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

9141--A

I N A S S E M B L Y

March 20, 2014

Introduced by M. of A. LUPARDO -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law and the tax law, in relation to establishing an angel tax credit for investments made in small businesses

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

Section 1. The general municipal law is amended by adding a new section 959-c to read as follows:

S 959-C. CERTIFIED STARTUP BUSINESS ENTERPRISE. (A) CERTIFICATION. (I) THE COMMISSIONER SHALL APPROVE APPLICATIONS FOR QUALIFICATION OF A BUSINESS ENTERPRISE AS A CERTIFIED STARTUP BUSINESS ENTERPRISE. AS A CONDITION FOR APPROVAL OF SUCH APPLICATION, THE COMMISSIONER IS AUTHORIZED TO SPECIFY CERTAIN REQUIREMENTS TO BE SATISFIED AS A CONDITION FOR APPROVAL OF A BUSINESS ENTERPRISE AS A CERTIFIED STARTUP BUSINESS ENTERPRISE AS THE COMMISSIONER DEEMS NECESSARY TO ENSURE THE QUALIFYING ANGEL INVESTMENT WILL MAKE A SUBSTANTIAL CONTRIBUTION TO THE ECONOMIC DEVELOPMENT OF THIS STATE, INCLUDING THE USE OF A SYSTEM OF EVALUATION OF VARIOUS APPLICANT BUSINESS ENTERPRISES IN A COMPETITIVE FASHION.

(II) WITH RESPECT TO AN APPROVED APPLICATION FOR QUALIFICATION OF A BUSINESS ENTERPRISE AS A CERTIFIED STARTUP BUSINESS ENTERPRISE, THE COMMISSIONER SHALL ISSUE TO SUCH BUSINESS ENTERPRISE A CERTIFICATE OF QUALIFICATION AS A CERTIFIED STARTUP BUSINESS ENTERPRISE SETTING FORTH THE EFFECTIVE DATE OF THE CERTIFICATION AND THE AMOUNT OF QUALIFYING ANGEL INVESTMENT AWARDED TO SUCH BUSINESS ENTERPRISE, WHICH AMOUNT SHALL BE NO LESS THAN ONE HUNDRED THOUSAND DOLLARS AND NO MORE THAN ONE MILLION DOLLARS.

(III) FOR THE PERIOD JULY FIRST, TWO THOUSAND FOURTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND FIFTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT. FOR THE PERIOD JULY FIRST, TWO THOUSAND FIFTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND SIXTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT. FOR THE PERIOD JULY FIRST, TWO THOUSAND

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

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SIXTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND SEVENTEEN, THE COMMISSIONER MAY CERTIFY UP TO SEVEN MILLION DOLLARS IN QUALIFYING ANGEL INVESTMENT.

(B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(I) "CERTIFIED STARTUP BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTERPRISE LOCATED IN NEW YORK STATE:

(1) WITH LESS THAN FIVE MILLION DOLLARS IN ANNUAL REVENUES;

(2) WHOSE PRIMARY ACTIVITY CONSISTS OF A QUALIFYING TECHNOLOGY OR INNOVATION ACTIVITY; AND

(3) THAT HAS BEEN CERTIFIED AS A CERTIFIED STARTUP BUSINESS ENTERPRISE BY THE COMMISSIONER.

(II) "QUALIFYING TECHNOLOGY OR INNOVATION ACTIVITY" SHALL MEAN:

(1) BIOTECHNOLOGIES, WHICH SHALL BE DEFINED AS TECHNOLOGIES INVOLVING THE SCIENTIFIC MANIPULATION OF LIVING ORGANISMS, ESPECIALLY AT THE MOLECULAR AND/OR THE SUB-MOLECULAR GENETIC LEVEL, TO PRODUCE PRODUCTS CONDUCIVE TO IMPROVING THE LIVES AND HEALTH OF PLANTS, ANIMALS, AND HUMANS; AND THE ASSOCIATED SCIENTIFIC RESEARCH, PHARMACOLOGICAL, MECHANICAL, AND COMPUTATIONAL APPLICATIONS AND SERVICES CONNECTED WITH THESE IMPROVEMENTS;

(2) INFORMATION AND COMMUNICATION TECHNOLOGIES, EQUIPMENT AND SYSTEMS THAT INVOLVE ADVANCED COMPUTER SOFTWARE AND HARDWARE, VISUALIZATION TECHNOLOGIES, AND HUMAN INTERFACE TECHNOLOGIES;

(3) ADVANCED MATERIALS AND PROCESSING TECHNOLOGIES THAT INVOLVE THE DEVELOPMENT, MODIFICATION, OR IMPROVEMENT OF ONE OR MORE MATERIALS OR METHODS TO PRODUCE DEVICES AND STRUCTURES WITH IMPROVED PERFORMANCE CHARACTERISTICS OR SPECIAL FUNCTIONAL ATTRIBUTES, OR TO ACTIVATE, SPEED UP, OR OTHERWISE ALTER CHEMICAL, BIOCHEMICAL, OR MEDICAL PROCESSES;

(4) ELECTRONIC AND PHOTONIC DEVICES AND COMPONENTS FOR USE IN PRODUCING ELECTRONIC, OPTOELECTRONIC, MECHANICAL EQUIPMENT AND PRODUCTS OF ELECTRONIC DISTRIBUTION WITH INTERACTIVE MEDIA CONTENT;

(5) ENERGY EFFICIENCY, RENEWABLE ENERGY AND ENVIRONMENTAL TECHNOLOGIES, PRODUCTS, DEVICES AND SERVICES; OR

(6) SMALL SCALE SYSTEMS INTEGRATION AND PACKAGING.

(III) "QUALIFYING ANGEL INVESTMENT" SHALL MEAN A CONTRIBUTION TO THE CAPITAL OF A CERTIFIED STARTUP BUSINESS ENTERPRISE, PROVIDED THAT SUCH CONTRIBUTION TO CAPITAL IS MADE WITHIN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THE CERTIFIED TECHNOLOGY VENTURE'S CERTIFICATE OF QUALIFICATION AS A CERTIFIED TECHNOLOGY VENTURE AND SUCH CONTRIBUTION IS APPLIED BY THE CERTIFIED STARTUP BUSINESS ENTERPRISE AGAINST ITS ALLOCATION OF QUALIFYING ANGEL INVESTMENT. TOGETHER WITH ALL OTHER QUALIFYING ANGEL INVESTMENTS MADE TO A SINGLE CERTIFIED STARTUP BUSINESS ENTERPRISE, THE TOTAL QUALIFYING ANGEL INVESTMENT MAY NOT EXCEED ONE MILLION DOLLARS. NOTHING HEREIN SHALL PROHIBIT A PERSON MAKING A QUALIFYING ANGEL INVESTMENT FROM MAKING ADDITIONAL CONTRIBUTIONS TO THE CAPITAL OF THE CERTIFIED STARTUP BUSINESS ENTERPRISE OR MAKING LOANS TO OR OTHER INVESTMENTS IN THE CERTIFIED STARTUP BUSINESS ENTERPRISE, PROVIDED, HOWEVER, THAT SUCH OTHER CONTRIBUTIONS, LOANS AND INVESTMENTS SHALL NOT BE TREATED AS QUALIFYING ANGEL INVESTMENTS.

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

12-H. ANGEL TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

(B) APPLICATION OF CREDIT. 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 THUS 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 EIGHT-Y-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.

S 3. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(CCC) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE GENERAL MUNICIPAL LAW, OR THAT IS A MEMBER OF A PARTNERSHIP THAT HAS MADE A QUALIFYING ANGEL INVESTMENT, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT OR, IN THE CASE OF A TAXPAYER WHO IS A MEMBER OF A PARTNERSHIP THAT HAS MADE A QUALIFYING ANGEL INVESTMENT, A PORTION OF SUCH QUALIFYING ANGEL INVESTMENT EQUAL TO THE PORTION OF ITEMS OF INCOME, GAIN, LOSS AND DEDUCTION ASSOCIATED WITH THE QUALIFYING ANGEL INVESTMENT PROPERLY ALLO-CABLE TO SUCH TAXPAYER UNDER SECTION 704 OF THE INTERNAL REVENUE CODE FOR THE TAXABLE YEAR.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE 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 4. Section 1456 of the tax law is amended by adding a new subsection (aa) to read as follows:

(AA) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS 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 EIGHT-Y-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.

S 5. Section 1511 of the tax law is amended by adding a new subdivi-sion (dd) to read as follows:

(DD) ANGEL TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT HAS MADE A QUALIFYING ANGEL INVESTMENT, AS SUCH TERM IS DEFINED IN PARAGRAPH (III) OF SUBDIVISION (B) OF SECTION NINE HUNDRED FIFTY-NINE-C OF THE GENERAL MUNICIPAL LAW, SHALL BE ALLOWED A CREDIT EQUAL TO THIRTY-FIVE PERCENT OF THE AMOUNT OF SUCH QUALIFYING ANGEL INVESTMENT.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE OR BY SECTION FIFTEEN HUNDRED TWO-A OF THIS ARTICLE, WHICHEVER IS APPLICABLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS 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.

S 6. This act shall take effect immediately; provided that the amendments to section 1456 of the tax law made by section four of this act shall not affect the repeal of such section and shall be deemed repealed therewith.