

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

7566--A

2011-2012 Regular Sessions

I N A S S E M B L Y

May 10, 2011

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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 solar and energy storage manufacturer facilities and operations credit

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

1 Section 1. Section 210 of the tax law is amended by adding a new
2 subdivision 12-H to read as follows:
3 12-H. QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND
4 OPERATIONS CREDIT. (A) A TAXPAYER THAT IS WHOLE OR PART OF AN ENTITY
5 THAT SERVES AS THE PRINCIPAL OPERATOR OF A FACILITY PRIMARILY FUNCTION-
6 ING TO FABRICATE SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT AND
7 THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF THIS SUBDI-
8 VISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
9 CLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPEC-
10 IFIED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION ATTRIBUTABLE TO THE
11 TAXPAYER SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVI-
12 SION. FOR THE PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL
13 MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED
14 TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE
15 FOR SUCH ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS
16 AND DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY
17 TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED
18 FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY
19 ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL,
20 THERMAL OR OTHER DEMONSTRABLE MEANS SINGLY OR IN COMBINATION. THE
21 DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIP-
22 MENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETER-

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

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MINED 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 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 ATTRIBUTABLE COST OR SIMILAR 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) ATTRIBUTABLE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND PRODUCTS,

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

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

(IV) ATTRIBUTABLE 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 ATTRIBUTABLE EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND ATTRIBUTABLE 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

1 OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN
2 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
3 PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED,
4 HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHT-
5 Y-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THERE-
6 ON.

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

9 (UU) QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND
10 OPERATIONS CREDIT. (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSIST-
11 ING OF ONE OR MORE TAXPAYERS THAT SERVES AS THE PRINCIPAL OPERATOR OF A
12 FACILITY PRIMARILY FUNCTIONING TO FABRICATE SOLAR ENERGY EQUIPMENT OR
13 ENERGY STORAGE EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN
14 PARAGRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE
15 TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE
16 SUM (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE
17 AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION
18 SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE
19 PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANU-
20 FACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE
21 ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH
22 ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS AND
23 DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY
24 TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED
25 FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY
26 ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL,
27 THERMAL OR OTHER MEANS SINGLY OR IN COMBINATION. THE DETERMINATION OF
28 WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT QUALIFIES FOR
29 ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE COMMIS-
30 SIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW
31 YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

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

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

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

50 (III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROC-
51 ESSES,

52 (IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF
53 MATERIALS AND PRODUCTS RESULTING FROM THE ACTIVITIES OF AN ELIGIBLE
54 TAXPAYER AS LONG AS SUCH ACTIVITIES FALL UNDER THE ACTIVITIES LISTED IN
55 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF
56 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 TWENTY-FIVE MILLION DOLLARS PER YEAR. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE CAP IMPOSED BY THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS, SHAREHOLDERS, OR OTHER MEMBERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED TWENTY-FIVE MILLION DOLLARS PER YEAR FOR UP TO FOUR CONSECUTIVE TAXABLE YEARS.

(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 is amended by adding a new clause (xxxiv) to read as follows:

(XXXIV) CREDIT FOR	AMOUNT OF CREDIT UNDER
QUALIFIED SOLAR AND ENERGY STORAGE	SUBDIVISION TWELVE-H OF
MANUFACTURER FACILITIES	SECTION TWO HUNDRED TEN
AND OPERATIONS CREDIT	
UNDER SUBSECTION (UU)	

S 4. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2013.