

3763

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. MAGNARELLI, MORELLE, DESTITO, DelMONTE, SCHIM-  
MINGER, JAFFEE, BENEDETTO, LUPARDO, KOON, GABRYSZAK, CAHILL, HOYT,  
STIRPE, ESPAILLAT -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN,  
CAMARA, LATIMER, MAISEL, MARKEY, PEOPLES, PERRY, PHEFFER, SCHIMEL,  
SWEENEY, WEISENBERG, ZEBROWSKI -- read once and referred to the  
Committee on Ways and Means

AN ACT to amend the tax law, in relation to refundability of the invest-  
ment tax credit for research and development property

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

1 Section 1. Paragraph (e) of subdivision 12 of section 210 of the tax  
2 law, as amended by section 9 of part M of chapter 407 of the laws of  
3 1999, is amended to read as follows:  
4 (e) Except as otherwise provided in this paragraph, the credit allowed  
5 under this subdivision for any taxable year shall not reduce the tax due  
6 for such year to less than the higher of the amounts prescribed in para-  
7 graphs (c) and (d) of subdivision one of this section. However, if the  
8 amount of credit allowable under this subdivision for any taxable year  
9 reduces the tax to such amount, any amount of credit allowed for a taxa-  
10 ble year commencing prior to January first, nineteen hundred eighty-sev-  
11 en and not deductible in such taxable year may be carried over to the  
12 following year or years and may be deducted from the taxpayer's tax for  
13 such year or years but in no event shall such credit be carried over to  
14 taxable years commencing on or after January first, two thousand two,  
15 and any amount of credit allowed for a taxable year commencing on or  
16 after January first, nineteen hundred eighty-seven and not deductible in  
17 such year may be carried over to the fifteen taxable years next follow-  
18 ing such taxable year and may be deducted from the taxpayer's tax for  
19 such year or years. In lieu of such carryover, any such taxpayer which  
20 qualifies as a new business under paragraph (j) of this subdivision AND  
21 ANY SUCH TAXPAYER ALLOWED A CREDIT UNDER CLAUSE (C) OF SUBPARAGRAPH (I)

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

LBD00553-01-9

1 OF PARAGRAPH (B) OF THIS SUBDIVISION THAT CONDUCTS BASIC, APPLIED OR  
2 TRANSLATIONAL RESEARCH THAT LEADS TO THE DEVELOPMENT OF PRODUCTS THAT  
3 IMPROVE HUMAN HEALTH OR AGRICULTURE AND THAT REQUIRE APPROVAL BY THE  
4 FEDERAL FOOD AND DRUG ADMINISTRATION AND THE CONDUCT OF CLINICAL TRIALS  
5 TO OBTAIN SUCH APPROVAL may elect to treat the amount of such carryover  
6 as an overpayment of tax to be credited or refunded in accordance with  
7 the provisions of section [ten hundred] ONE THOUSAND eighty-six of this  
8 chapter, provided, however, the provisions of subsection (c) of section  
9 [ten hundred] ONE THOUSAND eighty-eight of this chapter notwithstanding,  
10 no interest shall be paid thereon.

11 S 2. Paragraph 5 of subsection (a) of section 606 of the tax law, as  
12 amended by chapter 170 of the laws of 1994, is amended to read as  
13 follows:

14 (5) If the amount of credit allowable under this subsection for any  
15 taxable year shall exceed the taxpayer's tax for such year, the excess  
16 allowed for a taxable year commencing prior to January first, nineteen  
17 hundred eighty-seven may be carried over to the following year or years  
18 and may be deducted from the taxpayer's tax for such year or years, but  
19 in no event shall such credit be carried over to taxable years commencing  
20 on or after January first, nineteen hundred ninety-seven, and any  
21 amount of credit allowed for a taxable year commencing on or after January  
22 first, nineteen hundred eighty-seven and not deductible in such year  
23 may be carried over to the ten taxable years next following such taxable  
24 year and may be deducted from the taxpayer's tax for such year or years.  
25 In lieu of carrying over any such excess, a taxpayer who qualifies as an  
26 owner of a new business for purposes of paragraph ten of this subsection  
27 OR WHO QUALIFIES AS AN OWNER OF A BUSINESS THAT CONDUCTS BASIC, APPLIED  
28 OR TRANSLATIONAL RESEARCH THAT LEADS TO THE DEVELOPMENT OF PRODUCTS THAT  
29 IMPROVE HUMAN HEALTH OR AGRICULTURE AND THAT REQUIRE APPROVAL BY THE  
30 FEDERAL FOOD AND DRUG ADMINISTRATION AND THE CONDUCT OF CLINICAL TRIALS  
31 TO OBTAIN SUCH APPROVAL may, at his option, receive such excess as a  
32 refund. Any refund paid pursuant to this paragraph shall be deemed to be  
33 a refund of an overpayment of tax as provided in section six hundred  
34 eighty-six of this article, provided, however, that no interest shall be  
35 paid thereon.

36 S 3. This act shall take effect on the first of January next succeeding  
37 the date on which it shall have become a law.