

2745

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to establishing a targeted human pharmacological project fee credit

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

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

3 S 30. TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. (A) DEFINI-
4 TIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE
5 FOLLOWING MEANINGS:

6 (1) "PRIMARILY" SHALL MEAN MORE THAN FIFTY PERCENT.

7 (2) "RESEARCH AND DEVELOPMENT COSTS" SHALL MEAN IN-HOUSE RESEARCH
8 EXPENSES WITHIN THE MEANING OF SECTION 41 (B) (2) OF THE INTERNAL REVEN-
9 UE CODE.

10 (3) "PROJECT FEES" SHALL MEAN THE MONETARY AMOUNT ACTUALLY PAID TO THE
11 U.S.F.D.A. THAT CONSTITUTES THE FEE DUE UPON THE SUBMISSION OF A HUMAN
12 DRUG APPLICATION OR SUPPLEMENT PURSUANT TO U.S.C. S 379 H (A) (1) FOR A
13 HUMAN DRUG, RESEARCH AND DEVELOPMENT COSTS OF WHICH WERE PRIMARILY
14 INCURRED IN NEW YORK STATE.

15 (4) "U.S.F.D.A." SHALL MEAN THE UNITED STATES FOOD AND DRUG ADMINIS-
16 TRATION.

17 (B) TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. (1) A TAXPAYER
18 WHO IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER
19 SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX. SUCH CREDIT SHALL BE ALLOWED
20 WITH RESPECT TO PROJECT FEES.

21 (2) THE APPLICABLE PERCENTAGE SHALL EQUAL THIRTY-SIX PERCENT OF THE
22 COST OF PROJECT FEES.

23 (3) THE CREDIT ALLOWED UNDER THIS SECTION MAY ONLY BE CLAIMED AFTER
24 ITS LICENSURE IS APPROVED BY THE U.S.F.D.A. AND THE TAXPAYER IS LICENSED

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

LBD07650-01-9

1 TO MANUFACTURE SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT IN NEW YORK
2 STATE.

3 (4) THE CREDIT ALLOWED UNDER THIS SECTION MAY BE TAKEN ONLY AFTER THE
4 TAXPAYER COMPLETES AND SUBMITS AN APPLICATION TO THE COMMISSIONER,
5 SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE TAXPAYER. SUCH APPLICATION
6 SHALL INCLUDE COPIES OF ALL RELEVANT LICENSES AND APPROVALS FROM THE
7 U.S.F.D.A. AND ANY OTHER NECESSARY FEDERAL OR NEW YORK STATE REGULATORY
8 BODY. SUCH APPLICATION MUST BE FILED WITH THE COMMISSIONER WITHIN NINETY
9 DAYS OF THE GRANTING OF ALL NECESSARY LICENSES AND CERTIFICATIONS TO
10 ALLOW THE MANUFACTURING OF SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT.

11 (5) IF THE TAXPAYER DOES NOT BEGIN PRIMARILY MANUFACTURING THE HUMAN
12 DRUG APPLICATION OR SUPPLEMENT IN NEW YORK STATE WITHIN ONE CALENDAR
13 YEAR OF THE GRANTING OF THE CREDIT, AND DOES NOT PRIMARILY MANUFACTURE
14 SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT FOR AT LEAST FIVE CALENDAR
15 YEARS FROM THE ONSET OF PRIMARY MANUFACTURING, ANY AMOUNT OF CREDIT
16 ALLOWED BY THIS SECTION SHALL BE ADDED BACK IN THE TAXABLE YEAR THAT
17 SUCH CREDIT IS RECAPTURED AND THIS RECAPTURE IS NO LONGER SUBJECT TO
18 JUDICIAL REVIEW.

19 (6) ANY DEDUCTION FROM GROSS INCOME THAT MAY BE TAKEN WITH RESPECT TO
20 ANY EXPENDITURES QUALIFYING FOR THE CREDIT UNDER THIS SECTION SHALL BE
21 DISALLOWED TO THE EXTENT OF THE CREDIT.

22 (7) ONLY PROJECT FEES PAID BY THE TAXPAYER TO THE U.S.F.D.A. ON OR
23 AFTER THE EFFECTIVE DATE OF THIS SECTION ARE ELIGIBLE FOR THE CREDIT.

24 (C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN
25 THIS SECTION SEE; (1) ARTICLE 9-A: SECTION 210, SUBDIVISION 41, AND (2)
26 ARTICLE 22: SECTION 606, SUBSECTIONS (I) AND (QQ).

27 S 2. Section 210 of the tax law is amended by adding a new subdivision
28 41 to read as follows:

29 41. TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. A TAXPAYER
30 SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY
31 OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE CREDIT
32 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE
33 TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER AMOUNT PRESCRIBED IN PARA-
34 GRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE
35 AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
36 REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN
37 SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CRED-
38 ITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOU-
39 SAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
40 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
41 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

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

49 The corporation's credit base under
50 section two hundred ten or section
51 With respect to the following fourteen hundred fifty-six of this
52 credit under this section: chapter is:

53 (I) Investment tax credit under Investment credit base or qualified
54 subsection (a) rehabilitation expenditures under

1		subdivision twelve of section two
2		hundred ten
3	(II) Empire zone investment	Cost or other basis under
4	tax credit under subsection (j)	subdivision twelve-B of section
5		two hundred ten
6	(III) Empire zone wage tax credit	Eligible wages under subdivision
7	under subsection (k)	nineteen of section two hundred
8		ten or subsection (e) of section
9		fourteen hundred fifty-six
10	(IV) Empire zone capital tax	Qualified investments and
11	credit under subsection (l)	contributions under subdivision
12		twenty of section two hundred ten
13		or subsection (d) of section
14		fourteen hundred fifty-six
15	(V) Agricultural property tax	Allowable school district property
16	credit under subsection (n)	taxes under subdivision twenty-two
17		of section two hundred ten
18	(VI) Credit for employment of	Qualified first-year wages or
19	persons with disabilities	qualified second-year wages under
20	under subsection (o)	subdivision twenty-three of
21		section two hundred ten or
22		subsection (f) of section
23		fourteen hundred fifty-six
24	(VII) Employment incentive credit	Applicable investment credit base
25	under subsection (a-1)	under subdivision twelve-D of
26		section two hundred ten
27	(VIII) Empire zone employment	Applicable investment credit
28	incentive credit under subsection	under subdivision twelve-C of
29	(j-1)	section two hundred ten
30	(IX) Alternative fuels credit	Cost under subdivision twenty-four
31	under subsection (p)	of section two hundred ten
32	(X) Qualified emerging technology	Applicable credit base under
33	company employment credit under	subdivision twelve-E of section
34	subsection (q)	two hundred ten
35	(XI) Qualified emerging technology	Qualified investments under
36	company capital tax credit under	subdivision twelve-F of section
37	subsection (r)	two hundred ten
38	(XII) Credit for purchase of an	Cost of an automated external
39	automated external defibrillator	defibrillator under subdivision
40	under subsection (s)	twenty-five of section two hundred
41		ten or subsection (j) of section
42		fourteen hundred fifty-six
43	(XIII) Low-income housing credit	Credit amount under subdivision
44	under subsection (x)	thirty of section two hundred ten

1		or subsection (l) of section
2		fourteen hundred fifty-six
3	(XIV) Credit for transportation	Amount of credit under subdivision
4	improvement contributions under	thirty-two of section two hundred
5	subsection (z)	ten or subsection (n) of section
6		fourteen hundred fifty-six
7	(XV) QEZE credit for real property	Amount of credit under subdivision
8	taxes under subsection (bb)	twenty-seven of section two hundred
9		ten or subsection (o) of section
10		fourteen hundred fifty-six
11	(XVI) QEZE tax reduction credit	Amount of benefit period factor,
12	under subsection (cc)	employment increase factor and zone
13		allocation factor (without regard
14		to pro ration) under subdivision
15		twenty-eight of section two hundred
16		ten or subsection (p) of section
17		fourteen hundred fifty-six and
18		amount of tax factor as determined
19		under subdivision (f) of section
20		sixteen
21	(XVII) Green building credit under	Amount of green building credit
22	subsection (y)	under subdivision thirty-one of
23		section two hundred ten or
24		subsection (m) of section fourteen
25		hundred fifty-six
26	(XVIII) Credit for long-term care	Qualified costs under subdivision
27	insurance premiums under subsection	twenty-five-a of section two
28	(aa)	hundred ten or subsection (k) of
29		section fourteen hundred fifty-six
30	(XIX) Brownfield redevelopment	Amount of credit under subdivision
31	credit under subsection (dd)	thirty-three of section two hundred
32		ten or subsection (q) of section
33		fourteen hundred fifty-six
34	(XX) Remediated brownfield credit	Amount of credit under subdivision
35	for real property taxes for	thirty-four of section two hundred
36	qualified sites under subsection	ten or subsection (r) of section
37	(ee)	fourteen hundred fifty-six
38	(XXI) Environmental remediation	Amount of credit under subdivision
39	insurance credit under subsection	thirty-five of section two hundred
40	(ff)	ten or subsection (s) of section
41		fourteen hundred fifty-six
42	(XXII) Empire state film production	Amount of credit for qualified
43	credit under subsection (gg)	production costs in production of a
44		qualified film under subdivision
45		thirty-six of section two hundred
46		ten

1 (XXIII) Qualified emerging 2 technology company facilities, 3 operations and training credit 4 under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
5 (XXIV) Security training tax credit 6 under subsection (ii) 7 8	Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
9 (XXV) Credit for qualified fuel 10 cell electric generating equipment 11 expenditures under subsection (g-2) 12	Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six
13 (XXVI) Empire state commercial 14 production credit under subsection 15 (jj) 16 17	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of section two hundred ten
18 (XXVII) Biofuel production tax 19 credit under subsection (jj) 20	Amount of credit under subdivision thirty-eight of section two hundred ten
21 (XXVIII) Clean heating fuel credit 22 under subsection (mm) 23	Amount of credit under subdivision thirty-nine of section two hundred ten
24 (XXIX) Credit for rehabilitation 25 of historic properties under 26 subsection (oo)	Amount of credit under subdivision forty of [subsection] SECTION two hundred ten
27 (XXX) Credit for companies who 28 provide transportation to 29 individuals with disabilities under 30 subsection (oo)	Amount of credit under subdivision forty of section two hundred ten
31 (XXXI) CREDIT FOR TARGETED HUMAN 32 PHARMACOLOGICAL PROJECT FEES UNDER 33 SUBSECTION (QQ)	QUALIFYING EXPENDITURES UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN
34 S 4. Section 606 of the tax law is amended by adding a new subsection 35 (qq) to read as follows: 36 (QQ) TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. A TAXPAYER 37 SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED FOR IN SECTION 38 THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. IF THE 39 AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR 40 SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE 41 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD- 42 ANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTI- 43 CLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.	
44 S 5. This act shall take effect immediately and shall apply to taxable 45 years commencing on or after January 1, 2009; provided, however that the 46 empire state film production credit under subsection (gg), the empire 47 state commercial production credit under subsection (jj) and the credit 48 for companies who provide transportation to individuals with disabili-	

1 ties under subsection (oo) of section 606 of the tax law contained in
2 section three of this act shall expire on the same date as provided in
3 section 9 of part P of chapter 60 of the laws of 2004, as amended,
4 section 10 of part V of chapter 62 of the laws of 2006, as amended and
5 section 5 of chapter 522 of the laws of 2006, as amended, respectively.