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. WEPRIN, BING, CASTRO, CHRISTENSEN, KELLNER, MAISEL, ROSENTHAL, TITONE, WRIGHT -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, CLARK, COOK, EDDINGTON, GREENE, JAFFEE, SCHIMEL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to authorizing any city having a population of one million or more to provide a biotechnology credit against the general corporation tax, unincorporated business tax and banking corporation tax of such city

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

Section 1. Section 1201-a of the tax law is amended by adding a new subdivision (d) to read as follows:

(D) BIOTECHNOLOGY CREDIT. 1. ANY CITY IN THIS STATE HAVING A POPULATION OF ONE MILLION OR MORE, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED TO ADOPT AND AMEND LOCAL LAWS TO ALLOW A CREDIT AGAINST THE GENERAL CORPORATION TAX, UNINCORPORATED BUSINESS TAX AND THE BANKING CORPORATION TAX IMPOSED PURSUANT TO THE AUTHORITY OF CHAPTER SEVEN HUNDRED SEVENTY-TWO OF THE LAWS OF NINETEEN HUNDRED SIXTY-SIX WHICH SHALL BE SUBSTANTIALLY IDENTICAL TO THE CREDIT ALLOWED UNDER SUBDIVISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THIS CHAPTER, EXCEPT THAT (A) WHENEVER SUBDIVISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THIS CHAPTER REFERENCES THE STATE, SUCH WORDS SHALL BE READ AS REFERENCING THE CITY, (B) SUCH CREDIT SHALL BE ALLOWED ONLY TO A TAXPAYER THAT (1) IS A QUALIFIED EMERGING TECHNOLOGY COMPANY PURSUANT TO THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, EXCEPT THAT SUCH COMPANY SHALL MEAN A COMPANY LOCATED IN SUCH CITY, (2) ENGAGES IN ACTIVITIES REFERENCED IN SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, AND (3) MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF SUBDIVISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THIS CHAPTER, AND (C) THE EFFEC-

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

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TIVE DATE OF SUCH CREDIT SHALL BE AS PROVIDED IN LOCAL LAWS. SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION, SUCH CREDIT SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE CREDIT ALLOWED UNDER SUBDIVISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THIS CHAPTER EXCEPT AS MAY BE NECESSARY TO TAKE INTO ACCOUNT DIFFERENCES BETWEEN ARTICLE NINE-A OF THIS CHAPTER AND THE GENERAL CORPORATION TAX, THE UNINCORPORATED BUSINESS TAX OR THE BANKING CORPORATION TAX.

2. (A) THE PERCENTAGE OF THE CREDIT ALLOWED TO A TAXPAYER UNDER THIS SUBDIVISION IN ANY CALENDAR YEAR SHALL BE:

(1) IF THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY A TAXPAYER IN THE CITY DURING THE CALENDAR YEAR IN WHICH THE CREDIT IS CLAIMED IS AT LEAST ONE HUNDRED FIVE PERCENT OF THE TAXPAYER'S BASE YEAR EMPLOYMENT, ONE HUNDRED PERCENT, EXCEPT THAT IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS CLAUSE EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS PER CALENDAR YEAR. PROVIDED, HOWEVER, THE INCREASE IN BASE YEAR EMPLOYMENT SHALL NOT APPLY TO A TAXPAYER ALLOWED A CREDIT UNDER THIS SUBDIVISION THAT WAS, (I) LOCATED OUTSIDE OF THE CITY, (II) NOT DOING BUSINESS, OR (III) DID NOT HAVE ANY EMPLOYEES, IN THE YEAR PRECEDING THE FIRST YEAR THAT THE CREDIT WAS CLAIMED.

(2) IF THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY A TAXPAYER IN THE CITY DURING THE CALENDAR YEAR IN WHICH THE CREDIT IS CLAIMED IS LESS THAN ONE HUNDRED FIVE PERCENT OF THE TAXPAYER'S BASE YEAR EMPLOYMENT, FIFTY PERCENT, EXCEPT THAT IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS CLAUSE EXCEED ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS PER CALENDAR YEAR. IN THE CASE OF AN ENTITY LOCATED IN THE CITY OF NEW YORK RECEIVING SPACE AND BUSINESS SUPPORT SERVICES BY AN ACADEMIC INCUBATOR FACILITY, AS DEFINED IN SUBPARAGRAPH (VI) OF PARAGRAPH (E) OF SUBDIVISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THIS CHAPTER, IF THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY SUCH FACILITY IN THE CITY DURING THE CALENDAR YEAR IN WHICH THE CREDIT ALLOWED UNDER THIS SUBDIVISION IS CLAIMED IS LESS THAN ONE HUNDRED FIVE PERCENT OF THE TAXPAYER'S BASE YEAR EMPLOYMENT, THE CREDIT SHALL BE ZERO.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, "BASE YEAR EMPLOYMENT" MEANS THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY THE TAXPAYER IN THE CITY IN THE YEAR PRECEDING THE FIRST CALENDAR YEAR IN WHICH THE CREDIT IS CLAIMED.

(C) FOR THE PURPOSES OF THIS SUBDIVISION, AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME SHALL BE COMPUTED BY ADDING THE NUMBER OF SUCH INDIVIDUALS EMPLOYED BY THE TAXPAYER AT THE END OF EACH QUARTER DURING EACH CALENDAR YEAR OR OTHER APPLICABLE PERIOD AND DIVIDING THE SUM SO OBTAINED BY THE NUMBER OF SUCH QUARTERS OCCURRING WITHIN SUCH CALENDAR YEAR OR OTHER APPLICABLE PERIOD.

3. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SUBDIVISION IN ANY CALENDAR YEAR SHALL BE UP TO THREE MILLION DOLLARS. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE NEW YORK CITY DEPARTMENT OF FINANCE AMONG ELIGIBLE TAXPAYERS ON A PRO RATA BASIS. TAXPAYERS ELIGIBLE FOR SUCH PRO RATA ALLOCATION SHALL BE DETERMINED BY THE NEW YORK CITY DEPARTMENT OF FINANCE NO LATER THAN FEBRUARY TWENTY-EIGHTH OF THE SUCCEEDING CALENDAR YEAR IN WHICH THE CREDIT PROVIDED IN THIS SUBDIVISION IS APPLIED.

4. THE NEW YORK CITY DEPARTMENT OF FINANCE SHALL ESTABLISH BY RULE BY OCTOBER THIRTY-FIRST, TWO THOUSAND NINE, PROCEDURES FOR THE ALLOCATION OF TAX CREDITS AS REQUIRED BY PARAGRAPH TWO OF THIS SUBDIVISION. SUCH RULES SHALL INCLUDE PROVISIONS DESCRIBING THE APPLICATION PROCESS, THE DUE DATES FOR SUCH APPLICATIONS, THE STANDARDS THAT SHALL BE USED TO EVALUATE THE APPLICATIONS, THE DOCUMENTATION THAT WILL BE PROVIDED TO

TAXPAYERS TO SUBSTANTIATE THE AMOUNT OF TAX CREDITS ALLOCATED TO SUCH TAXPAYERS, AND SUCH OTHER PROVISIONS AS DEEMED NECESSARY AND APPROPRIATE.

5. ANY LOCAL LAW ADOPTED PURSUANT TO THIS SUBDIVISION MAY PROVIDE FOR A CREDIT AS AUTHORIZED BY THIS SUBDIVISION FOR A MAXIMUM OF THREE CONSECUTIVE CALENDAR YEARS, PROVIDED, HOWEVER, THAT ANY SUCH CREDIT MAY NOT APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND TEN OR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN.

S 2. This act shall take effect immediately.