

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

3083--A

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the qualified emerging technology company capital tax credit, to repeal certain provisions of such law relating thereto; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that New York state's future economic prosperity is linked to
3 the accelerated growth of companies in emerging technology fields.
4 Entrepreneurs and companies just starting out dominate these rapidly
5 growing segments of the economy. They are key players in translating
6 scientific and technological research into commercial products with
7 significant market and job-creation potential. However, entrepreneurs
8 and start-up companies require large amounts of outside seed capital to
9 prove a new concept and to fuel their growth.
10 The legislature further finds that there is not an adequate supply of
11 seed funding for these entrepreneurial firms. Seed funds account for
12 less than two percent of all venture capital investments. The largest
13 source of seed funds is from angel investors, wealthy individuals will-
14 ing to invest in new companies and new ideas, yet there has been a
15 recent decline in the percentage of angel investments going to seed and
16 start-up deals. Therefore, in order to enable entrepreneurs and young
17 companies to flourish in New York it is necessary to increase the incen-
18 tives available to angel investors and venture capitalists who provide
19 seed and early-stage capital.

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

LBD04185-03-0

1 S 2. Subdivision 12-F of section 210 of the tax law is REPEALED and a
2 new subdivision 12-F is added to read as follows:

3 12-F. QUALIFIED EMERGING TECHNOLOGY COMPANY CAPITAL TAX CREDIT. (1)
4 FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE
5 FOLLOWING MEANINGS:

6 (A) "QUALIFIED EMERGING TECHNOLOGY COMPANY" IS A PRIVATE COMPANY AS
7 DEFINED IN SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES
8 LAW.

9 (B) "QUALIFIED INVESTMENT" IS THE INVESTMENT OF MONEY IN A QUALIFIED
10 EMERGING TECHNOLOGY COMPANY IN EXCHANGE FOR ORIGINAL ISSUE CAPITAL STOCK
11 OR OTHER OWNERSHIP INTEREST, PROVIDED THAT REPAYMENT OF THE INVESTMENT
12 IS DEPENDENT ON THE SUCCESS OF THE BUSINESS OPERATIONS AND IS NOT
13 SECURED BY A LIEN ON BUSINESS ASSETS OR A PERSONAL GUARANTY OF ANY PRIN-
14 CIPAL OWNER, AND PROVIDED FURTHER THAT SUCH INVESTMENT IS NOT MADE BY OR
15 ON BEHALF OF AN OWNER OF THE BUSINESS, INCLUDING, BUT NOT LIMITED TO, A
16 STOCKHOLDER, PARTNER OR SOLE PROPRIETOR, OR ANY RELATED PERSON AS
17 DEFINED IN SECTION 465(B)(3)(C) OF THE INTERNAL REVENUE CODE.

18 (C) "QUALIFIED SEED INVESTMENT" IS A QUALIFIED INVESTMENT IN A START-
19 UP COMPANY OR A COMPANY THAT MAY NOT YET HAVE FULLY ESTABLISHED COMMER-
20 CIAL OPERATIONS TO ENABLE SUCH COMPANY TO CONDUCT RESEARCH TO PROVE A
21 CONCEPT.

22 (D) "QUALIFIED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPITAL A
23 LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A VENTURE CAPITAL FUND,
24 PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE QUALIFIED INVEST-
25 MENTS.

26 (E) "QUALIFIED SEED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPI-
27 TAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A SEED CAPITAL FUND,
28 AS DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, PROVIDED THAT
29 SUCH FUND WAS ESTABLISHED SOLELY TO MAKE SEED CAPITAL INVESTMENTS, AS
30 DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION.

31 (2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY
32 THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE
33 AMOUNTS SPECIFIED IN SUBPARAGRAPHS (A), (B), (C) AND (D) OF THIS PARA-
34 GRAPH.

35 (A) TWENTY PERCENT OF A QUALIFIED INVESTMENT, PROVIDED THAT TEN
36 PERCENT OF THE QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE
37 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE
38 QUALIFIED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO
39 TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD,
40 TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE
41 YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE
42 OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL
43 AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR
44 ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

45 (B) FORTY PERCENT OF A QUALIFIED SEED INVESTMENT, PROVIDED THAT TWENTY
46 PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE
47 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND TEN PERCENT OF THE
48 QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT
49 TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT
50 SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE
51 TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM
52 THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE
53 TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH
54 FOR ALL YEARS IS SIX HUNDRED THOUSAND DOLLARS.

55 (C) TWENTY PERCENT OF A QUALIFIED FUND INVESTMENT, PROVIDED THAT TEN
56 PERCENT OF THE QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN THE

1 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE
2 QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT
3 TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT
4 SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE
5 TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM
6 THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE
7 TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH
8 FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

9 (D) TWENTY PERCENT OF A QUALIFIED SEED FUND INVESTMENT, PROVIDED THAT
10 TEN PERCENT OF THE QUALIFIED SEED FUND INVESTMENT CAN BE TAKEN AS CREDIT
11 IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF
12 THE QUALIFIED SEED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF
13 THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS
14 NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE
15 TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM
16 THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE
17 TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH
18 FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

19 (3) IN NO EVENT SHALL THE CREDIT AND CARRYOVER OF SUCH CREDIT ALLOWED
20 UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR, IN THE AGGREGATE, REDUCE
21 THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS
22 PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION.
23 HOWEVER, IF THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH,
24 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO
25 SUCH AMOUNT, OR IF ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT
26 MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF THE FINAL
27 SENTENCE OF THIS PARAGRAPH, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH
28 CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO
29 THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAX FOR SUCH
30 YEAR OR YEARS. IN ADDITION, THE AMOUNT OF SUCH CREDIT, AND CARRYOVERS
31 OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE
32 MAY NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER
33 SECTION TWO HUNDRED NINE OF THIS ARTICLE COMPUTED WITHOUT REGARD TO ANY
34 CREDIT PROVIDED FOR BY THIS SECTION.

35 S 3. Paragraph 1 of subsection (r) of section 606 of the tax law is
36 REPEALED and a new paragraph 1 is added to read as follows:

37 (1) FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING TERMS SHALL
38 HAVE THE FOLLOWING MEANINGS:

39 (A) "QUALIFIED EMERGING TECHNOLOGY COMPANY" IS A PRIVATE COMPANY AS
40 DEFINED IN SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES
41 LAW.

42 (B) "QUALIFIED INVESTMENT" IS THE INVESTMENT OF MONEY IN A QUALIFIED
43 EMERGING TECHNOLOGY COMPANY IN EXCHANGE FOR ORIGINAL ISSUE CAPITAL STOCK
44 OR OTHER OWNERSHIP INTEREST, PROVIDED THAT REPAYMENT OF THE INVESTMENT
45 IS DEPENDENT ON THE SUCCESS OF THE BUSINESS OPERATIONS AND IS NOT
46 SECURED BY A LIEN ON BUSINESS ASSETS OR A PERSONAL GUARANTY OF ANY PRIN-
47 CIPAL OWNER, AND PROVIDED FURTHER THAT SUCH INVESTMENT IS NOT MADE BY OR
48 ON BEHALF OF AN OWNER OF THE BUSINESS, INCLUDING, BUT NOT LIMITED TO, A
49 STOCKHOLDER, PARTNER OR SOLE PROPRIETOR, OR ANY RELATED PERSON AS
50 DEFINED IN SECTION 465 (B)(3)(C) OF THE INTERNAL REVENUE CODE.

51 (C) "QUALIFIED SEED INVESTMENT" IS A QUALIFIED INVESTMENT IN A START-
52 UP COMPANY OR A COMPANY THAT MAY NOT YET HAVE FULLY ESTABLISHED COMMER-
53 CIAL OPERATIONS TO ENABLE SUCH COMPANY TO CONDUCT RESEARCH TO PROVE A
54 CONCEPT.

55 (D) "QUALIFIED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPITAL A
56 LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A VENTURE CAPITAL FUND,

1 PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE QUALIFIED INVEST-
2 MENTS.

3 (E) "QUALIFIED SEED FUND INVESTMENT" IS THE AMOUNT OF COMMITTED CAPI-
4 TAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A SEED CAPITAL FUND,
5 AS DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, PROVIDED THAT
6 SUCH FUND WAS ESTABLISHED SOLELY TO MAKE SEED CAPITAL INVESTMENTS, AS
7 DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION.

8 S 4. Paragraph 3 of subsection (r) of section 606 of the tax law is
9 REPEALED, paragraph 2 of subsection (r), as added by section 2 of part I
10 of chapter 407 of the laws of 1999, is renumbered paragraph 3 and
11 amended to read as follows:

12 (3) (A) If the amount of the credit and carryovers of such credit
13 allowed under this subsection for any taxable year shall exceed the
14 taxpayer's tax for such year, any amount of credit or carryovers of such
15 credit thus not deductible in such taxable year may be carried over to
16 the following year or years and may be deducted from the tax for such
17 year or years. In addition, the amount of such credit, and carryovers of
18 such credit to the taxable year, deducted from the tax otherwise due may
19 not, in the aggregate, exceed fifty percent of the tax imposed under
20 section six hundred one computed without regard to any credit provided
21 for by this section.

22 (B) In the case of a husband or wife who is required to file a sepa-
23 rate return, the limitations provided for in [subparagraph (c)] SUBPARA-
24 GRAPHS (A), (C) AND (D) of paragraph [one] TWO of this subsection shall
25 be [seventy-five] ONE HUNDRED FIFTY thousand dollars in lieu of [one
26 hundred fifty] THREE HUNDRED thousand dollars, and [one hundred fifty]
27 THE LIMITATIONS PROVIDED FOR IN SUBPARAGRAPH (B) OF PARAGRAPH TWO OF
28 THIS SUBSECTION SHALL BE THREE HUNDRED thousand dollars in lieu of
29 [three] SIX hundred thousand dollars, unless the spouse of the taxpayer
30 has no credit allowable under this subsection for the taxable year of
31 such spouse which ends within or with the taxpayer's taxable year.

32 (C) In the case of an estate or trust, the limitations provided for in
33 paragraph [one] TWO of this subsection shall be reduced to an amount
34 which bears the same ratio to [one hundred fifty] THREE HUNDRED thousand
35 dollars and an amount which bears the same ratio to [three] SIX hundred
36 thousand dollars as the portion of the income of the estate or trust
37 which is not allocated to beneficiaries bears to the total income of the
38 estate or trust.

39 S 5. Subsection (r) of section 606 of the tax law is amended by adding
40 a new paragraph 2 to read as follows:

41 (2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY
42 THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE
43 AMOUNTS SPECIFIED IN SUBPARAGRAPHS (A), (B), (C) AND (D) OF THIS PARA-
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25 TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM
26 THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE
27 TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH
28 FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

29 S 6. This act shall take effect immediately and shall apply to taxable
30 years beginning on and after January 1, 2010 and shall remain in effect
31 until December 31, 2015, when upon such date the provisions of this act
32 shall expire and be deemed repealed.