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

2745--A

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sens. GOLDEN, HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The tax law is amended by adding a new section 31 to read as follows:

S 31. TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. (A) DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

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

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

(4) "U.S.F.D.A." SHALL MEAN THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

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

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

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

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(3) THE CREDIT ALLOWED UNDER THIS SECTION MAY ONLY BE CLAIMED AFTER ITS LICENSURE IS APPROVED BY THE U.S.F.D.A. AND THE TAXPAYER IS LICENSED TO MANUFACTURE SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT IN NEW YORK STATE.

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

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

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

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

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

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

41. TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER AMOUNT PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxi) to read as follows:

(XXXI) CREDIT FOR TARGETED HUMAN PHARMACOLOGICAL PROJECT FEES UNDER SUBSECTION (QQ)	QUALIFYING EXPENDITURES UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

S 4. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED FOR IN SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE

TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 5. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2009.