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

2638

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. GABRYSZAK, SCHIMMINGER, MORELLE, LUPARDO, MAGNARELLI -- Multi-Sponsored by -- M. of A. MILLMAN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to creating the qualified emerging technology commercialization tax 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 EMERGING TECHNOLOGY COMMERCIALIZATION TAX CREDIT. (A) AS USED IN THIS SUBDIVISION:

(1) "QUALIFIED EMERGING TECHNOLOGY COMPANY" SHALL MEAN A COMPANY LOCATED IN NEW YORK STATE: (I) WHOSE PRIMARY PRODUCTS OR SERVICES ARE CLASSIFIED AS EMERGING TECHNOLOGIES AND WHOSE TOTAL ANNUAL PRODUCT SALES ARE TEN MILLION DOLLARS OR LESS; OR (II) A COMPANY WHICH HAS RESEARCH AND DEVELOPMENT ACTIVITIES IN NEW YORK STATE AND WHOSE RATIO OF RESEARCH AND DEVELOPMENT FUNDS TO NET SALES EQUALS OR EXCEEDS THE AVERAGE RATIO FOR ALL SURVEYED COMPANIES CLASSIFIED AS DETERMINED BY THE NATIONAL SCIENCE FOUNDATION IN THE MOST RECENT PUBLISHED RESULTS FROM ITS SURVEY OF INDUSTRY RESEARCH AND DEVELOPMENT, OR ANY COMPARABLE SUCCESSOR SURVEY AS DETERMINED BY THE DEPARTMENT, AND WHOSE TOTAL ANNUAL PRODUCT SALES ARE TEN MILLION DOLLARS OR LESS. THE DEFINITION OF "RESEARCH AND DEVELOPMENT FUNDS" SHALL BE THE SAME AS THAT USED BY THE NATIONAL SCIENCE FOUNDATION IN THE AFOREMENTIONED SURVEY.

(2) "QUALIFIED COMMERCIALIZATION EXPENSES" MEANS TESTING; PROTOTYPING; DESIGNING; NECESSARY MATERIALS AND FIXTURES, OR LABORATORY EQUIPMENT; INCORPORATION FEES AND LEGAL EXPENSES; ATTORNEY FEES; FEES FOR LICENSING OF TECHNOLOGIES DEVELOPED AT UNIVERSITIES; TRANSACTIONAL LEGAL EXPENSES RELATED TO LICENSING UNIVERSITY TECHNOLOGIES; TRADE SHOW AND CONFERENCE FEES; AND PRODUCT PROMOTION AND MARKET RESEARCH EXPENSES.

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

LBD06201-01-1

(B) A TAXPAYER THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY (AND SPECIFICALLY FOR THE ACTIVITIES REFERENCED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW), AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (C) OF THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(C) AN ELIGIBLE TAXPAYER SHALL (1) HAVE NO MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES, OF WHICH AT LEAST SEVENTY-FIVE PERCENT ARE EMPLOYED IN NEW YORK STATE, (2) 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 SIX PERCENT DURING ITS TAXABLE YEAR, AND (3) HAVE GROSS REVENUES, ALONG WITH THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NOT EXCEEDING TWENTY MILLION DOLLARS FOR THE TAXABLE YEAR IMMEDIATELY PRECEDING THE YEAR THE TAXPAYER IS ALLOWED A CREDIT UNDER THIS SUBDIVISION. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "RELATED MEMBER" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(D) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR FIFTEEN PER CENTUM OF "QUALIFIED COMMERCIALIZATION EXPENSES" PAID OR INCURRED BY THE TAXPAYER IN THE TAXABLE YEAR. THE CREDIT SHALL BE ALLOWED FOR "QUALIFIED COMMERCIALIZATION EXPENSES" ASSOCIATED WITH IN-HOUSE EXPENSES OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. 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 ONE HUNDRED THOUSAND DOLLARS PER YEAR.

(E) 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 THOUSAND 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 (ss) to read as follows:

(SS) QUALIFIED EMERGING TECHNOLOGY COMMERCIALIZATION TAX CREDIT. (1) AS USED IN THIS SUBSECTION:

(I) "QUALIFIED EMERGING TECHNOLOGY COMPANY" SHALL MEAN A COMPANY LOCATED IN NEW YORK STATE: (1) WHOSE PRIMARY PRODUCTS OR SERVICES ARE CLASSIFIED AS EMERGING TECHNOLOGIES AND WHOSE TOTAL ANNUAL PRODUCT SALES ARE TEN MILLION DOLLARS OR LESS; OR (2) A COMPANY WHICH HAS RESEARCH AND DEVELOPMENT ACTIVITIES IN NEW YORK STATE AND WHOSE RATIO OF RESEARCH AND DEVELOPMENT FUNDS TO NET SALES EQUALS OR EXCEEDS THE AVERAGE RATIO FOR ALL SURVEYED COMPANIES CLASSIFIED AS DETERMINED BY THE NATIONAL SCIENCE FOUNDATION IN THE MOST RECENT PUBLISHED RESULTS FROM ITS SURVEY OF INDUSTRY RESEARCH AND DEVELOPMENT, OR ANY COMPARABLE SUCCESSOR SURVEY AS DETERMINED BY THE DEPARTMENT, AND WHOSE TOTAL ANNUAL PRODUCT SALES ARE TEN MILLION DOLLARS OR LESS. THE DEFINITION OF "RESEARCH AND DEVELOPMENT

FUNDS" SHALL BE THE SAME AS THAT USED BY THE NATIONAL SCIENCE FOUNDATION IN THE AFOREMENTIONED SURVEY.

(II) "QUALIFIED COMMERCIALIZATION EXPENSES" MEANS TESTING; PROTOTYPING; DESIGNING; NECESSARY MATERIALS AND FIXTURES, OR LABORATORY EQUIPMENT; INCORPORATION FEES AND LEGAL EXPENSES; ATTORNEY FEES; FEES FOR LICENSING OF TECHNOLOGIES DEVELOPED AT UNIVERSITIES; TRANSACTIONAL LEGAL EXPENSES RELATED TO LICENSING UNIVERSITY TECHNOLOGIES; TRADE SHOW AND CONFERENCE FEES; AND PRODUCT PROMOTION AND MARKET RESEARCH EXPENSES.

(2) A TAXPAYER THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY (AND SPECIFICALLY FOR THE ACTIVITIES REFERENCED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW), AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH THREE OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(3) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES, OF WHICH AT LEAST SEVENTY-FIVE PERCENT ARE EMPLOYED IN NEW YORK STATE, (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 SIX PERCENT DURING ITS TAXABLE YEAR, AND (III) HAVE GROSS REVENUES, ALONG WITH THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NOT EXCEEDING TWENTY MILLION DOLLARS FOR THE TAXABLE YEAR IMMEDIATELY PRECEDING THE YEAR THE TAXPAYER IS ALLOWED A CREDIT UNDER THIS SUBSECTION. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "RELATED MEMBER" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(4) THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE AMOUNT (OR PRO RATA SHARE OF THE AMOUNT IN THE CASE OF A PARTNERSHIP) SPECIFIED IN PARAGRAPH FIVE OF THIS SUBSECTION, SUBJECT TO THE LIMITATIONS IN PARAGRAPH SIX OF THIS SUBSECTION.

(5) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR FIFTEEN PER CENTUM OF "QUALIFIED COMMERCIALIZATION EXPENSES" PAID OR INCURRED BY THE TAXPAYER IN THE TAXABLE YEAR. THE CREDIT SHALL BE ALLOWED FOR "QUALIFIED COMMERCIALIZATION EXPENSES" ASSOCIATED WITH IN-HOUSE EXPENSES OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS.

(6) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBSECTION FOR FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY THIS SUBSECTION TO A TAXPAYER EXCEED ONE HUNDRED THOUSAND DOLLARS PER YEAR.

(7) 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 (xxxii) to read as follows:

(XXXII) QUALIFIED EMERGING TECHNOLOGY COMMERCIALIZATION TAX CREDIT UNDER SUBSECTION (SS)	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 beginning on or after January 1, 2011.