

5060

2013-2014 Regular Sessions

I N A S S E M B L Y

February 15, 2013

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the
Committee on Energy

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The public service law is amended by adding a new section
2 66-n to read as follows:

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

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

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

16 2. WITHIN FORTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE
17 COMMISSION SHALL COMMENCE THE CONSIDERATION OF MODIFICATIONS TO ITS
18 EXISTING PROGRAMS THAT ENCOURAGE THE DEVELOPMENT OF QUALIFIED SOLAR
19 PHOTOVOLTAIC GENERATING SYSTEMS AND, NO LATER THAN JANUARY FIRST, TWO
20 THOUSAND FOURTEEN, THE COMMISSION SHALL MAKE A DETERMINATION ESTABLISH-
21 ING MODIFICATIONS TO ITS EXISTING PROGRAMS THAT ENCOURAGE THE DEVELOP-
22 MENT OF QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS IN CONFORMANCE
23 WITH THIS SECTION. THE DEPARTMENT SHALL CONSULT WITH THE NEW YORK STATE
24 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IN THE PREPARATION OF ITS

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

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1 RECOMMENDATIONS TO THE COMMISSION FOR SUCH DETERMINATION. THE PROGRAM
2 MODIFICATIONS SHALL REQUIRE:

3 (A) ADMINISTRATION BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOP-
4 MENT AUTHORITY;

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

9 (C) A DIVERSITY OF PROJECT SIZES, GEOGRAPHIC DISTRIBUTION, AND PARTIC-
10 IPATION AMONG CUSTOMER CLASSES, SUBJECT TO COST-EFFECTIVENESS CONSIDER-
11 ATIONS;

12 (D) INCENTIVE STRUCTURES THAT MAXIMIZE COST-EFFECTIVENESS AND PRACTI-
13 CALITY THROUGH COMPETITIVE PROCUREMENTS, STANDING-OFFERS, PRODUCTION
14 INCENTIVES OR CAPACITY INCENTIVES AT THE WHOLESALE OR RETAIL LEVEL AS IN
15 THE JUDGMENT OF THE COMMISSION, IN CONSULTATION WITH THE NEW YORK INDE-
16 PENDENT SYSTEM OPERATOR, PROVIDE FOR THE MOST EFFECTIVE PROGRAM;

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

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

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

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

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

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

37 2. THE AUTHORITY SHALL CONTINUE TO ENCOURAGE THE DEVELOPMENT OF QUALI-
38 FIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS IN ITS SERVICE TERRITORY
39 THROUGH IMPLEMENTATION OF THE SOLAR INCENTIVE PROGRAM. THE PROGRAM SHALL
40 REQUIRE:

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

45 (B) A DIVERSITY OF PROJECT TYPES;

46 (C) PROGRAM ADMINISTRATION AND DELIVERY;

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

49 (E) PROGRAM DESIGNS THAT TAKE INTO CONSIDERATION THE AVOIDANCE OF
50 LONG-TERM COSTS TO THE TRANSMISSION AND DISTRIBUTION SYSTEM AND MINIMI-
51 ZATION OF PEAK LOAD IN CONSTRAINED AREAS AND THAT MAXIMIZES COST-EFFEC-
52 TIVENESS THROUGH COMPETITIVE PROCUREMENTS;

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

55 (G) ANY OTHER OBJECTIVES THE AUTHORITY MAY ESTABLISH.

1 S 3. Section 210 of the tax law is amended by adding a new subdivision
2 12-H to read as follows:

3 12-H. QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND
4 OPERATIONS CREDIT. (A) A TAXPAYER THAT IS WHOLE OR PART OF AN ENTITY
5 THAT SERVES AS THE PRINCIPAL OPERATOR OF A FACILITY PRIMARILY FUNCTION-
6 ING TO FABRICATE SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT AND
7 THAT MEETS THE ELIGIBILITY REQUIREMENTS IN PARAGRAPH (B) OF THIS SUBDI-
8 VISION, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
9 CLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPEC-
10 IFIED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION ATTRIBUTABLE TO THE
11 TAXPAYER SUBJECT TO THE LIMITATIONS IN PARAGRAPH (E) OF THIS SUBDIVI-
12 SION. FOR THE PURPOSES OF THIS SUBDIVISION SOLAR ENERGY EQUIPMENT SHALL
13 MEAN THE MANUFACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED
14 TO PRODUCE ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE
15 FOR SUCH ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS
16 AND DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY
17 TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED
18 FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY
19 ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL,
20 THERMAL OR OTHER DEMONSTRABLE MEANS SINGLY OR IN COMBINATION. THE
21 DETERMINATION OF WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIP-
22 MENT QUALIFIES FOR ELIGIBLE COSTS UNDER THIS SUBDIVISION SHALL BE DETER-
23 MINED BY THE COMMISSIONER AND, IF REQUESTED BY THE COMMISSIONER, THE
24 PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORI-
25 TY.

26 (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE MORE THAN ONE HUNDRED
27 FULL-TIME EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF
28 RESEARCH AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION
29 THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR
30 EXCEEDS THREE PERCENT DURING ITS TAXABLE YEAR.

31 (C) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER
32 CENTUM OF THE ATTRIBUTABLE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX
33 PURPOSES OF RESEARCH AND DEVELOPMENT AND MANUFACTURING PROPERTY AS
34 DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF THIS SECTION THAT IS
35 ACQUIRED BY THE TAXPAYER BY PURCHASE AS DEFINED IN SECTION 179(D) OF
36 THE INTERNAL REVENUE CODE AND PLACED IN SERVICE DURING THE TAXABLE YEAR.
37 PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS PARAGRAPH ONLY, AN ELIGIBLE
38 TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH PERCENTAGE OF THE (I)
39 ATTRIBUTABLE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES FOR
40 PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND PRODUCTS,

41 (II) THE ATTRIBUTABLE COSTS OR EXPENSES ASSOCIATED WITH QUALITY
42 CONTROL OF THE RESEARCH AND DEVELOPMENT OR MANUFACTURING OPERATIONS,

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

45 (IV) ATTRIBUTABLE FEES FOR THE PRODUCTION OR EVENTUAL COMMERCIAL
46 DISTRIBUTION OF MATERIALS AND PRODUCTS RESULTING FROM THE QUALIFIED
47 MANUFACTURING ACTIVITIES OF AN ELIGIBLE TAXPAYER.

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

51 (D) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM
52 OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY
53 THE TAXPAYER IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE
54 TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN ATTRIB-
55 UTABLE EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING
56 PROCESSES, AND ATTRIBUTABLE COSTS ASSOCIATED WITH THE DISSEMINATION OF

1 THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND
2 DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT
3 SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID
4 MEDIA. IN ADDITION, COSTS ASSOCIATED WITH THE PREPARATION OF PATENT
5 APPLICATIONS, PATENT APPLICATION FILING FEES, PATENT RESEARCH FEES,
6 PATENT EXAMINATIONS FEES, PATENT POST ALLOWANCE FEES, PATENT MAINTENANCE
7 FEES, AND GRANT APPLICATION EXPENSES AND FEES SHALL BE ELIGIBLE FOR SUCH
8 CREDIT. IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS PARAGRAPH APPLY
9 TO EXPENSES FOR LITIGATION OR THE CHALLENGE OF ANOTHER ENTITY'S INTEL-
10 LECTUAL PROPERTY RIGHTS, OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID
11 CONSULTANTS. THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT
12 IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE
13 CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

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

18 (F) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
19 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF
20 THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF
21 THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDI-
22 VISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT
23 OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN
24 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
25 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER.
26 PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOU-
27 SAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE
28 PAID THEREON.

29 S 4. Section 606 of the tax law is amended by adding a new subsection
30 (vv) to read as follows:

31 (VV) QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND
32 OPERATIONS CREDIT. (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSIST-
33 ING OF ONE OR MORE TAXPAYERS THAT SERVES AS THE PRINCIPAL OPERATOR OF A
34 FACILITY PRIMARILY FUNCTIONING TO FABRICATE SOLAR ENERGY EQUIPMENT OR
35 ENERGY STORAGE EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN
36 PARAGRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE
37 TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE
38 SUM (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE
39 AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION
40 SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE
41 PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANU-
42 FACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE
43 ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH
44 ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS AND
45 DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY
46 TECHNOLOGIES AS DESCRIBED IN SUBDIVISION ONE OF SECTION EIGHTEEN HUNDRED
47 FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW. SUCH EQUIPMENT MAY EMPLOY
48 ELECTRICAL, ELECTROCHEMICAL, SUPERCAPACITOR, COMPRESSED GAS, MECHANICAL,
49 THERMAL OR OTHER MEANS SINGLY OR IN COMBINATION. THE DETERMINATION OF
50 WHETHER SOLAR ENERGY EQUIPMENT OR ENERGY STORAGE EQUIPMENT QUALIFIES FOR
51 ELIGIBLE COSTS UNDER THIS SUBSECTION SHALL BE DETERMINED BY THE COMMIS-
52 SIONER, AND, IF REQUESTED BY THE COMMISSIONER, THE PRESIDENT OF THE NEW
53 YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

54 (2) AN ELIGIBLE ENTITY SHALL (I) HAVE MORE THAN ONE HUNDRED FULL-TIME
55 EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF RESEARCH
56 AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE

1 HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS
2 THREE PERCENT DURING ITS TAXABLE YEAR.

3 (3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER
4 CENTUM OF THE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES
5 INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING
6 PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION
7 TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED BY PURCHASE AS DEFINED
8 IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE
9 DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS
10 PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH
11 PERCENTAGE OF THE (I) COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX
12 PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND
13 PRODUCTS,

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

16 (III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROC-
17 ESSES,

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

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

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

45 (5) AN ELIGIBLE TAXPAYER MAY CLAIM CREDITS UNDER THIS SUBSECTION FOR
46 FOUR CONSECUTIVE TAXABLE YEARS. IN NO CASE SHALL THE CREDIT ALLOWED BY
47 THIS SUBDIVISION TO A TAXPAYER EXCEED TWENTY-FIVE MILLION DOLLARS PER
48 YEAR. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A
49 NEW YORK S CORPORATION, THEN THE CAP IMPOSED BY THIS PARAGRAPH SHALL BE
50 APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL
51 THE PARTNERS, SHAREHOLDERS, OR OTHER MEMBERS OF EACH SUCH ENTITY IN THE
52 TAXABLE YEAR DOES NOT EXCEED TWENTY-FIVE MILLION DOLLARS PER YEAR FOR UP
53 TO FOUR CONSECUTIVE TAXABLE YEARS.

54 (6) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY
55 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
56 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN

1 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
2 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

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

6 (XXXV) CREDIT FOR	AMOUNT OF CREDIT UNDER
7 QUALIFIED SOLAR AND ENERGY STORAGE	SUBDIVISION TWELVE-H OF
8 MANUFACTURER FACILITIES	SECTION TWO HUNDRED TEN
9 AND OPERATIONS CREDIT	
10 UNDER SUBSECTION (VV)	

11 S 6. If any provision of this act is, for any reason, declared uncon-
12 stitutional or invalid, in whole or in part, by any court of competent
13 jurisdiction, such portion shall be deemed severable, and such unconsti-
14 tutionality or invalidity shall not affect the validity of the remaining
15 provisions of this act, which remaining provisions shall continue in
16 full force and effect.

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