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

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2009-2010 Regular Sessions

I N S E N A T E

March 5, 2009

Introduced by Sen. BONACIC -- 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 the qualified solar and fuel cell manufacturer facilities and operations credit

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

Section 1. Section 210 of the tax law is amended by adding a new subdivision 12-H to read as follows:

12-H. QUALIFIED SOLAR AND FUEL CELL MANUFACTURER FACILITIES AND OPERATIONS CREDIT. (A) A TAXPAYER THAT IS PRINCIPALLY ENGAGED IN THE MANUFACTURING OF SOLAR ENERGY EQUIPMENT AND/OR FUEL CELLS, AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVISION. FOR THE PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH ELECTRICITY. FUEL CELL EQUIPMENT SHALL MEAN THE MANUFACTURING IN NEW YORK STATE OF ON-SITE ELECTRICITY GENERATION SYSTEMS UTILIZING PROTON EXCHANGE MEMBRANE FUEL CELLS OR MOLTEN CARBONATE FUEL CELL TECHNOLOGIES. FUEL CELL MEANS A DEVICE THAT PRODUCES ELECTRICITY DIRECTLY FROM HYDROGEN OR HYDROCARBON FUEL THROUGH A NON-COMBUSTIVE ELECTROCHEMICAL PROCESS. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR FUEL CELL EQUIPMENT QUALIFY FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETERMINED BY THE COMMISSIONER AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

(B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF

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

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RESEARCH AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS THREE PERCENT DURING ITS TAXABLE YEAR.

(C) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER CENTUM OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF THIS SECTION THAT IS ACQUIRED BY THE TAXPAYER BY PURCHASE AS DEFINED IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH PERCENTAGE OF THE (I) COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND PRODUCTS,

(II) THE COSTS OR EXPENSES ASSOCIATED WITH QUALITY CONTROL OF THE RESEARCH AND DEVELOPMENT OR MANUFACTURING OPERATIONS,

(III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROCESSES,

(IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF MATERIALS AND PRODUCTS RESULTING FROM THE QUALIFIED MANUFACTURING ACTIVITIES OF AN ELIGIBLE TAXPAYER.

(V) THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

(D) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY THE TAXPAYER IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOWANCE FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

(E) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBDIVISION FOR FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY THIS SUBDIVISION TO A TAXPAYER EXCEED TWENTY-FIVE MILLION DOLLARS PER YEAR.

(F) 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 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 THOU-

SAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 2. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) QUALIFIED SOLAR AND FUEL CELL MANUFACTURER FACILITIES AND OPERATIONS CREDIT. (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSISTING OF ONE OR MORE TAXPAYERS THAT IS PRINCIPALLY ENGAGED IN THE MANUFACTURING OF SOLAR ENERGY EQUIPMENT AND/OR FUEL, AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH ELECTRICITY. FUEL CELL EQUIPMENT SHALL MEAN THE MANUFACTURING IN NEW YORK STATE OF ON-SITE ELECTRICITY GENERATION SYSTEMS UTILIZING PROTON EXCHANGE MEMBRANE FUEL CELLS OR MOLTEN CARBONATE FUEL CELL TECHNOLOGIES. FUEL CELL MEANS A DEVICE THAT PRODUCES ELECTRICITY DIRECTLY FROM HYDROGEN OR HYDROCARBON FUEL THROUGH A NON-COMBUSTIVE ELECTROCHEMICAL PROCESS. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR FUEL CELL EQUIPMENT QUALIFY FOR ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE COMMISSIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

(2) AN ELIGIBLE ENTITY SHALL (I) HAVE MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF RESEARCH AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS THREE PERCENT DURING ITS TAXABLE YEAR.

(3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER CENTUM OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED BY PURCHASE AS DEFINED IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH PERCENTAGE OF THE (I) COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND PRODUCTS,

(II) THE COSTS OR EXPENSES ASSOCIATED WITH QUALITY CONTROL OF THE RESEARCH AND DEVELOPMENT OR MANUFACTURING OPERATIONS,

(III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROCESSES,

(IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF MATERIALS AND PRODUCTS RESULTING FROM THE ACTIVITIES OF AN ELIGIBLE TAXPAYER AS LONG AS SUCH ACTIVITIES FALL UNDER THE ACTIVITIES LISTED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW.

(V) THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

(4) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY

THE ENTITY IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOWANCE FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

(5) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBSECTION FOR FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY THIS SUBDIVISION TO A TAXPAYER EXCEED FIFTEEN MILLION DOLLARS PER YEAR.

(6) IF THE AMOUNT OF 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 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	Amount of credit under subdivision forty of

to individuals with disabilities under subsection (oo)	section two hundred ten
CREDIT FOR QUALIFIED SOLAR AND FUEL CELL MANUFACTURER FACILITIES AND OPERATIONS CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT UNDER SUBDIVISION TWELVE-H OF SECTION TWO HUNDRED TEN

S 4. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2010; 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.