CORPORATION BUSINESS TAX BENEFIT TRANSFER CERTIF-
23 ICATES, IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE MADE BY THE
24 TAXPAYER IN AN AMOUNT EQUAL TO AT LEAST SEVENTY-FIVE PERCENT OF THE
25 AMOUNT OF THE SURRENDERED TAX BENEFIT OF AN EMERGING TECHNOLOGY OR
26 BIOTECHNOLOGY COMPANY IN THE STATE. THE PRIVATE FINANCIAL ASSISTANCE
27 SHALL ASSIST IN FUNDING EXPENSES INCURRED IN CONNECTION WITH THE OPERA-
28 TION OF A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY
29 IN THE STATE, INCLUDING BUT NOT LIMITED TO THE EXPENSES OF FIXED ASSETS,
30 SUCH AS THE CONSTRUCTION AND ACQUISITION AND DEVELOPMENT OF REAL ESTATE,
31 MATERIALS, START-UP, TENANT FIT-OUT, WORKING CAPITAL, SALARIES,
32 RESEARCH, AND DEVELOPMENT EXPENDITURES.

33 (E) THE COMMISSIONER SHALL COORDINATE THE APPLICATIONS, IN CONJUNCTION
34 WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT, FOR SURRENDER AND ACQUI-
35 SITION OF UNUSED BUT OTHERWISE ALLOWABLE TAX BENEFITS PURSUANT TO THIS
36 SECTION IN A MANNER THAT CAN BEST STIMULATE AND ENCOURAGE THE EXTENSION
37 OF PRIVATE FINANCIAL ASSISTANCE TO NEW AND EXPANDING EMERGING TECHNOLOGY
38 AND BIOTECHNOLOGY COMPANIES IN THIS STATE INTO A WRITTEN AGREEMENT WITH
39 SUCH COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE PRIVATE FINAN-
40 CIAL ASSISTANCE MADE IN EXCHANGE FOR THE CERTIFICATE. THE WRITTEN AGREE-
41 MENT MAY CONTAIN TERMS CONCERNING THE MAINTENANCE BY THE NEW OR EXPAND-
42 ING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY OF A HEADQUARTERS OR A
43 BASE OF OPERATION IN THIS STATE.

44 2. (A) A TAXPAYER THAT HAS ACQUIRED A CORPORATION BUSINESS TAX BENEFIT
45 CERTIFICATE PURSUANT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVI-
46 SION THAT INCLUDES THE RIGHT TO A NET OPERATING LOSS CARRYOVER DEDUCTION
47 SHALL ATTACH THAT CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO
48 FILE AND SHALL OTHERWISE APPLY THE NET OPERATING LOSS CARRYOVER
49 DEDUCTION AS EVIDENCED BY THE CERTIFICATE ACCORDING TO THE PROVISIONS OF
50 PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION AND ANY RULES OR REGU-
51 LATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE PROVISIONS OF THIS
52 SECTION.

53 (B) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY
54 THAT HAS SURRENDERED AN UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO
55 THE PROVISIONS OF PARAGRAPH (F) OF SUBDIVISION NINE OF SECTION TWO
56 HUNDRED EIGHT OF THIS ARTICLE SHALL NOT BE ALLOWED A NET OPERATING LOSS

1 CARRYOVER DEDUCTION BASED UPON THE RIGHT TO SUCH A DEDUCTION, AS
2 EVIDENCED BY SUCH CORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND
3 SHALL ATTACH A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS
4 REQUIRED TO FILE.

5 3. (A) A TAXPAYER THAT HAS ACQUIRED A CORPORATION BUSINESS TAX BENEFIT
6 CERTIFICATE PURSUANT TO SUBDIVISION ONE OF THIS SECTION THAT INCLUDES
7 THE RIGHT TO A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER PURSUANT TO
8 SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO
9 HUNDRED TEN OF THIS ARTICLE SHALL ATTACH THAT CERTIFICATE TO ANY RETURN
10 THE TAXPAYER IS REQUIRED TO FILE AND SHALL OTHERWISE APPLY THE CREDIT
11 CARRYOVER, AS EVIDENCED BY THE CERTIFICATE, ACCORDING TO THE PROVISIONS
12 OF PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION AND ANY RULES OR
13 REGULATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE PROVISIONS OF
14 THIS SECTION.

15 (B) A NEW OR EXPANDING TECHNOLOGY OR BIOTECHNOLOGY COMPANY THAT HAS
16 SURRENDERED AN UNUSED RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER
17 SHALL NOT BE ALLOWED A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER
18 BASED UPON THE RIGHT TO SUCH A CREDIT CARRYOVER, AS EVIDENCED BY THE
19 CORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND SHALL ATTACH A COPY OF
20 THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE.

21 4. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE
22 FOLLOWING MEANINGS:

23 (A) "ADVANCED COMPUTING" MEANS A TECHNOLOGY USED IN THE DESIGNING AND
24 DEVELOPING OF COMPUTING HARDWARE AND SOFTWARE, INCLUDING INNOVATIONS IN
25 DESIGNING THE FULL SPECTRUM OF HARDWARE FROM HAND-HELD CALCULATORS TO
26 SUPER COMPUTERS, AND PERIPHERAL EQUIPMENT.

27 (B) "ADVANCED MATERIALS" MEANS MATERIALS WITH ENGINEERED PROPERTIES
28 CREATED THROUGH THE DEVELOPMENT OF SPECIALIZED PROCESSING AND SYNTHESIS
29 TECHNOLOGY, INCLUDING CERAMICS, HIGH VALUE-ADDED METALS, ELECTRONIC
30 MATERIALS, COMPOSITES, POLYMERS, AND BIOMATERIALS.

31 (C) "BIOTECHNOLOGY" MEANS THE CONTINUALLY EXPANDING BODY OF FUNDAMEN-
32 TAL KNOWLEDGE ABOUT THE FUNCTION OF BIOLOGICAL SYSTEMS FROM THE MACRO
33 LEVEL TO THE MOLECULAR AND SUBATOMIC LEVELS, AS WELL AS NOVEL PRODUCTS,
34 SERVICES, TECHNOLOGIES, AND SUB-TECHNOLOGIES DEVELOPED AS A RESULT OF
35 INSIGHTS GAINED FROM RESEARCH ADVANCES WHICH ADD TO THAT BODY OF FUNDA-
36 MENTAL KNOWLEDGE.

37 (D) "CONTROL", WITH RESPECT TO A CORPORATION, MEANS OWNERSHIP, DIRECT-
38 LY OR INDIRECTLY, OF STOCK POSSESSING EIGHTY PERCENT OR MORE OF THE
39 TOTAL COMBINED VOTING POWER OF ALL CLASSES OF THE STOCK OF THE CORPO-
40 RATION ENTITLED TO VOTE; AND "CONTROL", WITH RESPECT TO A TRUST, MEANS
41 OWNERSHIP, DIRECTLY OR INDIRECTLY, OF EIGHTY PERCENT OR MORE OF THE
42 BENEFICIAL INTEREST IN THE PRINCIPAL OR INCOME OF THE TRUST. THE OWNER-
43 SHIP OF STOCK IN A CORPORATION, OF A CAPITAL OR PROFITS INTEREST IN A
44 PARTNERSHIP OR ASSOCIATION, OR OF A BENEFICIAL INTEREST IN A TRUST SHALL
45 BE DETERMINED IN ACCORDANCE WITH THE RULES FOR CONSTRUCTIVE OWNERSHIP OF
46 STOCK PROVIDED IN SUBSECTION (C) OF SECTION 267 OF THE FEDERAL INTERNAL
47 REVENUE CODE OF 1986, 26 U.S.C. S267, OTHER THAN PARAGRAPH (3) OF
48 SUBSECTION (C) OF SUCH SECTION.

49 (E) "CONTROLLED GROUP" MEANS ONE OR MORE CHAINS OF CORPORATIONS
50 CONNECTED THROUGH STOCK OWNERSHIP WITH A COMMON PARENT CORPORATION IF
51 STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF ALL
52 CLASSES OF STOCK OF EACH OF THE CORPORATIONS IS OWNED DIRECTLY OR INDI-
53 RECTLY BY ONE OR MORE OF THE CORPORATIONS AND THE COMMON PARENT OWNS
54 DIRECTLY STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF
55 ALL CLASSES OF STOCK OF AT LEAST ONE OF THE OTHER CORPORATIONS.

(F) "ELECTRONIC DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING MICRO-ELECTRONICS, SEMICONDUCTORS, ELECTRONIC EQUIPMENT, AND INSTRUMENTATION, RADIO FREQUENCY, MICROWAVE, AND MILLIMETER ELECTRONICS, AND OPTICAL AND OPTIC-ELECTRICAL DEVICES, OR DATA AND DIGITAL COMMUNICATIONS AND IMAGING DEVICES.

(G) "ENVIRONMENTAL TECHNOLOGY" MEANS ASSESSMENT AND PREVENTION OF THREATS OR DAMAGE TO HUMAN HEALTH OR THE ENVIRONMENT, ENVIRONMENTAL CLEANUP, OR THE DEVELOPMENT OF ALTERNATIVE ENERGY SOURCES.

(H) "MEDICAL DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING ANY MEDICAL EQUIPMENT OR PRODUCT (OTHER THAN A PHARMACEUTICAL PRODUCT) THAT HAS THERAPEUTIC VALUE, DIAGNOSTIC VALUE, OR BOTH, AND IS REGULATED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION.

(I) "PARTNERSHIP" MEANS A SYNDICATE, GROUP, POOL, JOINT VENTURE, OR OTHER UNINCORPORATED ORGANIZATION THROUGH OR BY MEANS OF WHICH ANY BUSINESS, FINANCIAL OPERATION, OR VENTURE IS CARRIED ON, AND WHICH IS NOT A TRUST OR ESTATE, A CORPORATION, OR A SOLE PROPRIETORSHIP.

(J) "PILOT SCALE MANUFACTURING" MEANS DESIGN, CONSTRUCTION, AND TESTING OF PREPRODUCTION PROTOTYPES AND MODELS IN THE FIELDS OF ADVANCED COMPUTING, ADVANCED MATERIALS, BIOTECHNOLOGY, ELECTRONIC DEVICE TECHNOLOGY, ENVIRONMENTAL TECHNOLOGY, AND MEDICAL DEVICE TECHNOLOGY, OTHER THAN FOR COMMERCIAL SALE, EXCLUDING SALES OF PROTOTYPES OR SALES FOR MARKET TESTING, IF TOTAL GROSS RECEIPTS FROM SUCH SALES OF THE PRODUCT, SERVICE, OR PROCESS DO NOT EXCEED ONE MILLION DOLLARS.

(K) "QUALIFIED INVESTMENT" MEANS THE NON-REFUNDABLE INVESTMENT AT RISK IN A SMALL NEW YORK-BASED HIGH TECHNOLOGY BUSINESS BY A TAXPAYER THAT IS NOT A RELATED PERSON OF THE SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS, THE TRANSFER OF WHICH IS IN CONNECTION WITH A TRANSACTION IN EXCHANGE FOR STOCK, INTEREST IN PARTNERSHIPS OR JOINT VENTURES, LICENSES (EXCLUSIVE OR NON-EXCLUSIVE), RIGHT TO USE TECHNOLOGY, MARKETING RIGHTS, WARRANTS, OPTIONS, OR ANY ITEM SIMILAR TO THOSE INCLUDED IN THIS PARAGRAPH, INCLUDING BUT NOT LIMITED TO OPTIONS OR RIGHTS TO ACQUIRE ANY OF THE ITEMS INCLUDED IN THIS PARAGRAPH.

(L) "QUALIFIED RESEARCH EXPENSES" MEANS QUALIFIED RESEARCH EXPENSES, AS DEFINED IN SECTION 41 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986, 26 U.S.C. S 41, AS IN EFFECT ON JUNE THIRTIETH, NINETEEN HUNDRED NINETY-TWO, IN THE FIELDS OF ENVIRONMENTAL TECHNOLOGY OR MEDICAL DEVICE TECHNOLOGY.

(M) "RELATED PERSON" MEANS:

(1) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST BY THE TAXPAYER;

(2) AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN THE CONTROL OF THE TAXPAYER;

(3) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST CONTROLLED BY AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN THE CONTROL OF THE TAXPAYER; OR

(4) A MEMBER OF THE SAME CONTROLLED GROUP AS A TAXPAYER.

(N) "SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS" MEANS A CORPORATION DOING BUSINESS EMPLOYING OR OWNING CAPITAL OR PROPERTY, OR MAINTAINING AN OFFICE, IN THIS STATE THAT HAS QUALIFIED RESEARCH EXPENSES PAID OR INCURRED FOR RESEARCH EXPENSES CONDUCTED IN THIS STATE OR CONDUCTS PILOT SCALE MANUFACTURING IN THIS STATE, AND HAS FEWER THAN TWO HUNDRED TWENTY-FIVE EMPLOYEES, OF WHOM SEVENTY-FIVE PERCENT ARE NEW YORK-BASED EMPLOYEES FILLING A POSITION OR JOB IN THIS STATE.

(O) "TAX YEAR" MEANS THE FISCAL OR CALENDAR ACCOUNTING YEAR OF A TAXPAYER.

S 3. The tax law is amended by adding a new section 606-A to read as follows:

1 S 606-A. NONCORPORATION TAX BENEFIT CERTIFICATE TRANSFER PROGRAM. (A)
2 (1) THE DEPARTMENT SHALL ESTABLISH A CORPORATION BUSINESS TAX BENEFIT
3 CERTIFICATE TRANSFER PROGRAM TO ALLOW NEW OR EXPANDING EMERGING TECHNOL-
4 OGY AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING UNUSED AMOUNTS OF
5 RESEARCH AND DEVELOPMENT TAX CREDITS OTHERWISE ALLOWABLE PURSUANT TO
6 SUBPARAGRAPH (A) OF PARAGRAPH TWO OF SUBSECTION (A) OF SECTION SIX
7 HUNDRED SIX OF THIS ARTICLE, WHICH CANNOT BE APPLIED FOR THE CREDIT'S
8 TAX YEAR, AND UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO SUBSECTION
9 (B) OF SECTION SIX HUNDRED SEVENTEEN AND SUBSECTION (B) OF SECTION SIX
10 HUNDRED THIRTY-THREE OF THIS ARTICLE TO SURRENDER SUCH TAX BENEFITS FOR
11 USE BY OTHER ENTITIES SUBJECT TO THE PROVISIONS OF THIS ARTICLE IN
12 EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE PROVIDED SUCH TAXPAYERS
13 OR EXPANDING EMERGING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES. SUCH
14 TAXPAYERS SHALL BE PROVIDED WITH A NONCORPORATION BUSINESS TAX BENEFIT
15 CERTIFICATE TO BE DEVELOPED BY THE COMMISSIONER.

16 (2) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF THE
17 DEPARTMENT OF ECONOMIC DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICA-
18 TIONS BY NEW OR EXPANDING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES IN THIS
19 STATE HAVING UNUSED BUT OTHERWISE ALLOWABLE CARRYOVER OF RESEARCH AND
20 DEVELOPMENT TAX CREDITS AND OTHERWISE ALLOWABLE NET OPERATING LOSS
21 CARRYOVERS PURSUANT TO EITHER SUBPARAGRAPH (A) OF PARAGRAPH TWO OF
22 SUBSECTION (A) OF SECTION SIX HUNDRED SIX OR SUBSECTION (B) OF SECTION
23 SIX HUNDRED SEVENTEEN OR SUBSECTION (B) OF SECTION SIX HUNDRED
24 THIRTY-THREE OF THIS ARTICLE, RESPECTIVELY, TO SURRENDER THOSE TAX BENE-
25 FITS IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE MADE TO A
26 TAXPAYER FILING PURSUANT TO THIS ARTICLE WHO HAS OBTAINED A NONCORPO-
27 RATION BUSINESS TAX BENEFIT CERTIFICATE IN AN AMOUNT EQUAL TO AT LEAST
28 SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE SURRENDERED TAX BENEFITS.

29 (3) THE COMMISSIONER SHALL CALCULATE THE VALUE OF THE NET OPERATING
30 LOSS CARRYOVER FOR PURPOSES OF THE BENEFIT CERTIFICATE EQUAL TO THE
31 AMOUNT OF THE CARRYOVER TIMES THE APPLICABLE BUSINESS ALLOCATION
32 PERCENTAGE AND TAX RATE OF THE EMERGING TECHNOLOGY OR BIOTECHNOLOGY
33 COMPANY.

34 (4) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF THE
35 DEPARTMENT OF ECONOMIC DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICA-
36 TIONS BY TAXPAYERS SUBJECT TO THE PROVISIONS OF THIS ARTICLE TO ACQUIRE
37 SURRENDERED TAX BENEFITS APPROVED PURSUANT TO PARAGRAPH TWO OF THIS
38 SUBSECTION, WHICH SHALL BE ISSUED IN THE FORM OF NONCORPORATION BUSINESS
39 TAX BENEFIT TRANSFER CERTIFICATES, IN EXCHANGE FOR PRIVATE FINANCIAL
40 ASSISTANCE TO BE MADE BY THE TAXPAYER IN AN AMOUNT EQUAL TO AT LEAST
41 SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE SURRENDERED TAX BENEFIT OF AN
42 EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY IN THE STATE. THE PRIVATE
43 FINANCIAL ASSISTANCE SHALL ASSIST IN FUNDING EXPENSES INCURRED IN
44 CONNECTION WITH THE OPERATION OF A NEW OR EXPANDING EMERGING TECHNOLOGY
45 OR BIOTECHNOLOGY COMPANY IN THE STATE, INCLUDING BUT NOT LIMITED TO THE
46 EXPENSES OF FIXED ASSETS, SUCH AS THE CONSTRUCTION AND ACQUISITION AND
47 DEVELOPMENT OF REAL ESTATE, MATERIALS, START-UP, TENANT FIT-OUT, WORKING
48 CAPITAL, SALARIES, RESEARCH, AND DEVELOPMENT EXPENDITURES.

49 (5) THE COMMISSIONER SHALL COORDINATE THE APPLICATIONS, IN CONJUNCTION
50 WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT, FOR SURRENDER AND ACQUI-
51 SITION OF UNUSED BUT OTHERWISE ALLOWABLE TAX BENEFITS PURSUANT TO THIS
52 SECTION IN A MANNER THAT CAN BEST STIMULATE AND ENCOURAGE THE EXTENSION
53 OF PRIVATE FINANCIAL ASSISTANCE TO NEW AND EXPANDING EMERGING TECHNOLOGY
54 AND BIOTECHNOLOGY COMPANIES IN THIS STATE INTO A WRITTEN AGREEMENT WITH
55 SUCH COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE PRIVATE FINAN-
56 CIAL ASSISTANCE MADE IN EXCHANGE FOR THE CERTIFICATE. THE WRITTEN AGREE-

MENT MAY CONTAIN TERMS CONCERNING THE MAINTENANCE BY THE NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY OF A HEADQUARTERS OR A BASE OF OPERATION IN THIS STATE.

(B)(1) A TAXPAYER THAT HAS ACQUIRED A NONCORPORATION BUSINESS TAX BENEFIT CERTIFICATE PURSUANT TO THE PROVISIONS OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION THAT INCLUDES THE RIGHT TO A NET OPERATING LOSS CARRYOVER DEDUCTION SHALL ATTACH THAT CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE AND SHALL OTHERWISE APPLY THE NET OPERATING LOSS CARRYOVER DEDUCTION, AS EVIDENCED BY THE CERTIFICATE, ACCORDING TO THE PROVISIONS OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION AND ANY RULES OR REGULATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE PROVISIONS OF THIS SECTION.

(2) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY THAT HAS SURRENDERED AN UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO THE PROVISIONS OF SUBSECTION (B) OF SECTION SIX HUNDRED SEVENTEEN AND SUBSECTION (B) OF SECTION SIX HUNDRED THIRTY-THREE OF THIS ARTICLE SHALL NOT BE ALLOWED A NET OPERATING LOSS CARRYOVER DEDUCTION BASED UPON THE RIGHT TO SUCH A DEDUCTION, AS EVIDENCED BY SUCH NONCORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND SHALL ATTACH A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE.

(C) (1) A TAXPAYER THAT HAS ACQUIRED A NONCORPORATION BUSINESS TAX BENEFIT CERTIFICATE PURSUANT TO SUBSECTION (A) OF THIS SECTION THAT INCLUDES THE RIGHT TO A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER SHALL ATTACH THAT CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE AND SHALL OTHERWISE APPLY THE CREDIT CARRYOVER, AS EVIDENCED BY THE CERTIFICATE, ACCORDING TO THE PROVISIONS OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION AND ANY RULES OR REGULATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE PROVISIONS OF THIS SECTION.

(2) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY THAT HAS SURRENDERED AN UNUSED RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER SHALL NOT BE ALLOWED A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER BASED UPON THE RIGHT TO SUCH A CREDIT CARRYOVER, AS EVIDENCED BY THE NONCORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND SHALL ATTACH A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE.

(D) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "ADVANCED COMPUTING" MEANS A TECHNOLOGY USED IN DESIGNING AND DEVELOPING COMPUTING HARDWARE AND SOFTWARE, INCLUDING INNOVATIONS IN DESIGNING THE FULL SPECTRUM OF HARDWARE FROM HAND-HELD CALCULATORS TO SUPER COMPUTERS, AND PERIPHERAL EQUIPMENT.

(2) "ADVANCED MATERIALS" MEANS MATERIALS WITH ENGINEERED PROPERTIES CREATED THROUGH THE DEVELOPMENT OF SPECIALIZED PROCESSING AND SYNTHESIS TECHNOLOGY, INCLUDING CERAMICS, HIGH VALUE-ADDED METALS, ELECTRONIC MATERIALS, COMPOSITES, POLYMERS, AND BIOMATERIALS.

(3) "BIOTECHNOLOGY" MEANS THE CONTINUALLY EXPANDING BODY OF FUNDAMENTAL KNOWLEDGE ABOUT THE FUNCTION OF BIOLOGICAL SYSTEMS FROM THE MACRO LEVEL TO THE MOLECULAR AND SUBATOMIC LEVELS, AS WELL AS NOVEL PRODUCTS, SERVICES, TECHNOLOGIES, AND SUB-TECHNOLOGIES DEVELOPED AS A RESULT OF INSIGHTS GAINED FROM RESEARCH ADVANCES WHICH ADD TO THAT BODY OF FUNDAMENTAL KNOWLEDGE.

(4) "CONTROL", WITH RESPECT TO A CORPORATION, MEANS OWNERSHIP, DIRECTLY OR INDIRECTLY, OF STOCK POSSESSING EIGHTY PERCENT OR MORE OF THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF THE STOCK OF THE CORPORATION ENTITLED TO VOTE; AND "CONTROL", WITH RESPECT TO A TRUST, MEANS OWNERSHIP, DIRECTLY OR INDIRECTLY, OF EIGHTY PERCENT OR MORE OF THE

BENEFICIAL INTEREST IN THE PRINCIPAL OR INCOME OF THE TRUST. THE OWNERSHIP OF STOCK IN A CORPORATION, OF A CAPITAL OR PROFITS INTEREST IN A PARTNERSHIP OR ASSOCIATION, OR OF A BENEFICIAL INTEREST IN A TRUST SHALL BE DETERMINED IN ACCORDANCE WITH THE RULES FOR CONSTRUCTIVE OWNERSHIP OF STOCK PROVIDED IN SUBSECTION (C) OF SECTION 267 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986, 26 U.S.C. S 267, OTHER THAN PARAGRAPH (3) OF SUBSECTION (C) OF SUCH SECTION.

(5) "CONTROLLED GROUP" MEANS ONE OR MORE CHAINS OF CORPORATIONS CONNECTED THROUGH STOCK OWNERSHIP WITH A COMMON PARENT CORPORATION IF STOCK IS POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF STOCK OF EACH OF THE CORPORATIONS IS OWNED DIRECTLY OR INDIRECTLY BY ONE OR MORE OF THE CORPORATIONS AND THE COMMON PARENT OWNS DIRECTLY STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF STOCK OF AT LEAST ONE OF THE OTHER CORPORATIONS.

(6) "ELECTRONIC DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING MICRO-ELECTRONICS, SEMICONDUCTORS, ELECTRONIC EQUIPMENT, AND INSTRUMENTATION, RADIO FREQUENCY, MICROWAVE, AND MILLIMETER ELECTRONICS, AND OPTICAL AND OPTIC-ELECTRICAL DEVICES, OR DATA AND DIGITAL COMMUNICATIONS AND IMAGING DEVICES.

(7) "ENVIRONMENTAL TECHNOLOGY" MEANS ASSESSMENT AND PREVENTION OF THREATS OR DAMAGE TO HUMAN HEALTH OR THE ENVIRONMENT, ENVIRONMENTAL CLEANUP, OR THE DEVELOPMENT OF ALTERNATIVE ENERGY SOURCES.

(8) "MEDICAL DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING ANY MEDICAL EQUIPMENT OR PRODUCT (OTHER THAN A PHARMACEUTICAL PRODUCT) THAT HAS THERAPEUTIC VALUE, DIAGNOSTIC VALUE, OR BOTH, AND IS REGULATED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION.

(9) "PARTNERSHIP" MEANS A SYNDICATE, GROUP, POOL, JOINT VENTURE OR OTHER UNINCORPORATED ORGANIZATION THROUGH OR BY MEANS OF WHICH ANY BUSINESS, FINANCIAL OPERATION, OR VENTURE IS CARRIED ON, AND WHICH IS NOT A TRUST OR ESTATE, A CORPORATION, OR A SOLE PROPRIETORSHIP.

(10) "PILOT SCALE MANUFACTURING" MEANS DESIGN, CONSTRUCTION, AND TESTING OF PREPRODUCTION PROTOTYPES AND MODELS IN THE FIELDS OF ADVANCED COMPUTING, ADVANCED MATERIALS, BIOTECHNOLOGY, ELECTRONIC DEVICE TECHNOLOGY, ENVIRONMENTAL TECHNOLOGY, AND MEDICAL DEVICE TECHNOLOGY, OTHER THAN FOR COMMERCIAL SALE, EXCLUDING SALES OF PROTOTYPES OR SALES FOR MARKET TESTING, IF TOTAL GROSS RECEIPTS FROM SUCH SALES OF THE PRODUCT, SERVICE, OR PROCESS DO NOT EXCEED ONE MILLION DOLLARS.

(11) "QUALIFIED INVESTMENT" MEANS THE NON-REFUNDABLE INVESTMENT AT RISK IN A SMALL NEW YORK-BASED HIGH TECHNOLOGY BUSINESS BY A TAXPAYER THAT IS NOT A RELATED PERSON OF THE SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS, THE TRANSFER OF WHICH IS IN CONNECTION WITH A TRANSACTION IN EXCHANGE FOR STOCK, INTEREST IN PARTNERSHIPS OR JOINT VENTURES, LICENSES (EXCLUSIVE OR NON-EXCLUSIVE), RIGHTS TO USE TECHNOLOGY, MARKETING RIGHTS, WARRANTS, OPTIONS, OR RIGHTS TO ACQUIRE ANY OF THE ITEMS SIMILAR TO THOSE INCLUDED IN THIS PARAGRAPH, INCLUDING BUT NOT LIMITED TO OPTIONS OR RIGHTS TO ACQUIRE ANY OF THE ITEMS INCLUDED IN THIS PARAGRAPH.

(12) "QUALIFIED RESEARCH EXPENSES" MEANS QUALIFIED RESEARCH EXPENSES, AS DEFINED IN SECTION 41 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986, 26 U.S.C. S 41, AS IN EFFECT ON JUNE THIRTIETH, NINETEEN HUNDRED NINETY-TWO, IN THE FIELDS OF ENVIRONMENTAL TECHNOLOGY OR MEDICAL DEVICE TECHNOLOGY.

(13) "RELATED PERSON" MEANS:

(A) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST BY THE TAXPAYER;

(B) AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN THE CONTROL OF THE TAXPAYER;

1 (C) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST CONTROLLED BY AN
2 INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN
3 THE CONTROL OF THE TAXPAYER; OR

4 (D) A MEMBER OF THE SAME CONTROLLED GROUP AS THE TAXPAYER.

5 (14) "SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS" MEANS A CORPO-
6 RATION DOING BUSINESS EMPLOYING OR OWNING CAPITAL OR PROPERTY, OR MAIN-
7 TAINING AN OFFICE, IN THIS STATE THAT HAS QUALIFIED RESEARCH EXPENSES
8 PAID OR INCURRED FOR RESEARCH CONDUCTED IN THIS STATE OR CONDUCTS PILOT
9 SCALE MANUFACTURING IN THIS STATE, AND HAS FEWER THAN TWO HUNDRED TWEN-
10 TY-FIVE EMPLOYEES, OF WHOM SEVENTY-FIVE PERCENT ARE NEW YORK-BASED
11 EMPLOYEES FILLING A POSITION OR JOB IN THIS STATE.

12 (15) "TAX YEAR" MEANS THE FISCAL OR CALENDAR ACCOUNTING YEAR OF A
13 TAXPAYER.

14 S 4. This act shall take effect immediately and shall apply to taxable
15 years which commence on or after January 1, 2009.