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

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2013-2014 Regular Sessions

I N S E N A T E

January 18, 2013

Introduced by Sens. MAZIARZ, ADDABBO, AVELLA, BALL, BOYLE, CARLUCCI, DILAN, ESPAILLAT, FARLEY, GIPSON, GRISANTI, HANNON, HOYLMAN, KRUEGER, LARKIN, LATIMER, LAVALLE, MARCELLINO, MARTINS, MONTGOMERY, O'MARA, PARKER, PERKINS, RITCHIE, ROBACH, SAVINO, SERRANO, TKACZYK, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, the public authorities law and the tax law, in relation to establishing a solar incentive program and related tax credits

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

Section 1. The public service law is amended by adding a new section 66-n to read as follows:

S 66-N. SOLAR INCENTIVE PROGRAM. 1. AS USED IN THIS SECTION:

(A) "ELECTRIC DISTRIBUTION COMPANY" MEANS AN INVESTOR-OWNED ELECTRIC CORPORATION THAT DISTRIBUTES AND DELIVERS ELECTRICITY WITHIN THIS STATE AND HAS ANNUAL REVENUES IN EXCESS OF TWO HUNDRED MILLION DOLLARS; AND

(B) "QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEM" MEANS A SYSTEM OF COMPONENTS OWNED OR DEVELOPED BY AN ENTITY OTHER THAN A PUBLIC AUTHORITY OR AN ELECTRIC DISTRIBUTION COMPANY AND THAT GENERATES ELECTRICITY FROM SUNLIGHT BY MEANS OF THE PHOTOVOLTAIC EFFECT, WHETHER OR NOT THE DEVICE IS COUPLED WITH A DEVICE CAPABLE OF STORING THE ENERGY PRODUCED FOR LATER USE THAT IS (I) INSTALLED AND OPERATED IN NEW YORK STATE WITHIN ONE OF THE SERVICE TERRITORIES OF AN ELECTRIC DISTRIBUTION COMPANY AS DEFINED IN THIS SECTION, AND (II) INSTALLED AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN.

2. WITHIN FORTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION SHALL COMMENCE THE CONSIDERATION OF MODIFICATIONS TO ITS

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

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EXISTING PROGRAMS THAT ENCOURAGE THE DEVELOPMENT OF QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS AND, NO LATER THAN JANUARY FIRST, TWO THOUSAND FOURTEEN, THE COMMISSION SHALL MAKE A DETERMINATION ESTABLISHING MODIFICATIONS TO ITS EXISTING PROGRAMS THAT ENCOURAGE THE DEVELOPMENT OF QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS IN CONFORMANCE WITH THIS SECTION. THE DEPARTMENT SHALL CONSULT WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IN THE PREPARATION OF ITS RECOMMENDATIONS TO THE COMMISSION FOR SUCH DETERMINATION. THE PROGRAM MODIFICATIONS SHALL REQUIRE:

(A) ADMINISTRATION BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;

(B) PLANNED ANNUAL EXPENDITURES INCLUDING ALL COSTS OF A MINIMUM OF ONE HUNDRED EIGHT MILLION DOLLARS COMMENCING IN CALENDAR YEAR TWO THOUSAND FOURTEEN AND SUSTAINED EACH YEAR THROUGH CALENDAR YEAR TWO THOUSAND TWENTY-THREE;

(C) A DIVERSITY OF PROJECT SIZES, GEOGRAPHIC DISTRIBUTION, AND PARTICIPATION AMONG CUSTOMER CLASSES, SUBJECT TO COST-EFFECTIVENESS CONSIDERATIONS;

(D) INCENTIVE STRUCTURES THAT MAXIMIZE COST-EFFECTIVENESS AND PRACTICALITY THROUGH COMPETITIVE PROCUREMENTS, STANDING-OFFERS, PRODUCTION INCENTIVES OR CAPACITY INCENTIVES AT THE WHOLESALE OR RETAIL LEVEL AS IN THE JUDGMENT OF THE COMMISSION, IN CONSULTATION WITH THE NEW YORK INDEPENDENT SYSTEM OPERATOR, PROVIDE FOR THE MOST EFFECTIVE PROGRAM;

(E) INCENTIVE STRUCTURES THAT TAKE INTO CONSIDERATION THE ECONOMIC BENEFITS TO THE STATE OF NEW YORK;

(F) PROGRAM DESIGNS THAT TAKE INTO CONSIDERATION THE AVOIDANCE OF LONG-TERM COSTS TO THE TRANSMISSION AND DISTRIBUTION SYSTEM AND MINIMIZATION OF PEAK LOAD IN CONSTRAINED AREAS;

(G) ANNUAL REPORTS ON THE ACHIEVEMENTS AND EFFECTIVENESS OF THE PROGRAM; AND

(H) SUCH OTHER ISSUES DEEMED APPROPRIATE BY THE COMMISSION.

S 2. Sections 1020-ii, 1020-jj and 1020-kk of the public authorities law, as renumbered by chapter 388 of the laws of 2011, are renumbered sections 1020-jj, 1020-kk and 1020-ll and a new section 1020-ii is added to read as follows:

S 1020-II. ESTABLISHMENT OF SOLAR INCENTIVE PROGRAM. 1. AS USED IN THIS SECTION THE TERM "QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEM" MEANS A SYSTEM OF COMPONENTS OWNED OR DEVELOPED BY AN ENTITY OTHER THAN A PUBLIC AUTHORITY OR AN ELECTRIC DISTRIBUTION COMPANY AND THAT GENERATES ELECTRICITY FROM SUNLIGHT BY MEANS OF THE PHOTOVOLTAIC EFFECT, WHETHER OR NOT THE DEVICE IS COUPLED WITH A DEVICE CAPABLE OF STORING THE ENERGY PRODUCED FOR LATER USE, THAT IS INSTALLED IN THE AUTHORITY'S SERVICE TERRITORY AFTER JANUARY FIRST, TWO THOUSAND TWELVE.

2. THE AUTHORITY SHALL CONTINUE TO ENCOURAGE THE DEVELOPMENT OF QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS IN ITS SERVICE TERRITORY THROUGH IMPLEMENTATION OF THE SOLAR INCENTIVE PROGRAM. THE PROGRAM SHALL REQUIRE:

(A) PLANNED ANNUAL EXPENDITURES INCLUDING ALL COSTS OF AT MINIMUM THIRTY-EIGHT MILLION DOLLARS COMMENCING IN CALENDAR YEAR TWO THOUSAND FOURTEEN AND SUSTAINED EACH YEAR THROUGH CALENDAR YEAR TWO THOUSAND TWENTY-THREE;

(B) A DIVERSITY OF PROJECT TYPES;

(C) PROGRAM ADMINISTRATION AND DELIVERY;

(D) INCENTIVE STRUCTURES THAT TAKE INTO CONSIDERATION THE ECONOMIC BENEFITS TO THE STATE OF NEW YORK;

(E) PROGRAM DESIGNS THAT TAKE INTO CONSIDERATION THE AVOIDANCE OF LONG-TERM COSTS TO THE TRANSMISSION AND DISTRIBUTION SYSTEM AND MINIMIZATION OF PEAK LOAD IN CONSTRAINED AREAS AND THAT MAXIMIZES COST-EFFECTIVENESS THROUGH COMPETITIVE PROCUREMENTS;

(F) ANNUAL REPORTS ON THE ACHIEVEMENTS AND EFFECTIVENESS OF THE PROGRAM; AND

(G) ANY OTHER OBJECTIVES THE AUTHORITY MAY ESTABLISH.

S 3. Section 210 of the tax law is amended by adding a new subdivision 12-H to read as follows:

12-H. QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND OPERATIONS CREDIT. (A) A TAXPAYER THAT IS WHOLE OR PART OF AN ENTITY THAT SERVES AS THE PRINCIPAL OPERATOR OF A FACILITY PRIMARILY FUNCTIONING TO FABRICATE SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT 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) AND (D) OF THIS SUBDIVISION ATTRIBUTABLE TO THE TAXPAYER SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVISION. FOR THE PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS AND DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL, THERMAL OR OTHER DEMONSTRABLE MEANS SINGLY OR IN COMBINATION. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETERMINED BY THE COMMISSIONER AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

(B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (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 THREE PERCENT DURING ITS TAXABLE YEAR.

(C) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER CENTUM OF THE ATTRIBUTABLE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES OF RESEARCH AND DEVELOPMENT AND MANUFACTURING 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 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 OR MANUFACTURING OPERATIONS,

(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 QUALIFIED MANUFACTURING ACTIVITIES OF AN ELIGIBLE TAXPAYER.

(V) 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 TEN PER CENTUM OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY THE TAXPAYER IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN ATTRIBUTABLE EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND ATTRIBUTABLE COSTS ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID 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. 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.

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

(F) 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 ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 4. Subdivisions (yy) and (zz) of section 606 of the tax law, as relettered by section 5 of part H of chapter 1 of the laws of 2003, are relettered subsections (yyy) and (zzz) and a new subsection (xx) is added to read as follows:

(XX) QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND OPERATIONS CREDIT. (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSISTING OF ONE OR MORE TAXPAYERS THAT SERVES AS THE PRINCIPAL OPERATOR OF A FACILITY PRIMARILY FUNCTIONING TO FABRICATE SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT 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 AND FOUR OF THIS SUBSECTION SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS AND DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY

TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL, THERMAL OR OTHER MEANS SINGLY OR IN COMBINATION. THE DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE COMMISSIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

(2) AN ELIGIBLE ENTITY SHALL (I) HAVE MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (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 THREE PERCENT DURING ITS TAXABLE YEAR.

(3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER CENTUM OF THE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED 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) COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX 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 OR MANUFACTURING OPERATIONS,

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

(IV) 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.

(V) 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 TEN PER CENTUM OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY THE ENTITY IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING PROCESSES, AND COSTS ASSOCIATED WITH THE DISSEMINATION OF THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID 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. 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 TWENTY-FIVE MILLION DOLLARS PER YEAR. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE CAP IMPOSED BY THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS, SHAREHOLDERS, OR OTHER MEMBERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED TWENTY-FIVE MILLION DOLLARS PER YEAR FOR UP TO FOUR CONSECUTIVE TAXABLE YEARS.

(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 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxvii) to read as follows:

(XXXVII) CREDIT FOR QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND OPERATIONS CREDIT UNDER SUBSECTION (XX)	AMOUNT OF CREDIT UNDER SUBDIVISION TWELVE-H OF SECTION TWO HUNDRED TEN

S 6. If any provision of this act is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining provisions of this act, which remaining provisions shall continue in full force and effect.

S 7. This act shall take effect immediately and sections three, four and five of this act shall apply to taxable years commencing on or after January 1, 2014.