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2009-2010 Regular Sessions

I N S E N A T E

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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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "medical malpractice insurance premiums credit act".
3 S 2. Section 210 of the tax law is amended by adding a new subdivision
4 25-b to read as follows:
5 25-B. CREDIT FOR MEDICAL MALPRACTICE INSURANCE PREMIUMS. (A) AS USED
6 IN THIS SUBDIVISION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEAN-
7 INGS: (1) "MEDICAL MALPRACTICE INSURANCE" MEANS INSURANCE AGAINST LEGAL
8 LIABILITY OF THE INSURED, AND AGAINST LOSS, DAMAGE, OR EXPENSE INCIDENT
9 TO A CLAIM OF SUCH LIABILITY ARISING OUT OF THE DEATH OR INJURY OF ANY
10 PERSON DUE TO MEDICAL, DENTAL, PODIATRIC, CERTIFIED NURSE-MIDWIFERY OR
11 HOSPITAL MALPRACTICE BY ANY LICENSED PHYSICIAN, DENTIST, PODIATRIST,
12 CERTIFIED NURSE-MIDWIFE, CERTIFIED REGISTERED NURSE ANESTHETIST OR
13 HOSPITAL.
14 (2) "QUALIFIED PREMIUMS" SHALL INCLUDE ALL PREMIUMS PAID BY THE
15 TAXPAYER DURING THE CURRENT TAX YEAR ON ALL MEDICAL MALPRACTICE INSUR-
16 ANCE POLICIES WHOSE PREMIUMS ARE REGULATED AND ESTABLISHED BY THE NEW
17 YORK STATE DEPARTMENT OF INSURANCE WITH THE EXCEPTION OF PREMIUMS PAID
18 TO THE NEW YORK MEDICAL MALPRACTICE INSURANCE PLAN AS ESTABLISHED BY
19 SUCH DEPARTMENT UNDER REGULATION 170 (11 NYCRR 430).
20 (3) "QUALIFIED INCOME" SHALL INCLUDE ALL NET RECEIPTS THE TAXPAYER
21 DERIVES FROM ACTIVITIES COVERED BY THE MALPRACTICE POLICY FOR WHICH THE
22 QUALIFIED PREMIUMS ARE PAID.
23 (B) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY
24 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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1 QUALIFIED PREMIUMS EXCEED TEN PERCENT OF THE TAXPAYER'S QUALIFIED INCOME
2 FOR THE CURRENT YEAR, NOT TO EXCEED THE LESSER OF THE TAXPAYER'S CURRENT
3 YEAR TAX LIABILITY OR TWENTY-FIVE THOUSAND DOLLARS. THE CREDIT SHALL BE
4 CLAIMED AFTER THE ALLOWANCE OF ALL OTHER CREDITS PROVIDED BY THIS CHAP-
5 TER.

6 (C) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY YEAR SHALL NOT
7 REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS
8 PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION.
9 IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR
10 ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT
11 NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
12 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
13 OR YEARS.

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

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

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

30 The corporation's credit base under
31 section two hundred ten or section
32 With respect to the following fourteen hundred fifty-six of this
33 credit under this section: chapter is:

34 (I) Investment tax credit Investment credit base
35 under subsection (a) or qualified
36 rehabilitation
37 expenditures under
38 subdivision twelve of
39 section two hundred ten

40 (II) Empire zone Cost or other basis
41 investment tax credit under subdivision
42 under subsection (j) twelve-B
43 of section two hundred
44 ten

45 (III) Empire zone Eligible wages under
46 wage tax credit subdivision nineteen of
47 under subsection (k) section two hundred ten
48 or subsection (e) of
49 section fourteen hundred
50 fifty-six

1 (IV) Empire zone	Qualified investments
2 capital tax credit	and contributions under
3 under subsection (l)	subdivision twenty of
4	section two hundred ten
5	or subsection (d) of
6	section fourteen hundred
7	fifty-six
8 (V) Agricultural property tax	Allowable school
9 credit under subsection (n)	district property taxes under
10	subdivision twenty-two of
11	section two hundred ten
12 (VI) Credit for employment	Qualified first-year wages or
13 of persons with dis-	qualified second-year wages
14 abilities under	under subdivision
15 subsection (o)	twenty-three of section
16	two hundred ten
17	or subsection (f)
18	of section fourteen
19	hundred fifty-six
20 (VII) Employment incentive	Applicable investment credit
21 credit under subsec-	base under subdivision
22 tion (a-1)	twelve-D of section two
23	hundred ten
24 (VIII) Empire zone	Applicable investment
25 employment	credit under sub-
26 incentive credit under	division twelve-C
27 subsection (j-1)	of section two hundred ten
28 (IX) Alternative fuels credit	Cost under subdivision
29 under subsection (p)	twenty-four of section two
30	hundred ten
31 (X) Qualified emerging	Applicable credit base
32 technology company	under subdivision twelve-E
33 employment credit	of section two hundred ten
34 under subsection (q)	
35 (XI) Qualified emerging	Qualified investments under
36 technology company	subdivision twelve-F of
37 capital tax credit	section two hundred ten
38 under subsection (r)	
39 (XII) Credit for purchase of an	Cost of an automated
40 automated external defibrillator	external defibrillator under
41 under subsection (s)	subdivision twenty-five of
42	section two hundred ten
43	or subsection (j) of section
44	fourteen hundred fifty-six
45 (XIII) Low-income housing	Credit amount under
46 credit under subsection (x)	subdivision thirty
47	of section two hundred ten or

1		subsection (l) of section
2		fourteen hundred fifty-six
3	(XIV) Credit for transportation	Amount of credit under sub-
4	improvement contributions	division thirty-two of section
5	under subsection (z)	two hundred ten or subsection
6		(n) of section fourteen
7		hundred fifty-six
8	(XV) QEZE credit for real property	Amount of credit under
9	taxes under subsection (bb)	subdivision twenty-seven of
10		section two hundred ten or
11		subsection (o) of section
12		fourteen hundred fifty-six
13	(XVI) QEZE tax reduction credit	Amount of benefit period
14	under subsection (cc)	factor, employment increase factor
15		and zone allocation
16		factor (without regard
17		to pro ration) under
18		subdivision twenty-eight of
19		section two hundred ten or
20		subsection (p) of section
21		fourteen hundred fifty-six
22		and amount of tax factor
23		as determined under
24		subdivision (f) of section sixteen
25	(XVII) Green building credit	Amount of green building credit
26	under subsection (y)	under subdivision thirty-one
27		of section two hundred ten
28		or subsection (m) of section
29		fourteen hundred fifty-six
30	(XVIII) Credit for long-term	Qualified costs under
31	care insurance premiums	subdivision twenty-five-a of
32	under subsection (aa)	section two hundred ten
33		or subsection (k) of section
34		fourteen hundred fifty-six
35	(XIX) Brownfield redevelopment	Amount of credit
36	credit under subsection	under subdivision
37	(dd)	thirty-three of section
38		two hundred ten
39		or subsection (q) of
40		section fourteen hundred
41		fifty-six
42	(XX) Remediated brownfield	Amount of credit under
43	credit for real property	subdivision thirty-four
44	taxes for qualified	of section two hundred
45	sites under subsection	ten or subsection (r) of
46	(ee)	section fourteen hundred
47		fifty-six

1 (XXI) Environmental 2 remediation 3 insurance credit under 4 subsection (ff) 5 6 7	Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six
8 (XXII) Empire state film pro- 9 duction credit under subsection 10 (gg) 11 12	Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten
13 (XXIII) Qualified emerging 14 technology company facilities, 15 operations and training credit 16 under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
17 (XXIV) Security training tax 18 credit under 19 subsection (ii) 20 21	Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
22 (XXV) Credit for qualified fuel 23 cell electric generating equipment 24 expenditures under subsection (g-2) 25 26 27	Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six
28 (XXVI) Empire state commercial 29 production credit under subsection 30 (jj) 31 32	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of sec- tion two hundred ten
33 (XXVII) Biofuel production 34 tax credit under 35 subsection (jj) 36	Amount of credit under subdivision thirty-eight of section two hundred ten
37 (XXVIII) Clean heating fuel credit 38 under subsection (mm) 39	Amount of credit under subdivision thirty-nine of section two hundred ten
40 (XXIX) Credit for rehabilitation 41 of historic properties 42 under subsection (oo)	Amount of credit under subdivision forty of subsection two hundred ten
43 (XXX) Credit for companies who 44 provide transportation 45 to individuals 46 with disabilities 47 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.