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

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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:

Section 1. Paragraphs (a), (b) and (h) of 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, are amended to read as follows:

(a) [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 (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 subject to the limitations in paragraph (f) of this subdivision] FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, A TAXPAYER THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH ONE OF PARAGRAPH (C) OF SUBDIVISION ONE OF 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 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

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

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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 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) 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.

[(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. Paragraphs 1, 2 and 8 of 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, are amended to read as follows:

(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] FOR TAXABLE YEARS BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, A TAXPAYER THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH ONE OF PARAGRAPH (C) OF SUBDIVISION ONE OF 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 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.

[(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; provided that the amendments to paragraph (b) of subdivision 12-G of section 210 of the tax law made by section one of this act and the amendments to paragraph 2 of subsection (nn) of section 606 of the tax law made by section two of this act shall apply to taxable years beginning January 1, 2013.