

3974

2011-2012 Regular Sessions

I N A S S E M B L Y

January 31, 2011

Introduced by M. of A. MORELLE, PHEFFER, CANESTRARI, P. RIVERA, HOYT, LUPARDO -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, DESTITO, GALEF, KELLNER, MAGEE, SCARBOROUGH, SCHIMMINGER, SWEENEY -- read once and referred to the Committee on Ways and Means

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 Subdivision 12-F of section 210 of the tax law is REPEALED and a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

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

LBD06505-01-1

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

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

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

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

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

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

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

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

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

(C) TWENTY PERCENT OF A QUALIFIED FUND INVESTMENT, PROVIDED THAT TEN
PERCENT OF THE QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN THE
TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE
QUALIFIED FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN SUBPARAGRAPHS (A), (B), (C) AND (D) OF THIS PARAGRAPH.

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

(B) FORTY PERCENT OF A QUALIFIED SEED INVESTMENT, PROVIDED THAT TWENTY PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND TEN PERCENT OF THE QUALIFIED SEED INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT

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

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

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

27 S 6. This act shall take effect immediately and shall apply to taxable
28 years beginning on and after January 1, 2011 and shall remain in effect
29 until December 31, 2016, when upon such date the provisions of this act
30 shall expire and be deemed repealed.