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

3763

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I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. MAGNARELLI, MORELLE, DESTITO, DelMONTE, SCHIMMINGER, 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 investment tax credit for research and development property

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

Section 1. Paragraph (e) of subdivision 12 of section 210 of the tax law, as amended by section 9 of part M of chapter 407 of the laws of 1999, is amended to read as follows:

(e) Except as otherwise provided in this paragraph, 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 allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit allowed for a taxable year commencing prior to January first, nineteen hundred eighty-seven and not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years but in no event shall such credit be carried over to taxable years commencing on or after January first, two thousand two, and any amount of credit allowed for a taxable year commencing on or after January first, nineteen hundred eighty-seven and not deductible in such year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph (j) of this subdivision AND 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.

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

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

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

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