

7566

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

AN ACT to amend the tax law, in relation to the qualified solar 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 MANUFACTURER FACILITIES AND OPERATIONS CREDIT.  
4     (A) A TAXPAYER THAT IS PRINCIPALLY ENGAGED IN THE MANUFACTURING OF SOLAR  
5     ENERGY EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF THIS SUBDIVISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX  
6     IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM  
7     OF THE AMOUNTS SPECIFIED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION  
8     SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVISION. FOR THE  
9     PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE  
10    ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH  
11    ELECTRICITY. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETERMINED BY  
12    THE COMMISSIONER AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF  
13    THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.  
14    (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE MORE THAN TWENTY FULL-TIME  
15    EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF RESEARCH  
16    AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE  
17    HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS  
18    THREE PERCENT DURING ITS TAXABLE YEAR.  
19    (C) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER  
20    CENTUM OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF  
21    RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF THIS SECTION THAT IS ACQUIRED BY THE

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

LBD11378-01-1

1 TAXPAYER BY PURCHASE AS DEFINED IN SECTION 179(D) OF THE INTERNAL REVENUE  
2 CODE AND PLACED IN SERVICE DURING THE TAXABLE YEAR. PROVIDED, HOWEVER,  
3 ER, FOR THE PURPOSES OF THIS PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL  
4 BE ALLOWED A CREDIT FOR SUCH PERCENTAGE OF THE (I) COST OR OTHER BASIS  
5 FOR FEDERAL INCOME TAX PURPOSES FOR PROPERTY USED IN THE TESTING OR  
6 INSPECTION OF MATERIALS AND PRODUCTS,

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

9 (III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROCESSES,  
10 ESSES,

11 (IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF  
12 MATERIALS AND PRODUCTS RESULTING FROM THE QUALIFIED MANUFACTURING ACTIVITIES  
13 OF AN ELIGIBLE TAXPAYER.

14 (V) THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS  
15 ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION  
16 OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

17 (D) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM  
18 OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY  
19 THE TAXPAYER IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE  
20 TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES  
21 ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS  
22 ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT  
23 DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING  
24 ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVERTISING  
25 OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED  
26 WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING  
27 FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOWANCE  
28 FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND  
29 FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT  
30 ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE  
31 CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR  
32 CONTRACT EXPENSES INVOLVING OUTSIDE PAID CONSULTANTS. THE COSTS,  
33 EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS ALLOWED AND CLAIMED  
34 UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCULATION OF ANY OTHER  
35 CREDIT ALLOWED UNDER THIS ARTICLE.

36 (E) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBDIVISION FOR  
37 FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY  
38 THIS SUBDIVISION TO A TAXPAYER EXCEED TWENTY-FIVE MILLION DOLLARS PER  
39 YEAR.

40 (F) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR  
41 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF  
42 THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF  
43 THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION  
44 FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT  
45 OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN  
46 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE  
47 PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED,  
48 HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-  
49 EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.  
50

51 S 2. Section 606 of the tax law is amended by adding a new subsection  
52 (tt) to read as follows:

53 (TT) QUALIFIED SOLAR MANUFACTURER FACILITIES AND OPERATIONS CREDIT.  
54 (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSISTING OF ONE OR MORE  
55 TAXPAYERS THAT IS PRINCIPALLY ENGAGED IN THE MANUFACTURING OF SOLAR  
56 ENERGY EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARA-

1 GRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX  
2 IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM  
3 (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE  
4 AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION  
5 SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE  
6 PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANU-  
7 FACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE  
8 ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH  
9 ELECTRICITY. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT QUALI-  
10 FIES FOR ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE  
11 COMMISSIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF  
12 THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

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

18 (3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER  
19 CENTUM OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES  
20 INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING  
21 PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION  
22 TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED BY PURCHASE AS DEFINED  
23 IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE  
24 DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS  
25 PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH  
26 PERCENTAGE OF THE (I) COST OR OTHER BASIS FOR FEDERAL INCOME TAX  
27 PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND  
28 PRODUCTS,

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

31 (III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROC-  
32 ESSES,

33 (IV) FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL DISTRIBUTION OF  
34 MATERIALS AND PRODUCTS RESULTING FROM THE ACTIVITIES OF AN ELIGIBLE  
35 TAXPAYER AS LONG AS SUCH ACTIVITIES FALL UNDER THE ACTIVITIES LISTED IN  
36 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF  
37 THE PUBLIC AUTHORITIES LAW.

38 (V) THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT IS  
39 ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE CALCU-  
40 LATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

41 (4) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM  
42 OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY  
43 THE ENTITY IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE  
44 TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES  
45 ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS  
46 ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT  
47 DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING  
48 ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVER-  
49 TISING OR PROMOTION THROUGH PAID MEDIA. IN ADDITION, COSTS ASSOCIATED  
50 WITH THE PREPARATION OF PATENT APPLICATIONS, PATENT APPLICATION FILING  
51 FEES, PATENT RESEARCH FEES, PATENT EXAMINATIONS FEES, PATENT POST ALLOW-  
52 ANCE FEES, PATENT MAINTENANCE FEES, AND GRANT APPLICATION EXPENSES AND  
53 FEES SHALL BE ELIGIBLE FOR SUCH CREDIT. IN NO CASE SHALL THE CREDIT  
54 ALLOWED UNDER THIS PARAGRAPH APPLY TO EXPENSES FOR LITIGATION OR THE  
55 CHALLENGE OF ANOTHER ENTITY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR  
56 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 FIFTEEN MILLION DOLLARS PER YEAR.

(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 (xxxiii) to read as follows:

(XXXIII) CREDIT FOR	AMOUNT OF CREDIT UNDER
QUALIFIED SOLAR	SUBDIVISION TWELVE-H OF
MANUFACTURER FACILITIES	SECTION TWO HUNDRED TEN
AND OPERATIONS CREDIT	
UNDER SUBSECTION (TT)	

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