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I N S E N A T E

February 9, 2009

Introduced by Sens. KLEIN, STEWART-COUSINS, VALESKY -- 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 enacting the medical malpractice insurance premiums credit act

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

Section 1. Short title. This act shall be known and may be cited as the "medical malpractice insurance premiums credit act".

S 2. Section 210 of the tax law is amended by adding a new subdivision 25-b to read as follows:

25-B. CREDIT FOR MEDICAL MALPRACTICE INSURANCE PREMIUMS. (A) AS USED IN THIS SUBDIVISION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: (1) "MEDICAL MALPRACTICE INSURANCE" MEANS INSURANCE AGAINST LEGAL LIABILITY OF THE INSURED, AND AGAINST LOSS, DAMAGE, OR EXPENSE INCIDENT TO A CLAIM OF SUCH LIABILITY ARISING OUT OF THE DEATH OR INJURY OF ANY PERSON DUE TO MEDICAL, DENTAL, PODIATRIC, CERTIFIED NURSE-MIDWIFERY OR HOSPITAL MALPRACTICE BY ANY LICENSED PHYSICIAN, DENTIST, PODIATRIST, CERTIFIED NURSE-MIDWIFE, CERTIFIED REGISTERED NURSE ANESTHETIST OR HOSPITAL.

(2) "QUALIFIED PREMIUMS" SHALL INCLUDE ALL PREMIUMS PAID BY THE TAXPAYER DURING THE CURRENT TAX YEAR ON ALL MEDICAL MALPRACTICE INSURANCE POLICIES WHOSE PREMIUMS ARE REGULATED AND ESTABLISHED BY THE NEW YORK STATE DEPARTMENT OF INSURANCE WITH THE EXCEPTION OF PREMIUMS PAID TO THE NEW YORK MEDICAL MALPRACTICE INSURANCE PLAN AS ESTABLISHED BY SUCH DEPARTMENT UNDER REGULATION 170 (11 NYCRR 430).

(3) "QUALIFIED INCOME" SHALL INCLUDE ALL NET RECEIPTS THE TAXPAYER DERIVES FROM ACTIVITIES COVERED BY THE MALPRACTICE POLICY FOR WHICH THE QUALIFIED PREMIUMS ARE PAID.

(B) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO TWENTY-FIVE PERCENT OF THE AMOUNT BY WHICH ANNUAL

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

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QUALIFIED PREMIUMS EXCEED TEN PERCENT OF THE TAXPAYER'S QUALIFIED INCOME FOR THE CURRENT YEAR, NOT TO EXCEED THE LESSER OF THE TAXPAYER'S CURRENT YEAR TAX LIABILITY OR TWENTY-FIVE THOUSAND DOLLARS. THE CREDIT SHALL BE CLAIMED AFTER THE ALLOWANCE OF ALL OTHER CREDITS PROVIDED BY THIS CHAPTER.

(C) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY 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. IF, HOWEVER, 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.

(D) FOR THE PURPOSES OF THIS SUBDIVISION A TAXPAYER MAY INCLUDE A PARTNERSHIP, A CORPORATION THAT HAS MADE AN ELECTION UNDER SUBCHAPTER S OF CHAPTER ONE OF SUBTITLE A OF THE INTERNAL REVENUE CODE, OR ANY OTHER BUSINESS ENTITY THROUGH WHICH INCOME FLOWS AS A DISTRIBUTIVE SHARE TO ITS OWNERS. A CREDIT RECEIVED UNDER THIS SUBDIVISION BY A PARTNERSHIP, S-CORPORATION, OR OTHER SUCH BUSINESS ENTITY SHALL BE APPORTIONED AMONG THE PERSONS TO WHOM THE INCOME OR PROFIT OF THE PARTNERSHIP, S-CORPORATION, OR OTHER ENTITY IS DISTRIBUTED, IN THE SAME PROPORTIONS AS THOSE IN WHICH THE INCOME OR PROFIT IS DISTRIBUTED.

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:
(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 dis- abilities 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 subsec- tion (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 sub- division 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 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) MEDICAL MALPRACTICE INSURANCE PREMIUMS CREDIT UNDER SUBSECTION (QQ)	QUALIFIED PREMIUMS UNDER SUBDIVISION TWENTY-FIVE-B 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) MEDICAL MALPRACTICE INSURANCE PREMIUMS TAX CREDIT. (1) AS USED IN THIS SUBSECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: (A) "MEDICAL MALPRACTICE INSURANCE" MEANS INSURANCE AGAINST LEGAL LIABILITY OF THE INSURED, AND AGAINST LOSS, DAMAGE, OR EXPENSE INCIDENT TO A CLAIM OF SUCH LIABILITY ARISING OUT OF THE DEATH OR INJURY OF ANY PERSON DUE TO MEDICAL, DENTAL, PODIATRIC, CERTIFIED NURSE-MIDWIFERY OR HOSPITAL MALPRACTICE BY ANY LICENSED PHYSICIAN, DENTIST, PODIATRIST, CERTIFIED NURSE-MIDWIFE, CERTIFIED REGISTERED NURSE ANESTHETIST OR HOSPITAL.

(B) "QUALIFIED PREMIUMS" SHALL INCLUDE ALL PREMIUMS PAID BY THE TAXPAYER DURING THE CURRENT TAX YEAR ON ALL MEDICAL MALPRACTICE INSURANCE POLICIES WHOSE PREMIUMS ARE REGULATED AND ESTABLISHED BY THE NEW YORK STATE DEPARTMENT OF INSURANCE WITH THE EXCEPTION OF PREMIUMS PAID TO THE NEW YORK MEDICAL MALPRACTICE INSURANCE PLAN AS ESTABLISHED BY SUCH DEPARTMENT UNDER REGULATION 170 (11 NYCRR 430).

(C) "QUALIFIED INCOME" SHALL INCLUDE ALL NET RECEIPTS THE TAXPAYER DERIVES FROM ACTIVITIES COVERED BY THE MALPRACTICE POLICY FOR WHICH THE QUALIFIED PREMIUMS ARE PAID.

(2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO TWENTY-FIVE PERCENT OF THE AMOUNT BY WHICH ANNUAL QUALIFIED PREMIUMS EXCEED TEN PERCENT OF THE TAXPAYER'S QUALIFIED INCOME FOR THE CURRENT YEAR, NOT TO EXCEED THE LESSER OF THE TAXPAYER'S CURRENT YEAR TAX LIABILITY OR TWENTY-FIVE THOUSAND DOLLARS. THE CREDIT SHALL BE CLAIMED AFTER THE ALLOWANCE OF ALL OTHER CREDITS PROVIDED BY THIS CHAPTER.

(3) ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN A 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.

(4) FOR THE PURPOSES OF THIS SUBSECTION A TAXPAYER MAY INCLUDE A PARTNERSHIP, A CORPORATION THAT HAS MADE AN ELECTION UNDER SUBCHAPTER S OF CHAPTER ONE OF SUBTITLE A OF THE INTERNAL REVENUE CODE, OR ANY OTHER BUSINESS ENTITY THROUGH WHICH INCOME FLOWS AS A DISTRIBUTIVE SHARE TO ITS OWNERS. A CREDIT RECEIVED UNDER THIS SUBSECTION BY A PARTNERSHIP, S-CORPORATION, OR OTHER SUCH BUSINESS ENTITY SHALL BE APPORTIONED AMONG THE PERSONS TO WHOM THE INCOME OR PROFIT OF THE PARTNERSHIP, S-CORPORATION, OR OTHER ENTITY IS DISTRIBUTED, IN THE SAME PROPORTIONS AS THOSE IN WHICH THE INCOME OR PROFIT IS DISTRIBUTED.

S 5. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2009 through December 31, 2018; 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.