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

6838

I N S E N A T E

March 28, 2012

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to the qualified emerging technology company facilities, operations and training credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 12-G of section 210 of the tax law, as amended by section 1-a of part A of chapter 63 of the laws of 2005, paragraph (f) as amended by section 2 of part A of chapter 57 of the laws of 2010, is amended to read as follows:

12-G. Qualified emerging technology company facilities, operations and training credit. (a) A taxpayer that is [a] IN WHOLE OR IN PART OF AN ENTITY THAT MEETS THE CRITERIA OF BEING A qualified emerging technology company pursuant to the provisions of section thirty-one hundred two-e (and specifically for the activities referenced in paragraph (b) of subdivision one of such section thirty-one hundred two-e) of the public authorities law, and that meets the eligibility requirements in paragraph (b) of this subdivision, shall be allowed a credit against the tax imposed by this article. The amount of credit shall be equal to the sum of the amounts specified in paragraphs (c), (d), and (e) of this subdivision ATTRIBUTABLE TO THE TAXPAYER subject to the limitations in paragraph (f) of this subdivision.

(b) 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, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, (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] FORTY 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)

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

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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. FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, EMPLOYEES WHO ARE EMPLOYED OUTSIDE THE UNITED STATES DURING THE TAXABLE YEAR SHALL NOT BE CONSIDERED; A TAXPAYER THAT MEETS THE EMPLOYMENT REQUIREMENTS IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE FIRST YEAR IN WHICH THE CREDIT ALLOWED BY THIS SUBDIVISION IS CLAIMED WILL NOT BE CONSIDERED INELIGIBLE SOLELY AS A RESULT OF HAVING MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES IN OTHER TAXABLE YEARS IN WHICH THE CREDIT IS CLAIMED, PROVIDED AT LEAST SEVENTY-FIVE PERCENT OF THE FULL-TIME EMPLOYEES IN THE OTHER TAXABLE YEARS ARE EMPLOYED IN NEW YORK STATE; AND AN INDIVIDUAL WHO IS A PARTNER IN A PARTNERSHIP THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY WILL BE CONSIDERED A FULL-TIME EMPLOYEE IF THE INDIVIDUAL PARTNER PARTICIPATES IN THE PARTNERSHIP ON A FULL-TIME BASIS DURING THE TAXABLE YEAR AND THE INVOLVEMENT OF THE INDIVIDUAL PARTNER IN THE ACTIVITIES OF THE PARTNERSHIP DURING THE TAXABLE YEAR SATISFIES THE REQUIREMENTS FOR MATERIAL PARTICIPATION FOR THE SAME TAXABLE YEAR WITHIN THE MEANING OF SUBSECTION (H) OF SECTION 469 OF THE INTERNAL REVENUE CODE.

(c) An eligible taxpayer shall be allowed a credit for [eighteen] THIRTY per centum of the ATTRIBUTABLE cost or [other] SIMILAR basis for federal income tax purposes of research and development property as defined in paragraph (b) of subdivision twelve of this section that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and placed in service during the taxable year. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (i) ATTRIBUTABLE cost or [other] SIMILAR basis for federal income tax purposes for property used in the testing or inspection of materials and products,

(ii) the ATTRIBUTABLE costs or expenses associated with quality control of the research and development,

(iii) ATTRIBUTABLE fees for use of sophisticated technology facilities and processes,

(iv) ATTRIBUTABLE fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under the activities listed in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law. 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.

(d) An eligible taxpayer shall be allowed a credit for [nine] FIFTEEN per centum of "qualified research expenses" paid or incurred by the taxpayer in the taxable year. "Qualified research expenses" shall mean ATTRIBUTABLE expenses associated with in-house research and processes, and ATTRIBUTABLE costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall be eligible for such credit. In no case shall the credit allowed

under this paragraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(e) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this paragraph paid or incurred by the taxpayer. (i) The amount of credit shall be one hundred percent of the training expenses described in subparagraph (iii) of this paragraph, subject to a limitation of no more than four thousand dollars per employee per year for such training expenses.

(ii) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in New York state that (A) directly relates to the activities referred to in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law, and

(B) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(iii) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a New York state higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(iv) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within New York state, which provides space and business support services to taxpayers, to another site, the credit provided in this section shall be allowed for all expenditures referenced in subparagraph (iii) of this paragraph paid or incurred in the two preceding

taxable years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such New York site and are employed and primarily located by the taxpayer in New York. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the taxable year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-time, full-year employee of said taxpayer during the taxable year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in subparagraph (iii) of this paragraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this subparagraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(v) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(vi) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in New York state. Such entity's primary activity must be an activity described in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in New York state. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(f) An eligible taxpayer may claim credits under this subdivision for four consecutive taxable years, except, if a taxpayer is located in an academic incubator facility and relocates within New York state to a nonacademic incubator site, then the taxpayer (i) may make a revocable election to defer the credit provided under this subdivision to the first taxable year beginning after the taxpayer relocates from an academic incubator facility, and (ii) shall be eligible for such credit for five consecutive taxable years. In no case shall the credit allowed by this subdivision to a taxpayer exceed [two hundred and fifty] A TOTAL OF FIVE HUNDRED thousand dollars per year UNDER PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION AND ONE HUNDRED THOUSAND DOLLARS PER YEAR UNDER PARAGRAPH (E) OF THIS SUBDIVISION. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the limit

imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed PER QUALIFIED SITE to all the partners or shareholders of each such entity in the taxable year does not exceed [two hundred and fifty] FIVE HUNDRED thousand dollars PER YEAR UNDER PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION AND ONE HUNDRED THOUSAND DOLLARS PER YEAR UNDER PARAGRAPH (E) OF THIS SUBDIVISION.

(g) 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 ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

[(h) The credit allowed under this subdivision shall not be applicable for taxable years beginning on or after January first, two thousand twelve.]

S 2. Subsection (nn) of section 606 of the tax law, as amended by section 1-a of part A of chapter 63 of the laws of 2005, paragraph 6 as amended by section 3 of part A of chapter 57 of the laws of 2010, is amended to read as follows:

(nn) Qualified emerging technology company facilities, operations and training credit. (1) A taxpayer that is a MEMBER OF AN ENTITY CONSISTING OF ONE OR MORE TAXPAYERS THAT MEETS THE CRITERIA OF BEING A qualified emerging technology company pursuant to the provisions of section thirty-one hundred two-e (and specifically for the activities referenced in paragraph (b) of subdivision one of such section thirty-one hundred two-e) of the public authorities law, and that meets the eligibility requirements in paragraph two of this subsection, shall be allowed a credit against the tax imposed by this article. The amount of credit shall be equal to the sum (or pro rata share of the sum in the case of a partnership) of the amounts specified in paragraphs three, four, and five of this subsection, subject to the limitations in paragraph six of this subsection.

(2) 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, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH,

(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] FORTY 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 [9] 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. FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, EMPLOYEES WHO ARE EMPLOYED OUTSIDE THE UNITED STATES DURING THE TAXABLE YEAR SHALL NOT BE CONSIDERED; A TAXPAYER THAT

MEETS THE EMPLOYMENT REQUIREMENTS IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE FIRST YEAR IN WHICH THE CREDIT ALLOWED BY THIS SUBSECTION IS CLAIMED WILL NOT BE CONSIDERED INELIGIBLE SOLELY AS A RESULT OF HAVING MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES IN OTHER TAXABLE YEARS IN WHICH THE CREDIT IS CLAIMED, PROVIDED AT LEAST SEVENTY-FIVE PERCENT OF THE FULL-TIME EMPLOYEES IN THE OTHER TAXABLE YEARS ARE EMPLOYED IN NEW YORK STATE; AND AN INDIVIDUAL WHO IS A PARTNER IN A PARTNERSHIP THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY WILL BE CONSIDERED A FULL-TIME EMPLOYEE IF THE INDIVIDUAL PARTNER PARTICIPATES IN THE PARTNERSHIP ON A FULL-TIME BASIS DURING THE TAXABLE YEAR AND THE INVOLVEMENT OF THE INDIVIDUAL PARTNER IN THE ACTIVITIES OF THE PARTNERSHIP DURING THE TAXABLE YEAR SATISFIES THE REQUIREMENTS FOR MATERIAL PARTICIPATION FOR THE SAME TAXABLE YEAR WITHIN THE MEANING OF SUBSECTION (H) OF SECTION 469 OF THE INTERNAL REVENUE CODE.

(3) An eligible taxpayer shall be allowed a credit for [eighteen] THIRTY per centum of the cost or [other] SIMILAR basis for federal income tax purposes of research and development property as defined in subparagraph (B) of paragraph two of subsection (a) of this section that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and is placed in service during the taxable year. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (i) cost or [other] SIMILAR basis for federal income purposes for property used in the testing or inspection of materials and products,

(ii) the costs or expenses associated with quality control of the research and development,

(iii) fees for use of sophisticated technology facilities and processes, and

(iv) fees for production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under the activities listed in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law. 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.

(4) An eligible taxpayer shall be allowed a credit for [nine percentum] FIFTEEN PER CENTUM of "qualified research expenses", paid or incurred by the taxpayer in the taxable year. "Qualified research expenses" shall mean expenses associated with in-house research, use of sophisticated technology facilities and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall be eligible for such credit. In no case shall the credit allowed by this paragraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this paragraph paid or incurred by the taxpayer.

(a) The amount of credit shall be one hundred percent of the training expenses described in subparagraph (c) of this paragraph, subject to a

limitation of no more than four thousand dollars per employee per year for such training expenses.

(b) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in New York state that

(i) directly relates to the activities referred to in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law, and

(ii) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(c) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, and software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliate of the taxpayer, paid or reimbursed by the taxpayer. Qualified high technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit allowed by this subsection unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred [and] eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in house or shared training outside of a New York state higher education institution or the use of consultants outside of credit granting courses whether such consultants function inside of such higher education institution or not.

(d) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within New York state, which provides space and business support services to taxpayers, to another site, the credit provided in this subsection shall be allowed for all expenditures referenced in subparagraph (c) of this paragraph paid or incurred in the two preceding taxable years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such New York site and are employed and primarily located by the taxpayer in New York. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subsection that were paid or incurred in the taxable

year that the taxpayer relocated from such a facility. Such expenditures shall include expenses paid or incurred for an eligible employee who is a full-time, full-year employee of said taxpayer during the taxable year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referenced in subparagraph (c) of this paragraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such an employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse such an employee for qualified expenditures paid by the employee during such two preceding years. The credit provided under this subparagraph shall be allowed, in any year that said taxpayer qualifies as an eligible taxpayer.

(e) For purposes of this subsection the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(f) For the purposes of this subsection the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in New York state. Such entity's primary activity must be an activity described in paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in New York state. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subsection for four consecutive taxable years, except, if a taxpayer is located in an academic incubator facility and relocates within New York state to a nonacademic incubator site, then the taxpayer (i) may make a revocable election to defer the credit provided under this subsection to the first taxable year beginning after the taxpayer relocates from an academic incubator facility, and (ii) shall be eligible for such credit for five consecutive years. In no case shall the credit allowed by this subsection to a taxpayer exceed [two hundred fifty] FIVE HUNDRED thousand dollars per year UNDER PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION AND ONE HUNDRED THOUSAND DOLLARS PER YEAR UNDER PARAGRAPH FIVE OF THIS SUBSECTION. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the limit imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed PER QUALIFIED SITE to all the partners or shareholders of each such entity in the taxable year does not exceed [two hundred fifty] FIVE HUNDRED thousand dollars PER YEAR UNDER PARAGRAPHS THREE AND FOUR

OF THIS SUBSECTION AND ONE HUNDRED THOUSAND DOLLARS PER YEAR UNDER PARAGRAPH FIVE OF THIS SUBSECTION.

(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.

[(8) The credit allowed under this subsection shall not be applicable for taxable years beginning on or after January first, two thousand twelve.]

S 3. This act shall take effect immediately.