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

3068

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. CHRISTENSEN, WEPRIN, SCHIMMINGER, HOYT, CAHILL, CARROZZA, MILLMAN, BING, BENJAMIN, JAFFEE -- Multi-Sponsored by -- M. of A. DelMONTE, DESTITO, GLICK, GORDON, GUNTHER, JOHN, KOON, MAGEE, McENENY, PERRY, SWEENEY, TOWNS -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing the micro-enterprise investor tax credit program

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

Section 1. Legislative intent. The legislature hereby finds and declares that it is the public policy of the state to stimulate economic growth that encourages micro-enterprise development. Micro-enterprises are a proven, viable grassroots strategy for achieving significant gains in the incomes and assets of citizens excluded from the economic mainstream. Extensive studies have demonstrated that micro-enterprises can play a role in the revitalization of local economies.

Moreover, the legislature further finds that in today's economic environment, there is a segment of the population for whom self-employment is a necessary, and in some cases, the best source of employment and income. By assisting individuals to build businesses and assets, micro-enterprises can open wealth and ownership opportunities to individuals who have been excluded from our economy.

The legislature further finds and declares that the welfare of the state is enhanced by a healthy entrepreneurial business environment and that the ready sources of capital necessary to support this environment are not currently available.

Therefore the legislature declares that a micro-enterprise investor tax credit would encourage third parties to invest in early stages of wealth-creating businesses in the state as well as expand the economy of the state by enlarging its base of wealth creating businesses.

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

LBD05519-01-9

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

41. NEW YORK MICRO-ENTERPRISE INVESTOR TAX CREDIT. (A) FOR THE PURPOSES OF THIS SUBDIVISION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "MICRO-ENTERPRISE" SHALL MEAN A BUSINESS WITH FIVE OR FEWER EMPLOYEES THAT IS LOCATED IN NEW YORK STATE AND IS NOT PRIMARILY ENGAGED IN REAL ESTATE, PROFESSIONAL SERVICES, OR FINANCIAL SERVICES;

(2) "PRINCIPAL OWNER" SHALL MEAN ONE OR MORE PERSONS WHO OWN AN AGGREGATE OF TWENTY-FIVE PERCENT OR MORE OF THE MICRO-ENTERPRISE;

(3) "AT-RISK" SHALL MEAN THAT THE REPAYMENT OF THE INVESTMENT IS NOT SECURED OR GUARANTEED AND IS ENTIRELY DEPENDENT ON THE SUCCESS OF THE MICRO-ENTERPRISE;

(4) "QUALIFIED INVESTMENT" SHALL MEAN AN INVESTMENT IN A MICRO-ENTERPRISE THAT IS AT RISK, PROVIDED THE INVESTOR IS NOT A PRINCIPAL OWNER OF THE MICRO-ENTERPRISE OR ANY RELATED PERSON AS DEFINED IN SECTION 465(B)(3)(C) OF THE INTERNAL REVENUE CODE AND IS NOT INVOLVED IN THE OPERATION OF THE MICRO-ENTERPRISE AS A FULL-TIME PROFESSIONAL ACTIVITY, AND PROVIDED FURTHER THAT THE INVESTMENT IN THE MICRO-ENTERPRISE IS MAINTAINED FOR A MINIMUM OF THREE YEARS, AND PROVIDED FURTHER THAT THE INVESTMENT IS USED BY THE MICRO-ENTERPRISE FOR CAPITAL IMPROVEMENTS, MACHINERY AND EQUIPMENT, RESEARCH AND DEVELOPMENT, OR WORKING CAPITAL.

(B) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE QUALIFIED INVESTMENT, PROVIDED THAT FIFTEEN PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT IS MADE AND FIVE PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS PARAGRAPH FOR ALL YEARS IS ONE HUNDRED FIFTY THOUSAND DOLLARS.

(C) IN NO EVENT SHALL THE CREDIT AND THE CARRYOVER OF SUCH CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR, IN THE AGGREGATE, 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 THE CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS 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.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ1 of chapter 57 of the laws of 2008, is amended to read as follows:

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

With respect to the following credit under this section:	The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is:
(I) Investment tax credit under subsection (a)	Investment credit base or qualified rehabilitation

	expenditures under subdivision twelve of section two hundred ten
(II) Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B of section two hundred ten
(III) Empire zone wage tax credit under subsection (k)	Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six
(IV) Empire zone capital tax credit under subsection (l)	Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six
(V) Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
(VI) Credit for employment of persons with disabilities under subsection (o)	Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six
(VII) Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten
(VIII) Empire zone employment incentive credit under subsection (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
(IX) Alternative fuels credit under subsection (p)	Cost under subdivision twenty-four of section two hundred ten
(X) Qualified emerging technology company	Applicable credit base under subdivision twelve-E

employment credit under subsection (q)	of section two hundred ten
(XI) Qualified emerging technology company capital tax credit under subsection (r)	Qualified investments under subdivision twelve-F of section two hundred ten
(XII) Credit for purchase of an automated external defibrillator under subsection (s)	Cost of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six
(XIII) Low-income housing credit under subsection (x)	Credit amount under subdivision thirty of section two hundred ten or subsection (l) of section fourteen hundred fifty-six
(XIV) Credit for transportation improvement contributions under subsection (z)	Amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six
(XV) QEZE credit for real property taxes under subsection (bb)	Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six
(XVI) QEZE tax reduction credit under subsection (cc)	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen
(XVII) Green building credit under subsection (y)	Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six
(XVIII) Credit for long-term care insurance premiums under subsection (aa)	Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of section

	fourteen hundred fifty-six
(XIX) Brownfield redevelopment credit under subsection (dd)	Amount of credit under subdivision thirty-three of section two hundred ten or subsection (q) of section fourteen hundred fifty-six
(XX) Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)	Amount of credit under subdivision thirty-four of section two hundred ten or subsection (r) of section fourteen hundred fifty-six
(XXI) Environmental remediation insurance credit under subsection (ff)	Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six
(XXII) Empire state film production credit under subsection (gg)	Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten
(XXIII) Qualified emerging technology company facilities, operations and training credit under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
(XXIV) Security training tax credit under subsection (ii)	Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
(XXV) Credit for qualified fuel cell electric generating equipment expenditures under subsection (g-2)	Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six
(XXVI) Empire state commercial production credit under subsection (jj)	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of section two hundred ten

(XXVII) Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision thirty-eight of section two hundred ten
(XXVIII) Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision thirty-nine of section two hundred ten
(XXIX) Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision forty of [subsection] SECTION two hundred ten
(XXX) Credit for companies who provide transportation to individuals with disabilities under subsection (oo)	Amount of credit under subdivision forty of section two hundred ten
(XXXI) NEW YORK MICRO-ENTERPRISE INVESTOR TAX CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT 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) NEW YORK MICRO-ENTERPRISE INVESTOR TAX CREDIT. (1) FOR THE PURPOSES OF THIS SUBSECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "MICRO-ENTERPRISE" SHALL MEAN A BUSINESS WITH FIVE OR FEWER EMPLOYEES THAT IS LOCATED IN NEW YORK STATE AND IS NOT PRIMARILY ENGAGED IN REAL ESTATE, PROFESSIONAL SERVICES, OR FINANCIAL SERVICES;

(B) "PRINCIPAL OWNER" SHALL MEAN ONE OR MORE PERSONS WHO OWN AN AGGREGATE OF TWENTY-FIVE PERCENT OR MORE OF THE MICRO-ENTERPRISE;

(C) "AT-RISK" SHALL MEAN THAT THE REPAYMENT OF THE INVESTMENT IS NOT SECURED OR GUARANTEED AND IS ENTIRELY DEPENDENT ON THE SUCCESS OF THE MICRO-ENTERPRISE;

(D) "QUALIFIED INVESTMENT" SHALL MEAN AN INVESTMENT IN A MICRO-ENTERPRISE THAT IS AT RISK, PROVIDED THE INVESTOR IS NOT A PRINCIPAL OWNER OF THE MICRO-ENTERPRISE OR ANY RELATED PERSON AS DEFINED IN SECTION 465(B)(3)(C) OF THE INTERNAL REVENUE CODE AND IS NOT INVOLVED IN THE OPERATION OF THE MICRO-ENTERPRISE AS A FULL-TIME PROFESSIONAL ACTIVITY, AND PROVIDED FURTHER THAT THE INVESTMENT IN THE MICRO-ENTERPRISE IS MAINTAINED FOR A MINIMUM OF THREE YEARS, AND PROVIDED FURTHER THAT THE INVESTMENT IS USED BY THE MICRO-ENTERPRISE FOR CAPITAL IMPROVEMENTS, MACHINERY AND EQUIPMENT, RESEARCH AND DEVELOPMENT, OR WORKING CAPITAL.

(2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE TWENTY-FIVE PERCENT OF THE QUALIFIED INVESTMENT, PROVIDED THAT FIFTEEN PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT IS MADE AND FIVE PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS PARAGRAPH FOR ALL YEARS IS ONE HUNDRED FIFTY THOUSAND DOLLARS.

(3) IF THE AMOUNT OF THE CREDIT AND THE CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR, IN THE AGGREGATE,

SHALL EXCEED TAXPAYER'S TAX FOR SUCH YEAR, ANY AMOUNT OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAX FOR SUCH YEAR OR YEARS.

S 5. This act shall take effect immediately; provided, however, that the empire state film production credit under subsection (gg), the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to individuals with disabilities under subsection (oo) of section 606 of the tax law contained in section three of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, as amended and section 5 of chapter 522 of the laws of 2006, as amended, respectively.