

4077

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I N S E N A T E

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Introduced by Sens. GOLDEN, BONACIC, GALLIVAN, GRIFFO, GRISANTI, MAZIARZ, RANZENHOFER, SEWARD, VALESKY, ZELDIN -- 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:

1 Section 1. Subdivision 12-G of section 210 of the tax law, as amended
2 by section 1-a of part A of chapter 63 of the laws of 2005, and para-
3 graph (f) as amended by section 2 of part A of chapter 57 of the laws of
4 2010, is amended to read as follows:
5 12-G. Qualified emerging technology company facilities, operations and
6 training credit. (a) A taxpayer that is a qualified emerging technology
7 company pursuant to the provisions of section thirty-one hundred two-e
8 (and specifically for the activities referenced in paragraph (b) of
9 subdivision one of such section thirty-one hundred two-e) of the public
10 authorities law, and that meets the eligibility requirements in para-
11 graph (b) of this subdivision, shall be allowed a credit against the tax
12 imposed by this article. The amount of credit shall be equal to the sum
13 of the amounts specified in paragraphs (c), (d), and (e) of this subdivi-
14 sion subject to the limitations in paragraph (f) of this subdivision.
15 (b) An eligible taxpayer shall (i) have no more than one hundred full-
16 time employees, of which at least seventy-five percent are employed in
17 New York state, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, (ii)
18 have a ratio of research and development funds to net sales, as referred
19 to in section thirty-one hundred two-e of the public authorities law,
20 which equals or exceeds six percent during its taxable year, and (iii)
21 have gross revenues, along with the gross revenues of its affiliates and
22 related members, not exceeding [twenty] FORTY million dollars for the
23 taxable year immediately preceding the year the taxpayer is allowed a

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

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

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

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

36 (iii) fees for use of sophisticated technology facilities and processes,
37

38 (iv) fees for the production or eventual commercial distribution of
39 materials and products resulting from the activities of an eligible
40 taxpayer as long as such activities fall under the activities listed in
41 paragraph (b) of subdivision one of section thirty-one hundred two-e of
42 the public authorities law. The costs, expenses and other amounts for
43 which a credit is allowed and claimed under this paragraph shall not be
44 used in the calculation of any other credit allowed under this article.

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

graph 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

1 taxable years that the taxpayer was located in such an incubator facili-
2 ty for employees of the taxpayer who also relocate from said incubator
3 facility to such New York site and are employed and primarily located by
4 the taxpayer in New York. Such expenditures in the two preceding years
5 shall be added to the amounts otherwise qualifying for the credit
6 provided by this subdivision that were paid or incurred in the taxable
7 year that the taxpayer relocates from such a facility. Such expendi-
8 tures shall include expenses paid for an eligible employee who is a
9 full-time, full-year employee of said taxpayer during the taxable year
10 that the taxpayer relocated from an incubator facility notwithstanding
11 (i) that such employee was employed full or part-time as an officer,
12 staff-person or paid intern of the taxpayer when such taxpayer was
13 located at such incubator facility or (ii) that such employee was not
14 continuously employed when such taxpayer was located at the incubator
15 facility during the one hundred eighty day period referred to in subpar-
16 agraph (iii) of this paragraph, provided such employee received wages or
17 equivalent income for at least seven hundred fifty hours during any
18 twenty-four month period when the taxpayer was located at the incubator
19 facility. Such expenditures shall include payments made to such employee
20 after the taxpayer has relocated from the incubator facility for quali-
21 fied expenditures if such payments are made to reimburse an employee for
22 expenditures paid by the employee during such two preceding years. The
23 credit provided under this subparagraph shall be allowed in any taxable
24 year that the taxpayer qualifies as an eligible taxpayer.

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

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

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

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

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

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

26 (iii) fees for use of sophisticated technology facilities and proc-
27 esses, and

28 (iv) fees for production or eventual commercial distribution of mate-
29 rials and products resulting from the activities of an eligible taxpayer
30 as long as such activities fall under the activities listed in paragraph
31 (b) of subdivision one of section thirty-one hundred two-e of the public
32 authorities law. The costs, expenses and other amounts for which a cred-
33 it is allowed and claimed under this paragraph shall not be used in the
34 calculation of any other credit allowed under this article.

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

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

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

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

3 (b) Qualified high-technology training shall include a course or
4 courses taken and satisfactorily completed by an employee of the taxpay-
5 er at an accredited, degree granting post-secondary college or universi-
6 ty in New York state that

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

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

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

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

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

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

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

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

1 OF THIS SUBSECTION AND ONE HUNDRED THOUSAND DOLLARS PER YEAR UNDER PARA-
2 GRAPH FIVE OF THIS SUBSECTION.

3 (7) If the amount of credit allowed under this subsection for any
4 taxable year shall exceed the taxpayer's tax for such year, the excess
5 shall be treated as an overpayment of tax to be credited or refunded in
6 accordance with the provisions of section six hundred eighty-six of this
7 article, provided, however, that no interest shall be paid thereon.

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

11 S 3. This act shall take effect immediately.