

7264

2013-2014 Regular Sessions

I N A S S E M B L Y

May 8, 2013

Introduced by M. of A. LUPARDO, SCHIMMINGER, ROSENTHAL -- 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 facilities, operations and training credit

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

1 Section 1. Paragraphs (a), (b) and (h) of subdivision 12-G of section
2 210 of the tax law, as amended by section 1-a of part A of chapter 63 of
3 the laws of 2005, are amended to read as follows:
4 (a) [A taxpayer that is a qualified emerging technology company pursu-
5 ant to the provisions of section thirty-one hundred two-e (and specif-
6 ically for the activities referenced in paragraph (b) of subdivision one
7 of such section thirty-one hundred two-e) of the public authorities law,
8 and that meets the eligibility requirements in paragraph (b) of this
9 subdivision, shall be allowed a credit against the tax imposed by this
10 article. The amount of credit shall be equal to the sum of the amounts
11 specified in paragraphs (c), (d), and (e) of this subdivision subject to
12 the limitations in paragraph (f) of this subdivision] FOR TAXABLE YEARS
13 BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, A TAXPAYER
14 THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY PURSUANT TO THE
15 PROVISIONS OF SUBPARAGRAPH ONE OF PARAGRAPH (C) OF SUBDIVISION ONE OF
16 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, AND THAT
17 MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF THIS SUBDIVISION,
18 SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE
19 AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN
20 PARAGRAPHS (C), (D), AND (E) OF THIS SUBDIVISION SUBJECT TO THE LIMITA-
21 TIONS IN PARAGRAPH (F) OF THIS SUBDIVISION.
22 (b) An eligible taxpayer shall (i) have no more than one hundred full-
23 time employees, of which at least seventy-five percent are employed in
24 New York state, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, (ii)
25 have a ratio of research and development funds to net sales, as referred

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

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1 to in section thirty-one hundred two-e of the public authorities law,
2 which equals or exceeds six percent during its taxable year, and (iii)
3 have gross revenues, along with the gross revenues of its affiliates and
4 related members, not exceeding twenty million dollars for the taxable
5 year immediately preceding the year the taxpayer is allowed a credit
6 under this subdivision. For purposes of this paragraph, the term
7 "related member" shall have the same meaning as set forth in clauses (A)
8 and (B) of subparagraph one of paragraph (o) of subdivision nine of
9 section two hundred eight of this article, and the term "affiliates"
10 shall mean those corporations that are members of the same affiliated
11 group (as defined in section fifteen hundred four of the internal revenue
12 code) as the taxpayer. FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH,
13 EMPLOYEES WHO ARE EMPLOYED OUTSIDE THE UNITED STATES DURING THE
14 TAXABLE YEAR SHALL NOT BE CONSIDERED; A TAXPAYER THAT MEETS THE EMPLOYMENT
15 REQUIREMENTS IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE FIRST
16 YEAR IN WHICH THE CREDIT ALLOWED BY THIS SUBDIVISION IS CLAIMED WILL NOT
17 BE CONSIDERED INELIGIBLE SOLELY AS A RESULT OF HAVING MORE THAN ONE
18 HUNDRED FULL-TIME EMPLOYEES IN OTHER TAXABLE YEARS IN WHICH THE CREDIT
19 IS CLAIMED, PROVIDED AT LEAST SEVENTY-FIVE PERCENT OF THE FULL-TIME
20 EMPLOYEES IN THE OTHER TAXABLE YEARS ARE EMPLOYED IN NEW YORK STATE; AND
21 AN INDIVIDUAL WHO IS A PARTNER IN A PARTNERSHIP THAT IS A QUALIFIED
22 EMERGING TECHNOLOGY COMPANY WILL BE CONSIDERED A FULL-TIME EMPLOYEE IF
23 THE INDIVIDUAL PARTNER PARTICIPATES IN THE PARTNERSHIP ON A FULL-TIME
24 BASIS DURING THE TAXABLE YEAR AND THE INVOLVEMENT OF THE INDIVIDUAL
25 PARTNER IN THE ACTIVITIES OF THE PARTNERSHIP DURING THE TAXABLE YEAR
26 SATISFIES THE REQUIREMENTS FOR MATERIAL PARTICIPATION FOR THE SAME TAXABLE
27 YEAR WITHIN THE MEANING OF SUBSECTION (H) OF SECTION 469 OF THE
28 INTERNAL REVENUE CODE.

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

32 S 2. Paragraphs 1, 2 and 8 of subsection (nn) of section 606 of the
33 tax law, as amended by section 1-a of part A of chapter 63 of the laws
34 of 2005, are amended to read as follows:

35 (1) [A taxpayer that is a qualified emerging technology company pursuant
36 to the provisions of section thirty-one hundred two-e (and specifically
37 for the activities referenced in paragraph (b) of subdivision one
38 of such section thirty-one hundred two-e) of the public authorities law,
39 and that meets the eligibility requirements in paragraph two of this
40 subsection, shall be allowed a credit against the tax imposed by this
41 article. The amount of credit shall be equal to the sum (or pro rata
42 share of the sum in the case of a partnership) of the amounts specified
43 in paragraphs three, four, and five of this subsection, subject to the
44 limitations in paragraph six of this subsection] FOR TAXABLE YEARS
45 BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, A TAXPAYER
46 THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY PURSUANT TO THE
47 PROVISIONS OF SUBPARAGRAPH ONE OF PARAGRAPH (C) OF SUBDIVISION ONE OF
48 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, AND THAT
49 MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH TWO OF THIS SUBSECTION,
50 SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE
51 AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM (OR PRO RATA SHARE OF THE SUM
52 IN THE CASE OF A PARTNERSHIP) OF THE AMOUNTS SPECIFIED IN PARAGRAPHS
53 THREE, FOUR, AND FIVE OF THIS SUBSECTION, SUBJECT TO THE LIMITATIONS IN
54 PARAGRAPH SIX OF THIS SUBSECTION.

1 (2) An eligible taxpayer shall (i) have no more than one hundred full-
2 time employees, of which at least seventy-five percent are employed in
3 New York state, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH,

4 (ii) have a ratio of research and development funds to net sales, as
5 referred to in section thirty-one hundred two-e of the public authori-
6 ties law, which equals or exceeds six percent during its taxable year,
7 and

8 (iii) have gross revenues, along with the gross revenues of its affil-
9 iates and related members, not exceeding twenty million dollars for the
10 taxable year immediately preceding the year the taxpayer is allowed a
11 credit under this subsection. For purposes of this paragraph, the term
12 "related member" shall have the same meaning as set forth in clauses (A)
13 and (B) of subparagraph one of paragraph (o) of subdivision [9] NINE of
14 section two hundred eight of this chapter, and the term "affiliates"
15 shall mean those corporations that are members of the same affiliated
16 group (as defined in section fifteen hundred four of the internal reven-
17 ue code) as the taxpayer. FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARA-
18 GRAPH, EMPLOYEES WHO ARE EMPLOYED OUTSIDE THE UNITED STATES DURING THE
19 TAXABLE YEAR SHALL NOT BE CONSIDERED; A TAXPAYER THAT MEETS THE EMPLOY-
20 MENT REQUIREMENTS IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE FIRST
21 YEAR IN WHICH THE CREDIT ALLOWED BY THIS SUBSECTION IS CLAIMED WILL NOT
22 BE CONSIDERED INELIGIBLE SOLELY AS A RESULT OF HAVING MORE THAN ONE
23 HUNDRED FULL-TIME EMPLOYEES IN OTHER TAXABLE YEARS IN WHICH THE CREDIT
24 IS CLAIMED, PROVIDED AT LEAST SEVENTY-FIVE PERCENT OF THE FULL-TIME
25 EMPLOYEES IN THE OTHER TAXABLE YEARS ARE EMPLOYED IN NEW YORK STATE; AND
26 AN INDIVIDUAL WHO IS A PARTNER IN A PARTNERSHIP THAT IS A QUALIFIED
27 EMERGING TECHNOLOGY COMPANY WILL BE CONSIDERED A FULL-TIME EMPLOYEE IF
28 THE INDIVIDUAL PARTNER PARTICIPATES IN THE PARTNERSHIP ON A FULL-TIME
29 BASIS DURING THE TAXABLE YEAR AND THE INVOLVEMENT OF THE INDIVIDUAL
30 PARTNER IN THE ACTIVITIES OF THE PARTNERSHIP DURING THE TAXABLE YEAR
31 SATISFIES THE REQUIREMENTS FOR MATERIAL PARTICIPATION FOR THE SAME TAXA-
32 BLE YEAR WITHIN THE MEANING OF SUBSECTION (H) OF SECTION 469 OF THE
33 INTERNAL REVENUE CODE.

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

37 S 3. This act shall take effect immediately; provided that the amend-
38 ments to paragraph (b) of subdivision 12-G of section 210 of the tax law
39 made by section one of this act and the amendments to paragraph 2 of
40 subsection (nn) of section 606 of the tax law made by section two of
41 this act shall apply to taxable years beginning January 1, 2013.