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. GIANARIS, ENGLEBRIGHT, PHEFFER -- Multi-Sponsored by -- M. of A. BOYLAND, BRADLEY, CHRISTENSEN, COLTON, COOK, CUSICK, DelMONTE, DIAZ, FIELDS, GALEF, JOHN, V. LOPEZ, MARKEY, MILLMAN, MORELLE, P. RIVERA, SCHIMMINGER, SWEENEY -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a tax credit against corporation taxes, business corporation taxes and personal income taxes, for the purchase of hybrid vehicles

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 187-o to read as follows:

S 187-O. HYBRID VEHICLE CREDIT. 1. GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE CREDITED AGAINST THE TAXES IMPOSED UNDER SECTIONS ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR AND ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE. SUCH CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SECTION, SHALL BE ALLOWED FOR QUALIFIED HYBRID VEHICLES PLACED IN SERVICE DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, THAT THE AMOUNT OF SUCH CREDIT ALLOWABLE AGAINST THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE SHALL BE THE EXCESS OF THE CREDIT ALLOWED BY THIS SECTION OVER THE AMOUNT OF SUCH CREDIT ALLOWABLE AGAINST THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE.

2. QUALIFIED HYBRID VEHICLES. THE CREDIT UNDER THIS SECTION FOR QUALIFIED HYBRID VEHICLES SHALL EQUAL FOUR THOUSAND DOLLARS PER VEHICLE REGISTERED IN THIS STATE.

3. DEFINITION. THE TERM "QUALIFIED HYBRID VEHICLE" SHALL HAVE THE SAME MEANING AS PROVIDED FOR UNDER PARAGRAPH THREE OF SUBSECTION (U) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER.

4. CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SECTION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE APPLICABLE MINIMUM TAX FIXED BY SECTION ONE HUNDRED EIGHTY-THREE OR ONE

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

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HUNDRED EIGHTY-FIVE OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT 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.

5. CREDIT RECAPTURE. (A) IF, WITHIN THREE FULL YEARS FROM THE DATE A QUALIFIED HYBRID VEHICLE IS PLACED IN SERVICE, SUCH QUALIFIED HYBRID VEHICLE CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE TAX YEAR IN WHICH SUCH CESSATION OCCURS.

(B) A QUALIFIED HYBRID VEHICLE CEASES TO BE QUALIFIED IF:

(I) IT IS MODIFIED BY THE TAXPAYER SO THAT IT NO LONGER MEETS THE REQUIREMENTS OF A QUALIFIED HYBRID VEHICLE AS DEFINED IN PARAGRAPH THREE OF SUBSECTION (U) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER, OR

(II) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SECTION SELLS OR DISPOSES OF THE VEHICLE AND KNOWS OR HAS REASON TO KNOW THAT THE VEHICLE WILL BE SO MODIFIED.

(C) THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SECTION MULTIPLIED BY:

(I) ONE HUNDRED PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE FIRST FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE,

(II) SIXTY-SIX AND TWO-THIRDS PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE SECOND FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE, OR

(III) THIRTY-THREE AND ONE-THIRD PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE THIRD FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE.

S 2. Section 210 of the tax law is amended by adding a new subdivision 29 to read as follows:

29. HYBRID VEHICLE CREDIT. (A) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBDIVISION, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR QUALIFIED HYBRID VEHICLES PLACED IN SERVICE DURING THE TAXABLE YEAR.

(B) QUALIFIED HYBRID VEHICLES. THE CREDIT UNDER THIS SUBDIVISION FOR QUALIFIED HYBRID VEHICLES SHALL EQUAL FOUR THOUSAND DOLLARS PER VEHICLE REGISTERED IN THIS STATE.

(C) DEFINITION. THE TERM "QUALIFIED HYBRID VEHICLE" SHALL HAVE THE SAME MEANING AS PROVIDED FOR UNDER PARAGRAPH THREE OF SUBSECTION (U) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER.

(D) CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SUBDIVISION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT 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.

(E) CREDIT RECAPTURE. (I) IF, WITHIN THREE FULL YEARS FROM THE DATE A QUALIFIED HYBRID VEHICLE IS PLACED IN SERVICE, SUCH QUALIFIED HYBRID VEHICLE CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE TAX YEAR IN WHICH SUCH CESSATION OCCURS.

(II) A QUALIFIED HYBRID VEHICLE CEASES TO BE QUALIFIED IF:

(A) IT IS MODIFIED BY THE TAXPAYER SO THAT IT NO LONGER MEETS THE REQUIREMENTS OF A QUALIFIED HYBRID VEHICLE AS DEFINED IN PARAGRAPH THREE OF SUBSECTION (U) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER, OR

(B) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBDIVISION SELLS OR DISPOSES OF THE VEHICLE AND KNOWS OR HAS REASON TO KNOW THAT THE VEHICLE WILL BE SO MODIFIED.

(III) THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION MULTIPLIED BY:

(A) ONE HUNDRED PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE FIRST FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE,

(B) SIXTY-SIX AND TWO-THIRDS PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE SECOND FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE, OR

(C) THIRTY-THREE AND ONE-THIRD PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE THIRD FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE.

(F) AFFILIATES. (I) IF A CREDIT UNDER THIS SUBDIVISION IS ALLOWED TO A TAXPAYER WITH RESPECT TO A TAXABLE YEAR, THE ACTION TAKEN BY SUCH TAXPAYER WHICH RESULTED IN SUCH CREDIT BEING ALLOWED THERETO MAY, AT THE ELECTION OF THE TAXPAYER AND AN AFFILIATE THEREOF, BE ASCRIBED TO SUCH AFFILIATE. WHERE SUCH AFFILIATE, BASED ON SUCH ASCRIPTION, IS ALLOWED SUCH CREDIT AND DEDUCTS FROM THE TAX OTHERWISE DUE THE AMOUNT OF SUCH CREDIT, SUCH CREDIT SHALL BE DEEMED IN ALL RESPECTS TO HAVE BEEN ALLOWED TO SUCH AFFILIATE, PROVIDED THAT ANY ACTION OR INACTION BY THE TAXPAYER WHICH CONSTITUTES AN EVENT OF RECAPTURE DESCRIBED IN PARAGRAPH (E) OF THIS SUBDIVISION SHALL BE ASCRIBED TO THE AFFILIATE AND SHALL CONSTITUTE AN EVENT OF RECAPTURE WITH RESPECT TO THE CREDIT ALLOWED TO THE AFFILIATE PURSUANT TO THIS SUBDIVISION.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE CASE OF THE CREDIT PROVIDED FOR UNDER THIS SUBDIVISION BEING ALLOWED TO, OR ASSERTED TO BE ALLOWED TO, AN AFFILIATE, PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL HAVE THE SAME POWERS WITH RESPECT TO EXAMINING THE BOOKS AND RECORDS OF THE TAXPAYER, AND HAVE SUCH OTHER POWERS OF INVESTIGATION WITH RESPECT TO THE TAXPAYER, AS ARE AFFORDED UNDER THIS CHAPTER WITH RESPECT TO A TAXPAYER WHICH HAS DEDUCTED THE CREDIT ALLOWED UNDER THIS SECTION FROM TAX OTHERWISE DUE, AS IF IT WERE THE TAXPAYER WHICH HAD DEDUCTED SUCH CREDIT FROM TAX OTHERWISE DUE.

(III) THE TERM "AFFILIATE" SHALL MEAN A CORPORATION SUBSTANTIALLY ALL THE CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED EITHER DIRECTLY OR INDIRECTLY BY THE TAXPAYER, OR WHICH OWNS OR CONTROLS EITHER DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE TAXPAYER, OR SUBSTANTIALLY ALL THE CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED EITHER DIRECTLY OR INDIRECTLY BY INTERESTS WHICH OWN OR CONTROL EITHER DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE TAXPAYER.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ-1 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:

Investment tax credit under subsection (a)	Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten
Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B of section two hundred ten
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
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
Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
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
Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten
Empire zone employment incentive credit under subsection (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
Alternative fuels credit under subsection (p)	Cost under subdivision twenty-four of section two hundred ten

Qualified emerging technology company employment credit under subsection (q)	Applicable credit base under subdivision twelve-E of section two hundred ten
Qualified emerging technology company capital tax credit under subsection (r)	Qualified investments under subdivision twelve-F of section two hundred ten
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
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
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
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
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
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

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
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
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
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
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
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
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
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
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
Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision thirty-eight of section two hundred ten
Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision thirty-nine of section two hundred ten
Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision forty of [subsection] SECTION two hundred ten
Credit for companies who provide transportation to individuals with disabilities under subsection (oo)	Amount of credit under subdivision forty of section two hundred ten
HYBRID VEHICLE CREDIT UNDER SUBSECTION (U)	COST UNDER SUBDIVISION TWENTY-NINE OF SECTION TWO HUNDRED TEN

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

(U) HYBRID VEHICLE CREDIT. (1) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBSECTION, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR QUALIFIED HYBRID VEHICLES PLACED IN SERVICE DURING THE TAXABLE YEAR.

(2) QUALIFIED HYBRID VEHICLE. THE CREDIT UNDER THIS SUBSECTION FOR QUALIFIED HYBRID VEHICLES SHALL EQUAL FOUR THOUSAND DOLLARS PER VEHICLE REGISTERED IN THIS STATE.

(3) DEFINITION. THE TERM "QUALIFIED HYBRID VEHICLE" MEANS A MOTOR VEHICLE, AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW, THAT:

(A) DRAWS PROPULSION ENERGY FROM BOTH:

(I) AN INTERNAL COMBUSTION ENGINE (OR HEAT ENGINE THAT USES COMBUSTIBLE FUEL); AND

(II) AN ENERGY STORAGE DEVICE;

(B) EMPLOYS A REGENERATIVE VEHICLE BRAKING SYSTEM THAT RECOVERS WASTE ENERGY TO CHARGE SUCH ENERGY STORAGE DEVICE; AND

(C) (I) IS MORE FUEL EFFICIENT THAN THE AVERAGE FUEL EFFICIENCY OF MOTOR VEHICLES, WHICH DO NOT MEET THE REQUIREMENTS OF SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH, AND ARE IN THE NEXT LOWER VEHICLE CLASS THAN THE SUBJECT MOTOR VEHICLE; OR

(II) IS ONE AND ONE-HALF TIMES MORE FUEL EFFICIENT THAN MOTOR VEHICLES, WHICH DO NOT MEET THE REQUIREMENTS OF SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH, AND ARE IN THE SAME CLASS AS THE SUBJECT MOTOR VEHICLE.

(4) CARRYOVERS. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(5) CREDIT RECAPTURE. (A) IF, WITHIN THREE FULL YEARS FROM THE DATE A QUALIFIED HYBRID VEHICLE IS PLACED IN SERVICE, SUCH QUALIFIED HYBRID VEHICLE CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE TAX YEAR IN WHICH SUCH CESSATION OCCURS.

(B) A QUALIFIED HYBRID VEHICLE CEASES TO BE QUALIFIED IF:

(I) IT IS MODIFIED BY THE TAXPAYER SO THAT IT NO LONGER MEETS THE REQUIREMENTS OF A QUALIFIED HYBRID VEHICLE AS DEFINED IN PARAGRAPH THREE OF THIS SUBSECTION.

(II) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBSECTION SELLS OR DISPOSES OF THE VEHICLE AND KNOWS OR HAS REASON TO KNOW THAT THE VEHICLE WILL BE SO MODIFIED.

(C) THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBSECTION MULTIPLIED BY:

(I) ONE HUNDRED PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE FIRST FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE,

(II) SIXTY-SIX AND TWO-THIRDS PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE SECOND FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE, OR

(III) THIRTY-THREE AND ONE-THIRD PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE THIRD FULL YEAR AFTER THE DATE THE VEHICLE IS PLACED IN SERVICE.

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.