

2522--A

2013-2014 Regular Sessions

I N S E N A T E

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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:

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

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

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1 EXISTING PROGRAMS THAT ENCOURAGE THE DEVELOPMENT OF QUALIFIED SOLAR
2 PHOTOVOLTAIC GENERATING SYSTEMS AND, NO LATER THAN JANUARY FIRST, TWO
3 THOUSAND FOURTEEN, THE COMMISSION SHALL MAKE A DETERMINATION ESTABLISH-
4 ING MODIFICATIONS TO ITS EXISTING PROGRAMS THAT ENCOURAGE THE DEVELOP-
5 MENT OF QUALIFIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS IN CONFORMANCE
6 WITH THIS SECTION. THE DEPARTMENT SHALL CONSULT WITH THE NEW YORK STATE
7 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IN THE PREPARATION OF ITS
8 RECOMMENDATIONS TO THE COMMISSION FOR SUCH DETERMINATION. THE PROGRAM
9 MODIFICATIONS SHALL REQUIRE:

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

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

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

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

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

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

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

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

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

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

44 2. THE AUTHORITY SHALL CONTINUE TO ENCOURAGE THE DEVELOPMENT OF QUALI-
45 FIED SOLAR PHOTOVOLTAIC GENERATING SYSTEMS IN ITS SERVICE TERRITORY
46 THROUGH IMPLEMENTATION OF THE SOLAR INCENTIVE PROGRAM. THE PROGRAM SHALL
47 REQUIRE:

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

52 (B) A DIVERSITY OF PROJECT TYPES;

53 (C) PROGRAM ADMINISTRATION AND DELIVERY;

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

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

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

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

8 S 3. Section 210 of the tax law is amended by adding a new subdivision
9 12-H to read as follows:

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

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

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

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

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

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

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

4 (D) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TEN PER CENTUM
5 OF "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" PAID OR INCURRED BY
6 THE TAXPAYER IN THE TAXABLE YEAR. FOR THE PURPOSES OF THIS SECTION, THE
7 TERM "QUALIFIED RESEARCH AND MANUFACTURING EXPENSES" SHALL MEAN ATTRIB-
8 UTABLE EXPENSES ASSOCIATED WITH IN-HOUSE RESEARCH AND MANUFACTURING
9 PROCESSES, AND ATTRIBUTABLE COSTS ASSOCIATED WITH THE DISSEMINATION OF
10 THE RESULTS OF THE PRODUCTS THAT DIRECTLY RESULT FROM SUCH RESEARCH AND
11 DEVELOPMENT AND/OR MANUFACTURING ACTIVITIES; PROVIDED, HOWEVER, THAT
12 SUCH COSTS SHALL NOT INCLUDE ADVERTISING OR PROMOTION THROUGH PAID
13 MEDIA. IN ADDITION, COSTS ASSOCIATED WITH THE PREPARATION OF PATENT
14 APPLICATIONS, PATENT APPLICATION FILING FEES, PATENT RESEARCH FEES,
15 PATENT EXAMINATIONS FEES, PATENT POST ALLOWANCE FEES, PATENT MAINTENANCE
16 FEES, AND GRANT APPLICATION EXPENSES AND FEES SHALL BE ELIGIBLE FOR SUCH
17 CREDIT. IN NO CASE SHALL THE CREDIT ALLOWED UNDER THIS PARAGRAPH APPLY
18 TO EXPENSES FOR LITIGATION OR THE CHALLENGE OF ANOTHER ENTITY'S INTEL-
19 LECTUAL PROPERTY RIGHTS, OR FOR CONTRACT EXPENSES INVOLVING OUTSIDE PAID
20 CONSULTANTS. THE COSTS, EXPENSES AND OTHER AMOUNTS FOR WHICH A CREDIT
21 IS ALLOWED AND CLAIMED UNDER THIS PARAGRAPH SHALL NOT BE USED IN THE
22 CALCULATION OF ANY OTHER CREDIT ALLOWED UNDER THIS ARTICLE.

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

27 (F) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
28 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF
29 THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF
30 THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDI-
31 VISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT
32 OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN
33 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
34 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER.
35 PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOU-
36 SAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE
37 PAID THEREON.

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

42 (XX) QUALIFIED SOLAR AND ENERGY STORAGE MANUFACTURER FACILITIES AND
43 OPERATIONS CREDIT. (1) A TAXPAYER WHO IS A MEMBER OF AN ENTITY CONSIST-
44 ING OF ONE OR MORE TAXPAYERS THAT SERVES AS THE PRINCIPAL OPERATOR OF A
45 FACILITY PRIMARILY FUNCTIONING TO FABRICATE SOLAR ENERGY EQUIPMENT OR
46 ENERGY STORAGE EQUIPMENT AND THAT MEETS THE ELIGIBILITY REQUIREMENTS IN
47 PARAGRAPH TWO OF THIS SUBSECTION, SHALL BE ALLOWED A CREDIT AGAINST THE
48 TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE
49 SUM (OR PRO RATA SHARE OF THE SUM IN THE CASE OF A PARTNERSHIP) OF THE
50 AMOUNTS SPECIFIED IN PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION
51 SUBJECT TO THE LIMITATIONS IN PARAGRAPH FIVE OF THIS SUBSECTION. FOR THE
52 PURPOSES OF THIS SUBSECTION SOLAR ENERGY EQUIPMENT SHALL MEAN THE MANU-
53 FACTURING OF MATERIAL COMPONENTS IN NEW YORK STATE DESIGNED TO PRODUCE
54 ELECTRICITY UTILIZING SOLAR RADIATION AS THE ENERGY SOURCE FOR SUCH
55 ELECTRICITY; AND ENERGY STORAGE EQUIPMENT SHALL MEAN MATERIALS AND
56 DEVICES INTENDED TO STORE SOME FORM OF ENERGY RELATED TO NEW ENERGY

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

9 (2) AN ELIGIBLE ENTITY SHALL (I) HAVE MORE THAN ONE HUNDRED FULL-TIME
10 EMPLOYEES EMPLOYED IN NEW YORK STATE, AND (II) HAVE A RATIO OF RESEARCH
11 AND DEVELOPMENT FUNDS TO NET SALES, AS REFERRED TO IN SECTION THIRTY-ONE
12 HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW, WHICH EQUALS OR EXCEEDS
13 THREE PERCENT DURING ITS TAXABLE YEAR.

14 (3) AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR TWENTY PER
15 CENTUM OF THE COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX PURPOSES
16 INCURRED BY THE ENTITY FOR RESEARCH AND DEVELOPMENT AND MANUFACTURING
17 PROPERTY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWELVE OF SECTION
18 TWO HUNDRED TEN OF THIS CHAPTER THAT IS ACQUIRED BY PURCHASE AS DEFINED
19 IN SECTION 179(D) OF THE INTERNAL REVENUE CODE AND PLACED IN SERVICE
20 DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS
21 PARAGRAPH ONLY, AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT FOR SUCH
22 PERCENTAGE OF THE (I) COST OR SIMILAR BASIS FOR FEDERAL INCOME TAX
23 PURPOSES FOR PROPERTY USED IN THE TESTING OR INSPECTION OF MATERIALS AND
24 PRODUCTS,

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

27 (III) FEES FOR USE OF SOPHISTICATED TECHNOLOGY FACILITIES AND PROC-
28 ESSES,

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

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

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

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

10 (6) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY
 11 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
 12 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN
 13 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
 14 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

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

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

23 S 6. If any provision of this act is, for any reason, declared uncon-
 24 stitutional or invalid, in whole or in part, by any court of competent
 25 jurisdiction, such portion shall be deemed severable, and such unconsti-
 26 tutionality or invalidity shall not affect the validity of the remaining
 27 provisions of this act, which remaining provisions shall continue in
 28 full force and effect.

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