

4228--A

2011-2012 Regular Sessions

I N S E N A T E

March 24, 2011

Introduced by Sens. ALESI, DILAN, GOLDEN, LIBOUS, McDONALD, OPPENHEIMER -- 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 providing for direct private assistance to emerging technology companies through the trading of their existing but unused research and development credits and their existing but unused net operating loss deductions to existing corporations and partnerships in return for private assistance

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 "Small New York Based High-Technology Business Investment Tax Credit
3 Act".
4 S 2. The tax law is amended by adding a new section 212 to read as
5 follows:
6 S 212. CORPORATION BUSINESS TAX BENEFIT CERTIFICATE TRANSFER PROGRAM.
7 1. (A) THE DEPARTMENT SHALL ESTABLISH A CORPORATION BUSINESS TAX BENEFIT
8 CERTIFICATE TRANSFER PROGRAM TO ALLOW NEW OR EXPANDING EMERGING TECHNOLOGY
9 AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING UNUSED AMOUNTS OF
10 RESEARCH AND DEVELOPMENT TAX CREDITS OTHERWISE ALLOWABLE PURSUANT TO
11 SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO
12 HUNDRED TEN OF THIS ARTICLE, WHICH CANNOT BE APPLIED FOR THE CREDIT'S
13 TAX YEAR, AND UNUSED NET OPERATING LOSS CARRYOVERS PURSUANT TO PARAGRAPH
14 (F) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE TO
15 SURRENDER THOSE TAX BENEFITS FOR USE BY OTHER CORPORATIONS ESTABLISHED
16 UNDER THE BUSINESS CORPORATION LAW AND SUBJECT TO THE PROVISIONS OF THIS
17 ARTICLE IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE PROVIDED

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

LBD06165-02-2

1 THOSE TAXPAYERS OR EXPANDING EMERGING TECHNOLOGY AND BIOTECHNOLOGY
2 COMPANIES. SUCH TAXPAYERS SHALL BE PROVIDED WITH A CORPORATION BUSINESS
3 TAX BENEFIT CERTIFICATE TO BE DEVELOPED BY THE COMMISSIONER.

4 (B) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF ECONOMIC
5 DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICATIONS BY NEW OR EXPANDING
6 EMERGING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING
7 UNUSED BUT OTHERWISE ALLOWABLE CARRYOVERS OF RESEARCH AND DEVELOPMENT
8 TAX CREDITS AND OTHERWISE ALLOWABLE NET OPERATING LOSS CARRYOVERS PURSU-
9 ANT TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF
10 SECTION TWO HUNDRED TEN OF THIS ARTICLE AND PARAGRAPH (F) OF SUBDIVISION
11 NINE OF SECTION TWO HUNDRED EIGHT, RESPECTIVELY, TO SURRENDER THOSE TAX
12 BENEFITS IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE MADE TO A
13 CORPORATION FILING PURSUANT TO THIS ARTICLE, WHICH HAS OBTAINED A CORPO-
14 RATION BUSINESS TAX BENEFIT CERTIFICATE IN AN AMOUNT EQUAL TO AT LEAST
15 SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE SURRENDERED TAX BENEFITS.

16 (C) THE COMMISSIONER SHALL CALCULATE THE VALUE OF THE NET OPERATING
17 LOSS CARRYOVER FOR PURPOSES OF THE BENEFIT CERTIFICATE EQUAL TO THE
18 AMOUNT OF THE CARRYOVER TIMES THE APPLICABLE BUSINESS ALLOCATION
19 PERCENTAGE AND TAX RATE OF THE EMERGING TECHNOLOGY OR BIOTECHNOLOGY
20 COMPANY.

21 (D) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF ECONOMIC
22 DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICATIONS BY TAXPAYERS PURSUANT
23 TO THE PROVISIONS OF THIS ARTICLE TO ACQUIRE SURRENDERED TAX BENEFITS
24 APPROVED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, WHICH SHALL BE
25 ISSUED IN THE FORM OF CORPORATION BUSINESS TAX BENEFIT TRANSFER CERTIF-
26 ICATES, IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE MADE BY THE
27 TAXPAYER IN AN AMOUNT EQUAL TO AT LEAST SEVENTY-FIVE PERCENT OF THE
28 AMOUNT OF THE SURRENDERED TAX BENEFIT OF AN EMERGING TECHNOLOGY OR
29 BIOTECHNOLOGY COMPANY IN THE STATE. THE PRIVATE FINANCIAL ASSISTANCE
30 SHALL ASSIST IN FUNDING EXPENSES INCURRED IN CONNECTION WITH THE OPERA-
31 TION OF A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY
32 IN THE STATE, INCLUDING BUT NOT LIMITED TO THE EXPENSES OF FIXED ASSETS,
33 SUCH AS THE CONSTRUCTION AND ACQUISITION AND DEVELOPMENT OF REAL ESTATE,
34 MATERIALS, START-UP, TENANT FIT-OUT, WORKING CAPITAL, SALARIES,
35 RESEARCH, AND DEVELOPMENT EXPENDITURES.

36 (E) THE COMMISSIONER SHALL COORDINATE THE APPLICATIONS, IN CONJUNCTION
37 WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT, FOR SURRENDER AND ACQUISI-
38 TION OF UNUSED BUT OTHERWISE ALLOWABLE TAX BENEFITS PURSUANT TO THIS
39 SECTION IN A MANNER THAT CAN BEST STIMULATE AND ENCOURAGE THE EXTENSION
40 OF PRIVATE FINANCIAL ASSISTANCE TO NEW AND EXPANDING EMERGING TECHNOLOGY
41 AND BIOTECHNOLOGY COMPANIES IN THIS STATE INTO A WRITTEN AGREEMENT WITH
42 SUCH COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE PRIVATE FINAN-
43 CIAL ASSISTANCE MADE IN EXCHANGE FOR THE CERTIFICATE. THE WRITTEN AGREE-
44 MENT MAY CONTAIN TERMS CONCERNING THE MAINTENANCE BY THE NEW OR EXPAND-
45 ING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY OF A HEADQUARTERS OR A
46 BASE OF OPERATION IN THIS STATE.

47 2. (A) A TAXPAYER THAT HAS ACQUIRED A CORPORATION BUSINESS TAX BENEFIT
48 CERTIFICATE PURSUANT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVI-
49 SION THAT INCLUDES THE RIGHT TO A NET OPERATING LOSS CARRYOVER DEDUCTION
50 SHALL ATTACH THAT CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO
51 FILE AND SHALL OTHERWISE APPLY THE NET OPERATING LOSS CARRYOVER
52 DEDUCTION AS EVIDENCED BY THE CERTIFICATE ACCORDING TO THE PROVISIONS OF
53 PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION AND ANY RULES OR REGU-
54 LATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE PROVISIONS OF THIS
55 SECTION.

(B) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY THAT HAS SURRENDERED AN UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO THE PROVISIONS OF PARAGRAPH (F) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE SHALL NOT BE ALLOWED A NET OPERATING LOSS CARRYOVER DEDUCTION BASED UPON THE RIGHT TO SUCH A DEDUCTION, AS EVIDENCED BY SUCH CORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND SHALL ATTACH A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE.

3. (A) A TAXPAYER THAT HAS ACQUIRED A CORPORATION BUSINESS TAX BENEFIT CERTIFICATE PURSUANT TO SUBDIVISION ONE OF THIS SECTION THAT INCLUDES THE RIGHT TO A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE SHALL ATTACH THAT CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE AND SHALL OTHERWISE APPLY THE CREDIT CARRYOVER, AS EVIDENCED BY THE CERTIFICATE, ACCORDING TO THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION AND ANY RULES OR REGULATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE PROVISIONS OF THIS SECTION.

(B) A NEW OR EXPANDING TECHNOLOGY OR BIOTECHNOLOGY COMPANY THAT HAS SURRENDERED AN UNUSED RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER SHALL NOT BE ALLOWED A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER BASED UPON THE RIGHT TO SUCH A CREDIT CARRYOVER, AS EVIDENCED BY THE CORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND SHALL ATTACH A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO FILE.

4. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(A) "ADVANCED COMPUTING" MEANS A TECHNOLOGY USED IN THE DESIGNING AND DEVELOPING OF COMPUTING HARDWARE AND SOFTWARE, INCLUDING INNOVATIONS IN DESIGNING THE FULL SPECTRUM OF HARDWARE FROM HAND-HELD CALCULATORS TO SUPER COMPUTERS, AND PERIPHERAL EQUIPMENT.

(B) "ADVANCED MATERIALS" MEANS MATERIALS WITH ENGINEERED PROPERTIES CREATED THROUGH THE DEVELOPMENT OF SPECIALIZED PROCESSING AND SYNTHESIS TECHNOLOGY, INCLUDING CERAMICS, HIGH VALUE-ADDED METALS, ELECTRONIC MATERIALS, COMPOSITES, POLYMERS, AND BIOMATERIALS.

(C) "BIOTECHNOLOGY" MEANS THE CONTINUALLY EXPANDING BODY OF FUNDAMENTAL KNOWLEDGE ABOUT THE FUNCTION OF BIOLOGICAL SYSTEMS FROM THE MACRO LEVEL TO THE MOLECULAR AND SUBATOMIC LEVELS, AS WELL AS NOVEL PRODUCTS, SERVICES, TECHNOLOGIES, AND SUB-TECHNOLOGIES DEVELOPED AS A RESULT OF INSIGHTS GAINED FROM RESEARCH ADVANCES WHICH ADD TO THAT BODY OF FUNDAMENTAL KNOWLEDGE.

(D) "CONTROL", WITH RESPECT TO A CORPORATION, MEANS OWNERSHIP, DIRECTLY OR INDIRECTLY, OF STOCK POSSESSING EIGHTY PERCENT OR MORE OF THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF THE STOCK OF THE CORPORATION ENTITLED TO VOTE; AND "CONTROL", WITH RESPECT TO A TRUST, MEANS OWNERSHIP, DIRECTLY OR INDIRECTLY, OF EIGHTY PERCENT OR MORE OF THE BENEFICIAL INTEREST IN THE PRINCIPAL OR INCOME OF THE TRUST. THE OWNERSHIP OF STOCK IN A CORPORATION, OF A CAPITAL OR PROFITS INTEREST IN A PARTNERSHIP OR ASSOCIATION, OR OF A BENEFICIAL INTEREST IN A TRUST SHALL BE DETERMINED IN ACCORDANCE WITH THE RULES FOR CONSTRUCTIVE OWNERSHIP OF STOCK PROVIDED IN SUBSECTION (C) OF SECTION 267 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986, 26 U.S.C. S267, OTHER THAN PARAGRAPH (3) OF SUBSECTION (C) OF SUCH SECTION.

(E) "CONTROLLED GROUP" MEANS ONE OR MORE CHAINS OF CORPORATIONS CONNECTED THROUGH STOCK OWNERSHIP WITH A COMMON PARENT CORPORATION IF STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF STOCK OF EACH OF THE CORPORATIONS IS OWNED DIRECTLY OR INDI-

RECTLY BY ONE OR MORE OF THE CORPORATIONS AND THE COMMON PARENT OWNS DIRECTLY STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF STOCK OF AT LEAST ONE OF THE OTHER CORPORATIONS.

(F) "ELECTRONIC DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING MICRO-ELECTRONICS, SEMICONDUCTORS, ELECTRONIC EQUIPMENT, AND INSTRUMENTATION, RADIO FREQUENCY, MICROWAVE, AND MILLIMETER ELECTRONICS, AND OPTICAL AND OPTIC-ELECTRICAL DEVICES, OR DATA AND DIGITAL COMMUNICATIONS AND IMAGING DEVICES.

(G) "ENVIRONMENTAL TECHNOLOGY" MEANS ASSESSMENT AND PREVENTION OF THREATS OR DAMAGE TO HUMAN HEALTH OR THE ENVIRONMENT, ENVIRONMENTAL CLEANUP, OR THE DEVELOPMENT OF ALTERNATIVE ENERGY SOURCES.

(H) "MEDICAL DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING ANY MEDICAL EQUIPMENT OR PRODUCT (OTHER THAN A PHARMACEUTICAL PRODUCT) THAT HAS THERAPEUTIC VALUE, DIAGNOSTIC VALUE, OR BOTH, AND IS REGULATED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION.

(I) "PARTNERSHIP" MEANS A SYNDICATE, GROUP, POOL, JOINT VENTURE, OR OTHER UNINCORPORATED ORGANIZATION THROUGH OR BY MEANS OF WHICH ANY BUSINESS, FINANCIAL OPERATION, OR VENTURE IS CARRIED ON, AND WHICH IS NOT A TRUST OR ESTATE, A CORPORATION, OR A SOLE PROPRIETORSHIP.

(J) "PILOT SCALE MANUFACTURING" MEANS DESIGN, CONSTRUCTION, AND TESTING OF PREPRODUCTION PROTOTYPES AND MODELS IN THE FIELDS OF ADVANCED COMPUTING, ADVANCED MATERIALS, BIOTECHNOLOGY, ELECTRONIC DEVICE TECHNOLOGY, ENVIRONMENTAL TECHNOLOGY, AND MEDICAL DEVICE TECHNOLOGY, OTHER THAN FOR COMMERCIAL SALE, EXCLUDING SALES OF PROTOTYPES OR SALES FOR MARKET TESTING, IF TOTAL GROSS RECEIPTS FROM SUCH SALES OF THE PRODUCT, SERVICE, OR PROCESS DO NOT EXCEED ONE MILLION DOLLARS.

(K) "QUALIFIED INVESTMENT" MEANS THE NON-REFUNDABLE INVESTMENT AT RISK IN A SMALL NEW YORK-BASED HIGH TECHNOLOGY BUSINESS BY A TAXPAYER THAT IS NOT A RELATED PERSON OF THE SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS, THE TRANSFER OF WHICH IS IN CONNECTION WITH A TRANSACTION IN EXCHANGE FOR STOCK, INTEREST IN PARTNERSHIPS OR JOINT VENTURES, LICENSES (EXCLUSIVE OR NON-EXCLUSIVE), RIGHT TO USE TECHNOLOGY, MARKETING RIGHTS, WARRANTS, OPTIONS, OR ANY ITEM SIMILAR TO THOSE INCLUDED IN THIS PARAGRAPH, INCLUDING BUT NOT LIMITED TO OPTIONS OR RIGHTS TO ACQUIRE ANY OF THE ITEMS INCLUDED IN THIS PARAGRAPH.

(L) "QUALIFIED RESEARCH EXPENSES" MEANS QUALIFIED RESEARCH EXPENSES, AS DEFINED IN SECTION 41 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986, 26 U.S.C. S 41, AS IN EFFECT ON JUNE THIRTIETH, NINETEEN HUNDRED NINETY-TWO, IN THE FIELDS OF ENVIRONMENTAL TECHNOLOGY OR MEDICAL DEVICE TECHNOLOGY.

(M) "RELATED PERSON" MEANS:

(1) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST BY THE TAXPAYER;

(2) AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN THE CONTROL OF THE TAXPAYER;

(3) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST CONTROLLED BY AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN THE CONTROL OF THE TAXPAYER; OR

(4) A MEMBER OF THE SAME CONTROLLED GROUP AS A TAXPAYER.

(N) "SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS" MEANS A CORPORATION DOING BUSINESS EMPLOYING OR OWNING CAPITAL OR PROPERTY, OR MAINTAINING AN OFFICE, IN THIS STATE THAT HAS QUALIFIED RESEARCH EXPENSES PAID OR INCURRED FOR RESEARCH EXPENSES CONDUCTED IN THIS STATE OR CONDUCTS PILOT SCALE MANUFACTURING IN THIS STATE, AND HAS FEWER THAN TWO HUNDRED TWENTY-FIVE EMPLOYEES, OF WHOM SEVENTY-FIVE PERCENT ARE NEW YORK-BASED EMPLOYEES FILLING A POSITION OR JOB IN THIS STATE.

1 (0) "TAX YEAR" MEANS THE FISCAL OR CALENDAR ACCOUNTING YEAR OF A
2 TAXPAYER.

3 S 3. The tax law is amended by adding a new section 606-a to read as
4 follows:

5 S 606-A. NONCORPORATION TAX BENEFIT CERTIFICATE TRANSFER PROGRAM. (A)

6 (1) THE DEPARTMENT SHALL ESTABLISH A CORPORATION BUSINESS TAX BENEFIT
7 CERTIFICATE TRANSFER PROGRAM TO ALLOW NEW OR EXPANDING EMERGING TECHNOL-
8 OGY AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING UNUSED AMOUNTS OF
9 RESEARCH AND DEVELOPMENT TAX CREDITS OTHERWISE ALLOWABLE PURSUANT TO
10 SUBPARAGRAPH (A) OF PARAGRAPH TWO OF SUBSECTION (A) OF SECTION SIX
11 HUNDRED SIX OF THIS ARTICLE, WHICH CANNOT BE APPLIED FOR THE CREDIT'S
12 TAX YEAR, AND UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO SUBSECTION
13 (B) OF SECTION SIX HUNDRED SEVENTEEN AND SUBSECTION (B) OF SECTION SIX
14 HUNDRED THIRTY-THREE OF THIS ARTICLE TO SURRENDER SUCH TAX BENEFITS FOR
15 USE BY OTHER ENTITIES SUBJECT TO THE PROVISIONS OF THIS ARTICLE IN
16 EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE PROVIDED SUCH TAXPAYERS
17 OR EXPANDING EMERGING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES. SUCH
18 TAXPAYERS SHALL BE PROVIDED WITH A NONCORPORATION BUSINESS TAX BENEFIT
19 CERTIFICATE TO BE DEVELOPED BY THE COMMISSIONER.

20 (2) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF THE
21 DEPARTMENT OF ECONOMIC DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICA-
22 TIONS BY NEW OR EXPANDING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES IN THIS
23 STATE HAVING UNUSED BUT OTHERWISE ALLOWABLE CARRYOVER OF RESEARCH AND
24 DEVELOPMENT TAX CREDITS AND OTHERWISE ALLOWABLE NET OPERATING LOSS
25 CARRYOVERS PURSUANT TO EITHER SUBPARAGRAPH (A) OF PARAGRAPH TWO OF
26 SUBSECTION (A) OF SECTION SIX HUNDRED SIX OR SUBSECTION (B) OF SECTION
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28 THIRTY-THREE OF THIS ARTICLE, RESPECTIVELY, TO SURRENDER THOSE TAX BENE-
29 FITS IN EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE MADE TO A
30 TAXPAYER FILING PURSUANT TO THIS ARTICLE WHO HAS OBTAINED A NONCORPO-
31 RATION BUSINESS TAX BENEFIT CERTIFICATE IN AN AMOUNT EQUAL TO AT LEAST
32 SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE SURRENDERED TAX BENEFITS.

33 (3) THE COMMISSIONER SHALL CALCULATE THE VALUE OF THE NET OPERATING
34 LOSS CARRYOVER FOR PURPOSES OF THE BENEFIT CERTIFICATE EQUAL TO THE
35 AMOUNT OF THE CARRYOVER TIMES THE APPLICABLE BUSINESS ALLOCATION
36 PERCENTAGE AND TAX RATE OF THE EMERGING TECHNOLOGY OR BIOTECHNOLOGY
37 COMPANY.

38 (4) THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF THE
39 DEPARTMENT OF ECONOMIC DEVELOPMENT, SHALL REVIEW AND APPROVE APPLICA-
40 TIONS BY TAXPAYERS SUBJECT TO THE PROVISIONS OF THIS ARTICLE TO ACQUIRE
41 SURRENDERED TAX BENEFITS APPROVED PURSUANT TO PARAGRAPH TWO OF THIS
42 SUBSECTION, WHICH SHALL BE ISSUED IN THE FORM OF NONCORPORATION BUSINESS
43 TAX BENEFIT TRANSFER CERTIFICATES, IN EXCHANGE FOR PRIVATE FINANCIAL
44 ASSISTANCE TO BE MADE BY THE TAXPAYER IN AN AMOUNT EQUAL TO AT LEAST
45 SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE SURRENDERED TAX BENEFIT OF AN
46 EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY IN THE STATE. THE PRIVATE
47 FINANCIAL ASSISTANCE SHALL ASSIST IN FUNDING EXPENSES INCURRED IN
48 CONNECTION WITH THE OPERATION OF A NEW OR EXPANDING EMERGING TECHNOLOGY
49 OR BIOTECHNOLOGY COMPANY IN THE STATE, INCLUDING BUT NOT LIMITED TO THE
50 EXPENSES OF FIXED ASSETS, SUCH AS THE CONSTRUCTION AND ACQUISITION AND
51 DEVELOPMENT OF REAL ESTATE, MATERIALS, START-UP, TENANT FIT-OUT, WORKING
52 CAPITAL, SALARIES, RESEARCH, AND DEVELOPMENT EXPENDITURES.

53 (5) THE COMMISSIONER SHALL COORDINATE THE APPLICATIONS, IN CONJUNCTION
54 WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT, FOR SURRENDER AND ACQUISSI-
55 TION OF UNUSED BUT OTHERWISE ALLOWABLE TAX BENEFITS PURSUANT TO THIS
56 SECTION IN A MANNER THAT CAN BEST STIMULATE AND ENCOURAGE THE EXTENSION

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3 SUCH COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE PRIVATE FINAN-
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7 BASE OF OPERATION IN THIS STATE.

8 (B)(1) A TAXPAYER THAT HAS ACQUIRED A NONCORPORATION BUSINESS TAX
9 BENEFIT CERTIFICATE PURSUANT TO THE PROVISIONS OF PARAGRAPH TWO OF
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12 THE TAXPAYER IS REQUIRED TO FILE AND SHALL OTHERWISE APPLY THE NET OPER-
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14 ING TO THE PROVISIONS OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION
15 AND ANY RULES OR REGULATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE
16 PROVISIONS OF THIS SECTION.

17 (2) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY
18 THAT HAS SURRENDERED AN UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO
19 THE PROVISIONS OF SUBSECTION (B) OF SECTION SIX HUNDRED SEVENTEEN AND
20 SUBSECTION (B) OF SECTION SIX HUNDRED THIRTY-THREE OF THIS ARTICLE SHALL
21 NOT BE ALLOWED A NET OPERATING LOSS CARRYOVER DEDUCTION BASED UPON THE
22 RIGHT TO SUCH A DEDUCTION, AS EVIDENCED BY SUCH NONCORPORATION BUSINESS
23 TAX BENEFIT CERTIFICATE, AND SHALL ATTACH A COPY OF THE CERTIFICATE TO
24 ANY RETURN THE TAXPAYER IS REQUIRED TO FILE.

25 (C) (1) A TAXPAYER THAT HAS ACQUIRED A NONCORPORATION BUSINESS TAX
26 BENEFIT CERTIFICATE PURSUANT TO SUBSECTION (A) OF THIS SECTION THAT
27 INCLUDES THE RIGHT TO A RESEARCH AND DEVELOPMENT TAX CREDIT CARRYOVER
28 SHALL ATTACH THAT CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO
29 FILE AND SHALL OTHERWISE APPLY THE CREDIT CARRYOVER, AS EVIDENCED BY THE
30 CERTIFICATE, ACCORDING TO THE PROVISIONS OF PARAGRAPH TWO OF SUBSECTION
31 (A) OF THIS SECTION AND ANY RULES OR REGULATIONS THE COMMISSIONER MAY
32 ADOPT TO CARRY OUT THE PROVISIONS OF THIS SECTION.

33 (2) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY
34 THAT HAS SURRENDERED AN UNUSED RESEARCH AND DEVELOPMENT TAX CREDIT
35 CARRYOVER SHALL NOT BE ALLOWED A RESEARCH AND DEVELOPMENT TAX CREDIT
36 CARRYOVER BASED UPON THE RIGHT TO SUCH A CREDIT CARRYOVER, AS EVIDENCED
37 BY THE NONCORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND SHALL ATTACH
38 A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS REQUIRED TO
39 FILE.

40 (D) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE
41 THE FOLLOWING MEANINGS:

42 (1) "ADVANCED COMPUTING" MEANS A TECHNOLOGY USED IN DESIGNING AND
43 DEVELOPING COMPUTING HARDWARE AND SOFTWARE, INCLUDING INNOVATIONS IN
44 DESIGNING THE FULL SPECTRUM OF HARDWARE FROM HAND-HELD CALCULATORS TO
45 SUPER COMPUTERS, AND PERIPHERAL EQUIPMENT.

46 (2) "ADVANCED MATERIALS" MEANS MATERIALS WITH ENGINEERED PROPERTIES
47 CREATED THROUGH THE DEVELOPMENT OF SPECIALIZED PROCESSING AND SYNTHESIS
48 TECHNOLOGY, INCLUDING CERAMICS, HIGH VALUE-ADDED METALS, ELECTRONIC
49 MATERIALS, COMPOSITES, POLYMERS, AND BIOMATERIALS.

50 (3) "BIOTECHNOLOGY" MEANS THE CONTINUALLY EXPANDING BODY OF FUNDAMEN-
51 TAL KNOWLEDGE ABOUT THE FUNCTION OF BIOLOGICAL SYSTEMS FROM THE MACRO
52 LEVEL TO THE MOLECULAR AND SUBATOMIC LEVELS, AS WELL AS NOVEL PRODUCTS,
53 SERVICES, TECHNOLOGIES, AND SUB-TECHNOLOGIES DEVELOPED AS A RESULT OF
54 INSIGHTS GAINED FROM RESEARCH ADVANCES WHICH ADD TO THAT BODY OF FUNDA-
55 MENTAL KNOWLEDGE.

1 (4) "CONTROL", WITH RESPECT TO A CORPORATION, MEANS OWNERSHIP, DIRECT-
2 LY OR INDIRECTLY, OF STOCK POSSESSING EIGHTY PERCENT OR MORE OF THE
3 TOTAL COMBINED VOTING POWER OF ALL CLASSES OF THE STOCK OF THE CORPO-
4 RATION ENTITLED TO VOTE; AND "CONTROL", WITH RESPECT TO A TRUST, MEANS
5 OWNERSHIP, DIRECTLY OR INDIRECTLY, OF EIGHTY PERCENT OR MORE OF THE
6 BENEFICIAL INTEREST IN THE PRINCIPAL OR INCOME OF THE TRUST. THE OWNER-
7 SHIP OF STOCK IN A CORPORATION, OF A CAPITAL OR PROFITS INTEREST IN A
8 PARTNERSHIP OR ASSOCIATION, OR OF A BENEFICIAL INTEREST IN A TRUST SHALL
9 BE DETERMINED IN ACCORDANCE WITH THE RULES FOR CONSTRUCTIVE OWNERSHIP OF
10 STOCK PROVIDED IN SUBSECTION (C) OF SECTION 267 OF THE FEDERAL INTERNAL
11 REVENUE CODE OF 1986, 26 U.S.C. S 267, OTHER THAN PARAGRAPH (3) OF
12 SUBSECTION (C) OF SUCH SECTION.

13 (5) "CONTROLLED GROUP" MEANS ONE OR MORE CHAINS OF CORPORATIONS
14 CONNECTED THROUGH STOCK OWNERSHIP WITH A COMMON PARENT CORPORATION IF
15 STOCK IS POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF ALL
16 CLASSES OF STOCK OF EACH OF THE CORPORATIONS IS OWNED DIRECTLY OR INDI-
17 RECTLY BY ONE OR MORE OF THE CORPORATIONS AND THE COMMON PARENT OWNS
18 DIRECTLY STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF
19 ALL CLASSES OF STOCK OF AT LEAST ONE OF THE OTHER CORPORATIONS.

20 (6) "ELECTRONIC DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING MICRO-
21 ELECTRONICS, SEMICONDUCTORS, ELECTRONIC EQUIPMENT, AND INSTRUMENTATION,
22 RADIO FREQUENCY, MICROWAVE, AND MILLIMETER ELECTRONICS, AND OPTICAL AND
23 OPTIC-ELECTRICAL DEVICES, OR DATA AND DIGITAL COMMUNICATIONS AND IMAGING
24 DEVICES.

25 (7) "ENVIRONMENTAL TECHNOLOGY" MEANS ASSESSMENT AND PREVENTION OF
26 THREATS OR DAMAGE TO HUMAN HEALTH OR THE ENVIRONMENT, ENVIRONMENTAL
27 CLEANUP, OR THE DEVELOPMENT OF ALTERNATIVE ENERGY SOURCES.

28 (8) "MEDICAL DEVICE TECHNOLOGY" MEANS A TECHNOLOGY INVOLVING ANY
29 MEDICAL EQUIPMENT OR PRODUCT (OTHER THAN A PHARMACEUTICAL PRODUCT) THAT
30 HAS THERAPEUTIC VALUE, DIAGNOSTIC VALUE, OR BOTH, AND IS REGULATED BY
31 THE FEDERAL FOOD AND DRUG ADMINISTRATION.

32 (9) "PARTNERSHIP" MEANS A SYNDICATE, GROUP, POOL, JOINT VENTURE OR
33 OTHER UNINCORPORATED ORGANIZATION THROUGH OR BY MEANS OF WHICH ANY BUSI-
34 NESS, FINANCIAL OPERATION, OR VENTURE IS CARRIED ON, AND WHICH IS NOT A
35 TRUST OR ESTATE, A CORPORATION, OR A SOLE PROPRIETORSHIP.

36 (10) "PILOT SCALE MANUFACTURING" MEANS DESIGN, CONSTRUCTION, AND TEST-
37 ING OF PREPRODUCTION PROTOTYPES AND MODELS IN THE FIELDS OF ADVANCED
38 COMPUTING, ADVANCED MATERIALS, BIOTECHNOLOGY, ELECTRONIC DEVICE TECHNOL-
39 OGY, ENVIRONMENTAL TECHNOLOGY, AND MEDICAL DEVICE TECHNOLOGY, OTHER THAN
40 FOR COMMERCIAL SALE, EXCLUDING SALES OF PROTOTYPES OR SALES FOR MARKET
41 TESTING, IF TOTAL GROSS RECEIPTS FROM SUCH SALES OF THE PRODUCT,
42 SERVICE, OR PROCESS DO NOT EXCEED ONE MILLION DOLLARS.

43 (11) "QUALIFIED INVESTMENT" MEANS THE NON-REFUNDABLE INVESTMENT AT
44 RISK IN A SMALL NEW YORK-BASED HIGH TECHNOLOGY BUSINESS BY A TAXPAYER
45 THAT IS NOT A RELATED PERSON OF THE SMALL NEW YORK BASED HIGH-TECHNOLOGY
46 BUSINESS, THE TRANSFER OF WHICH IS IN CONNECTION WITH A TRANSACTION IN
47 EXCHANGE FOR STOCK, INTEREST IN PARTNERSHIPS OR JOINT VENTURES, LICENSES
48 (EXCLUSIVE OR NON-EXCLUSIVE), RIGHTS TO USE TECHNOLOGY, MARKETING
49 RIGHTS, WARRANTS, OPTIONS, OR RIGHTS TO ACQUIRE ANY OF THE ITEMS SIMILAR
50 TO THOSE INCLUDED IN THIS PARAGRAPH, INCLUDING BUT NOT LIMITED TO
51 OPTIONS OR RIGHTS TO ACQUIRE ANY OF THE ITEMS INCLUDED IN THIS PARA-
52 GRAPH.

53 (12) "QUALIFIED RESEARCH EXPENSES" MEANS QUALIFIED RESEARCH EXPENSES,
54 AS DEFINED IN SECTION 41 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986,
55 26 U.S.C. S 41, AS IN EFFECT ON JUNE THIRTIETH, NINETEEN HUNDRED NINE-

1 TY-TWO, IN THE FIELDS OF ENVIRONMENTAL TECHNOLOGY OR MEDICAL DEVICE
2 TECHNOLOGY.

3 (13) "RELATED PERSON" MEANS:

4 (A) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST BY THE TAXPAYER;

5 (B) AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST
6 THAT IS IN THE CONTROL OF THE TAXPAYER;

7 (C) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST CONTROLLED BY AN
8 INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN
9 THE CONTROL OF THE TAXPAYER; OR

10 (D) A MEMBER OF THE SAME CONTROLLED GROUP AS THE TAXPAYER.

11 (14) "SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS" MEANS A CORPO-
12 RATION DOING BUSINESS EMPLOYING OR OWNING CAPITAL OR PROPERTY, OR MAIN-
13 TAINING AN OFFICE, IN THIS STATE THAT HAS QUALIFIED RESEARCH EXPENSES
14 PAID OR INCURRED FOR RESEARCH CONDUCTED IN THIS STATE OR CONDUCTS PILOT
15 SCALE MANUFACTURING IN THIS STATE, AND HAS FEWER THAN TWO HUNDRED TWEN-
16 TY-FIVE EMPLOYEES, OF WHOM SEVENTY-FIVE PERCENT ARE NEW YORK-BASED
17 EMPLOYEES FILLING A POSITION OR JOB IN THIS STATE.

18 (15) "TAX YEAR" MEANS THE FISCAL OR CALENDAR ACCOUNTING YEAR OF A
19 TAXPAYER.

20 S 4. This act shall take effect immediately and shall apply to taxable
21 years which commence on or after January 1, 2012.