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

2745

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sen. GOLDEN -- 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 establishing a targeted human pharmacological project fee credit

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. TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. (A) DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "PRIMARILY" SHALL MEAN MORE THAN FIFTY PERCENT.

(2) "RESEARCH AND DEVELOPMENT COSTS" SHALL MEAN IN-HOUSE RESEARCH EXPENSES WITHIN THE MEANING OF SECTION 41 (B) (2) OF THE INTERNAL REVENUE CODE.

(3) "PROJECT FEES" SHALL MEAN THE MONETARY AMOUNT ACTUALLY PAID TO THE U.S.F.D.A. THAT CONSTITUTES THE FEE DUE UPON THE SUBMISSION OF A HUMAN DRUG APPLICATION OR SUPPLEMENT PURSUANT TO U.S.C. S 379 H (A) (1) FOR A HUMAN DRUG, RESEARCH AND DEVELOPMENT COSTS OF WHICH WERE PRIMARILY INCURRED IN NEW YORK STATE.

(4) "U.S.F.D.A." SHALL MEAN THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

(B) TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. (1) A TAXPAYER WHO IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX. SUCH CREDIT SHALL BE ALLOWED WITH RESPECT TO PROJECT FEES.

(2) THE APPLICABLE PERCENTAGE SHALL EQUAL THIRTY-SIX PERCENT OF THE COST OF PROJECT FEES.

(3) THE CREDIT ALLOWED UNDER THIS SECTION MAY ONLY BE CLAIMED AFTER ITS LICENSURE IS APPROVED BY THE U.S.F.D.A. AND THE TAXPAYER IS LICENSED

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

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TO MANUFACTURE SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT IN NEW YORK STATE.

(4) THE CREDIT ALLOWED UNDER THIS SECTION MAY BE TAKEN ONLY AFTER THE TAXPAYER COMPLETES AND SUBMITS AN APPLICATION TO THE COMMISSIONER, SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE TAXPAYER. SUCH APPLICATION SHALL INCLUDE COPIES OF ALL RELEVANT LICENSES AND APPROVALS FROM THE U.S.F.D.A. AND ANY OTHER NECESSARY FEDERAL OR NEW YORK STATE REGULATORY BODY. SUCH APPLICATION MUST BE FILED WITH THE COMMISSIONER WITHIN NINETY DAYS OF THE GRANTING OF ALL NECESSARY LICENSES AND CERTIFICATIONS TO ALLOW THE MANUFACTURING OF SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT.

(5) IF THE TAXPAYER DOES NOT BEGIN PRIMARILY MANUFACTURING THE HUMAN DRUG APPLICATION OR SUPPLEMENT IN NEW YORK STATE WITHIN ONE CALENDAR YEAR OF THE GRANTING OF THE CREDIT, AND DOES NOT PRIMARILY MANUFACTURE SUCH HUMAN DRUG APPLICATION OR SUPPLEMENT FOR AT LEAST FIVE CALENDAR YEARS FROM THE ONSET OF PRIMARY MANUFACTURING, ANY AMOUNT OF CREDIT ALLOWED BY THIS SECTION SHALL BE ADDED BACK IN THE TAXABLE YEAR THAT SUCH CREDIT IS RECAPTURED AND THIS RECAPTURE IS NO LONGER SUBJECT TO JUDICIAL REVIEW.

(6) ANY DEDUCTION FROM GROSS INCOME THAT MAY BE TAKEN WITH RESPECT TO ANY EXPENDITURES QUALIFYING FOR THE CREDIT UNDER THIS SECTION SHALL BE DISALLOWED TO THE EXTENT OF THE CREDIT.

(7) ONLY PROJECT FEES PAID BY THE TAXPAYER TO THE U.S.F.D.A. ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION ARE ELIGIBLE FOR THE CREDIT.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION SEE; (1) ARTICLE 9-A: SECTION 210, SUBDIVISION 41, AND (2) ARTICLE 22: SECTION 606, SUBSECTIONS (I) AND (QQ).

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

41. TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER AMOUNT 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 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 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 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) CREDIT FOR TARGETED HUMAN PHARMACOLOGICAL PROJECT FEES UNDER SUBSECTION (QQ)	QUALIFYING EXPENDITURES 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) TARGETED HUMAN PHARMACOLOGICAL PROJECT FEE CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED FOR IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. 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 5. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2009; 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 disabili-

ties 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.