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

5297

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. MORELLE, KOON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a credit for employers for wages associated with information technology security employees, and providing a deduction for businesses for the expenses of certain other security-related measures

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 30 to read as follows:

S 30. INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO, OR THIRTY-THREE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (E) OF THIS SECTION, TO BE COMPUTED AS PROVIDED IN SUBDIVISION (D) OF THIS SECTION.

(B) QUALIFIED EMPLOYEE. THE TERM "QUALIFIED EMPLOYEE" SHALL MEAN A PERSON HIRED AND EMPLOYED FOR THE SOLE PURPOSE OF PROVIDING INFORMATION TECHNOLOGY SECURITY.

(C) QUALIFIED INFORMATION SECURITY WAGES. THE TERM "QUALIFIED INFORMATION SECURITY WAGES" SHALL MEAN THE TOTAL AMOUNT OF THE SALARIES OR WAGES PAID TO QUALIFIED EMPLOYEES DURING A TAXABLE YEAR.

(D) AMOUNT OF CREDIT. THE AMOUNT OF THE CREDIT SHALL EQUAL FIFTY PERCENT OF THE TOTAL AMOUNT OF QUALIFIED INFORMATION SECURITY WAGES PAID TO QUALIFIED EMPLOYEES.

(E) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER;

(2) SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER;

(3) SUBSECTION (U) OF SECTION FOURTEEN HUNDRED FIFTY-SIX OF THIS CHAPTER;

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

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(4) SUBDIVISION (Y) OF SECTION FIFTEEN HUNDRED ELEVEN OF THIS CHAPTER.

S 2. Paragraph (a) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 18 to read as follows:

(18) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF THIS SUBDIVISION.

S 3. Subdivision 9 of section 208 of the tax law is amended by adding a new paragraph (r) to read as follows:

(R) (A) FOR THE PURPOSES OF THIS PARAGRAPH THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING DEFINITIONS:

(I) "BUSINESS" MEANS BOTH PRIVATE AND NOT-FOR-PROFIT BUSINESSES.

(II) "INFORMATION TECHNOLOGY SECURITY SOFTWARE OR HARDWARE" MEANS COMPUTER SOFTWARE OR HARDWARE THAT IS USED TO PROTECT AGAINST COMPUTER VIRUSES, WORMS OR DELETERIOUS INSTRUCTIONS AND SOFTWARE OR PRODUCTS THAT PROTECT AGAINST COMPUTER HACKING OR COMPUTER WORMS OR VIRUSES.

(B) ANY BUSINESS THAT PURCHASES AND INSTALLS INFORMATION TECHNOLOGY SOFTWARE OR HARDWARE MAY DEDUCT FIFTY PERCENT OF THE FULL AMOUNT OF THE EXPENSES RELATED TO THE PURCHASE AND INSTALLATION OF SUCH SOFTWARE OR HARDWARE WITHIN THE APPLICABLE TAXABLE YEAR.

(C) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS DEEMED NECESSARY TO CARRY OUT THE PROVISIONS OF THIS PARAGRAPH BY JANUARY FIRST, TWO THOUSAND TEN.

(D) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO TAXABLE YEARS BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND TEN.

S 4. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT 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 CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS 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 5. 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:
(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 employment credit under subsection (q)	Applicable credit base under subdivision twelve-E 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) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OR SUBSECTION (U) OF SECTION FOURTEEN HUNDRED FIFTY-SIX

S 6. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. 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 7. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER.

S 8. Subsection (e) of section 1453 of the tax law is amended by adding a new paragraph 19 to read as follows:

(19) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER.

S 9. Section 1456 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS 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 10. Paragraph 3 of subdivision (b) of section 1503 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(3) In determining entire net income, there shall be subtracted, to the extent not deductible in determining federal taxable income:

(A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this article but exempt from federal income tax;

(B) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this article but exempt from federal income tax; [and]

(C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax; AND

(D) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER.

S 11. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS 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 12. 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 five 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.