

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

3132--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. SCHIMMINGER, MAGNARELLI -- 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 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
18 THOSE TAXPAYERS OR EXPANDING EMERGING TECHNOLOGY AND BIOTECHNOLOGY

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

LBD06165-03-2

1 COMPANIES. SUCH TAXPAYERS SHALL BE PROVIDED WITH A CORPORATION BUSINESS
2 TAX BENEFIT CERTIFICATE TO BE DEVELOPED BY THE COMMISSIONER.

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

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

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

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

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

55 (B) A NEW OR EXPANDING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY
56 THAT HAS SURRENDERED AN UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO

1 THE PROVISIONS OF PARAGRAPH (F) OF SUBDIVISION NINE OF SECTION TWO
2 HUNDRED EIGHT OF THIS ARTICLE SHALL NOT BE ALLOWED A NET OPERATING LOSS
3 CARRYOVER DEDUCTION BASED UPON THE RIGHT TO SUCH A DEDUCTION, AS
4 EVIDENCED BY SUCH CORPORATION BUSINESS TAX BENEFIT CERTIFICATE, AND
5 SHALL ATTACH A COPY OF THE CERTIFICATE TO ANY RETURN THE TAXPAYER IS
6 REQUIRED TO FILE.

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

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

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

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

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

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

39 (D) "CONTROL", WITH RESPECT TO A CORPORATION, MEANS OWNERSHIP, DIRECT-
40 LY OR INDIRECTLY, OF STOCK POSSESSING EIGHTY PERCENT OR MORE OF THE
41 TOTAL COMBINED VOTING POWER OF ALL CLASSES OF THE STOCK OF THE CORPO-
42 RATION ENTITLED TO VOTE; AND "CONTROL", WITH RESPECT TO A TRUST, MEANS
43 OWNERSHIP, DIRECTLY OR INDIRECTLY, OF EIGHTY PERCENT OR MORE OF THE
44 BENEFICIAL INTEREST IN THE PRINCIPAL OR INCOME OF THE TRUST. THE OWNER-
45 SHIP OF STOCK IN A CORPORATION, OF A CAPITAL OR PROFITS INTEREST IN A
46 PARTNERSHIP OR ASSOCIATION, OR OF A BENEFICIAL INTEREST IN A TRUST SHALL
47 BE DETERMINED IN ACCORDANCE WITH THE RULES FOR CONSTRUCTIVE OWNERSHIP OF
48 STOCK PROVIDED IN SUBSECTION (C) OF SECTION 267 OF THE FEDERAL INTERNAL
49 REVENUE CODE OF 1986, 26 U.S.C. S267, OTHER THAN PARAGRAPH (3) OF
50 SUBSECTION (C) OF SUCH SECTION.

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

1 DIRECTLY STOCK POSSESSING AT LEAST EIGHTY PERCENT OF THE VOTING POWER OF
2 ALL CLASSES OF STOCK OF AT LEAST ONE OF THE OTHER CORPORATIONS.

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

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

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

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

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

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

35 (L) "QUALIFIED RESEARCH EXPENSES" MEANS QUALIFIED RESEARCH EXPENSES,
36 AS DEFINED IN SECTION 41 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986,
37 26 U.S.C. S 41, AS IN EFFECT ON JUNE THIRTIETH, NINETEEN HUNDRED NINE-
38 TY-TWO, IN THE FIELDS OF ENVIRONMENTAL TECHNOLOGY OR MEDICAL DEVICE
39 TECHNOLOGY.

40 (M) "RELATED PERSON" MEANS:

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

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

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

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

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

55 (O) "TAX YEAR" MEANS THE FISCAL OR CALENDAR ACCOUNTING YEAR OF A
56 TAXPAYER.

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

3 S 606-A. NONCORPORATION TAX BENEFIT CERTIFICATE TRANSFER PROGRAM. (A)
4 (1) THE DEPARTMENT SHALL ESTABLISH A CORPORATION BUSINESS TAX BENEFIT
5 CERTIFICATE TRANSFER PROGRAM TO ALLOW NEW OR EXPANDING EMERGING TECHNOL-
6 OGY AND BIOTECHNOLOGY COMPANIES IN THIS STATE HAVING UNUSED AMOUNTS OF
7 RESEARCH AND DEVELOPMENT TAX CREDITS OTHERWISE ALLOWABLE PURSUANT TO
8 SUBPARAGRAPH (A) OF PARAGRAPH TWO OF SUBSECTION (A) OF SECTION SIX
9 HUNDRED SIX OF THIS ARTICLE, WHICH CANNOT BE APPLIED FOR THE CREDIT'S
10 TAX YEAR, AND UNUSED NET OPERATING LOSS CARRYOVER PURSUANT TO SUBSECTION
11 (B) OF SECTION SIX HUNDRED SEVENTEEN AND SUBSECTION (B) OF SECTION SIX
12 HUNDRED THIRTY-THREE OF THIS ARTICLE TO SURRENDER SUCH TAX BENEFITS FOR
13 USE BY OTHER ENTITIES SUBJECT TO THE PROVISIONS OF THIS ARTICLE IN
14 EXCHANGE FOR PRIVATE FINANCIAL ASSISTANCE TO BE PROVIDED SUCH TAXPAYERS
15 OR EXPANDING EMERGING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES. SUCH
16 TAXPAYERS SHALL BE PROVIDED WITH A NONCORPORATION BUSINESS TAX BENEFIT
17 CERTIFICATE TO BE DEVELOPED BY THE COMMISSIONER.

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

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

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

51 (5) THE COMMISSIONER SHALL COORDINATE THE APPLICATIONS, IN CONJUNCTION
52 WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT, FOR SURRENDER AND ACQUISSI-
53 TION OF UNUSED BUT OTHERWISE ALLOWABLE TAX BENEFITS PURSUANT TO THIS
54 SECTION IN A MANNER THAT CAN BEST STIMULATE AND ENCOURAGE THE EXTENSION
55 OF PRIVATE FINANCIAL ASSISTANCE TO NEW AND EXPANDING EMERGING TECHNOLOGY
56 AND BIOTECHNOLOGY COMPANIES IN THIS STATE INTO A WRITTEN AGREEMENT WITH

1 SUCH COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE PRIVATE FINAN-
2 CIAL ASSISTANCE MADE IN EXCHANGE FOR THE CERTIFICATE. THE WRITTEN AGREE-
3 MENT MAY CONTAIN TERMS CONCERNING THE MAINTENANCE BY THE NEW OR EXPAND-
4 ING EMERGING TECHNOLOGY OR BIOTECHNOLOGY COMPANY OF A HEADQUARTERS OR A
5 BASE OF OPERATION IN THIS STATE.

6 (B)(1) A TAXPAYER THAT HAS ACQUIRED A NONCORPORATION BUSINESS TAX
7 BENEFIT CERTIFICATE PURSUANT TO THE PROVISIONS OF PARAGRAPH TWO OF
8 SUBSECTION (A) OF THIS SECTION THAT INCLUDES THE RIGHT TO A NET OPERAT-
9 ING LOSS CARRYOVER DEDUCTION SHALL ATTACH THAT CERTIFICATE TO ANY RETURN
10 THE TAXPAYER IS REQUIRED TO FILE AND SHALL OTHERWISE APPLY THE NET OPER-
11 ATING LOSS CARRYOVER DEDUCTION, AS EVIDENCED BY THE CERTIFICATE, ACCORD-
12 ING TO THE PROVISIONS OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION
13 AND ANY RULES OR REGULATIONS THE COMMISSIONER MAY ADOPT TO CARRY OUT THE
14 PROVISIONS OF THIS SECTION.

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

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

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

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

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

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

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

54 (4) "CONTROL", WITH RESPECT TO A CORPORATION, MEANS OWNERSHIP, DIRECT-
55 LY OR INDIRECTLY, OF STOCK POSSESSING EIGHTY PERCENT OR MORE OF THE
56 TOTAL COMBINED VOTING POWER OF ALL CLASSES OF THE STOCK OF THE CORPO-

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

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

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

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

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

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

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

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

50 (12) "QUALIFIED RESEARCH EXPENSES" MEANS QUALIFIED RESEARCH EXPENSES,
51 AS DEFINED IN SECTION 41 OF THE FEDERAL INTERNAL REVENUE CODE OF 1986,
52 26 U.S.C. S 41, AS IN EFFECT ON JUNE THIRTIETH, NINETEEN HUNDRED NINE-
53 TY-TWO, IN THE FIELDS OF ENVIRONMENTAL TECHNOLOGY OR MEDICAL DEVICE
54 TECHNOLOGY.

55 (13) "RELATED PERSON" MEANS:

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

1 (B) AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST
2 THAT IS IN THE CONTROL OF THE TAXPAYER;
3 (C) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST CONTROLLED BY AN
4 INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, OR TRUST THAT IS IN
5 THE CONTROL OF THE TAXPAYER; OR
6 (D) A MEMBER OF THE SAME CONTROLLED GROUP AS THE TAXPAYER.
7 (14) "SMALL NEW YORK BASED HIGH-TECHNOLOGY BUSINESS" MEANS A CORPO-
8 RATION DOING BUSINESS EMPLOYING OR OWNING CAPITAL OR PROPERTY, OR MAIN-
9 TAINING AN OFFICE, IN THIS STATE THAT HAS QUALIFIED RESEARCH EXPENSES
10 PAID OR INCURRED FOR RESEARCH CONDUCTED IN THIS STATE OR CONDUCTS PILOT
11 SCALE MANUFACTURING IN THIS STATE, AND HAS FEWER THAN TWO HUNDRED TWEN-
12 TY-FIVE EMPLOYEES, OF WHOM SEVENTY-FIVE PERCENT ARE NEW YORK-BASED
13 EMPLOYEES FILLING A POSITION OR JOB IN THIS STATE.
14 (15) "TAX YEAR" MEANS THE FISCAL OR CALENDAR ACCOUNTING YEAR OF A
15 TAXPAYER.
16 S 4. This act shall take effect immediately and shall apply to taxable
17 years which commence on or after January 1, 2012.