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

305

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. ROSENTHAL, MORELLE, MAGNARELLI -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the establishment of the angel investment tax credit for qualified emerging technologies; to repeal certain provisions of such law relating thereto; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Subdivision 8 of section 210-B of the tax law is REPEALED and a new subdivision 8 is added to read as follows:

8. ANGEL INVESTMENT TAX CREDIT. (A) FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "QUALIFIED EMERGING TECHNOLOGY COMPANY" SHALL MEAN A PRIVATE COMPANY AS DEFINED IN SUBPARAGRAPH ONE OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW.

(2) "SEED COMPANY" SHALL MEAN A QUALIFIED EMERGING TECHNOLOGY COMPANY WITH ANNUAL REVENUE OF LESS THAN FIVE MILLION DOLLARS OR A QUALIFIED EMERGING TECHNOLOGY COMPANY THAT MAY NOT YET HAVE FULLY ESTABLISHED COMMERCIAL OPERATIONS TO ENABLE SUCH COMPANY TO CONDUCT RESEARCH TO PROVE A CONCEPT.

(3) "QUALIFIED ANGEL INVESTMENT" SHALL MEAN THE INVESTMENT OF MONEY IN A SEED COMPANY IN EXCHANGE FOR ORIGINAL ISSUE CAPITAL STOCK OR OTHER OWNERSHIP INTEREST, PROVIDED, THAT REPAYMENT OF THE INVESTMENT IS DEPENDENT ON THE SUCCESS OF THE BUSINESS OPERATIONS AND IS NOT SECURED BY A LIEN ON BUSINESS ASSETS OR A PERSONAL GUARANTY OF ANY PRINCIPAL OWNER, AND PROVIDED, FURTHER, THAT SUCH INVESTMENT IS NOT MADE BY OR ON BEHALF OF AN OWNER OF THE BUSINESS, INCLUDING, BUT NOT LIMITED TO, A STOCKHOLDER, PARTNER OR SOLE PROPRIETOR, OR ANY RELATED PERSON AS DEFINED IN SECTION 465(B)(3)(C) OF THE INTERNAL REVENUE CODE.

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

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(4) "QUALIFIED ANGEL NETWORK FUND INVESTMENT" SHALL MEAN THE AMOUNT OF COMMITTED CAPITAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A SEED CAPITAL FUND PROVIDED, THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE QUALIFIED ANGEL INVESTMENTS.

(B) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN SUBPARAGRAPHS ONE AND TWO OF THIS PARAGRAPH.

(1) FORTY PERCENT OF A QUALIFIED ANGEL INVESTMENT, PROVIDED THAT TWENTY PERCENT OF THE QUALIFIED ANGEL INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND TEN PERCENT OF THE QUALIFIED ANGEL INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS SIX HUNDRED THOUSAND DOLLARS.

(2) TWENTY PERCENT OF A QUALIFIED ANGEL NETWORK FUND INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED ANGEL FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED ANGEL NETWORK FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(C) IN NO EVENT SHALL THE CREDIT AND CARRYOVER OF SUCH CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR, IN THE AGGREGATE, 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 SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED, HOWEVER, IF THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, OR IF ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF THE FINAL SENTENCE OF THIS PARAGRAPH, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAX FOR SUCH YEAR OR YEARS. IN ADDITION, THE AMOUNT OF SUCH CREDIT, AND CARRYOVERS OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE MAY NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER SECTION TWO HUNDRED NINE OF THIS ARTICLE COMPUTED WITHOUT REGARD TO ANY CREDIT PROVIDED FOR BY SECTION TWO HUNDRED TEN OF THIS ARTICLE.

(D) WHERE A TAXPAYER SELLS, TRANSFERS, OR OTHERWISE RECOVERS THE INVESTMENT, IN WHOLE OR IN PART, WHICH WAS THE BASIS FOR THE ALLOWANCE OF CREDIT PROVIDED FOR UNDER SUBPARAGRAPHS ONE OR TWO OF PARAGRAPH (B) OF THIS SUBDIVISION, DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED, THE TAXPAYER SHALL NOT BE ALLOWED THE PORTION OF THE CREDIT ATTRIBUTABLE TO SUCH INVESTMENT WITH RESPECT TO THE TAXABLE YEAR IN WHICH THE RECOVERY DESCRIBED ABOVE OCCURRED AND THE FOLLOWING TAXABLE YEARS.

S 2. Subsection (r) of section 606 of the tax law is REPEALED and a new subsection (r) is added to read as follows:

(R) ANGEL INVESTMENT TAX CREDIT. (1) FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "QUALIFIED EMERGING TECHNOLOGY COMPANY" SHALL MEAN A PRIVATE COMPANY AS DEFINED IN SUBPARAGRAPH ONE OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW.

(B) "SEED COMPANY" SHALL MEAN A QUALIFIED EMERGING TECHNOLOGY COMPANY WITH ANNUAL REVENUE OF LESS THAN FIVE MILLION DOLLARS OR A QUALIFIED EMERGING TECHNOLOGY COMPANY THAT MAY NOT YET HAVE FULLY ESTABLISHED COMMERCIAL OPERATIONS TO ENABLE SUCH COMPANY TO CONDUCT RESEARCH TO PROVE A CONCEPT.

(C) "QUALIFIED ANGEL INVESTMENT" SHALL MEAN THE INVESTMENT OF MONEY IN A SEED COMPANY IN EXCHANGE FOR ORIGINAL ISSUE CAPITAL STOCK OR OTHER OWNERSHIP INTEREST, PROVIDED THAT REPAYMENT OF THE INVESTMENT IS DEPENDENT ON THE SUCCESS OF THE BUSINESS OPERATIONS AND IS NOT SECURED BY A LIEN ON BUSINESS ASSETS OR A PERSONAL GUARANTY OF ANY PRINCIPAL OWNER, AND PROVIDED FURTHER THAT SUCH INVESTMENT IS NOT MADE BY OR ON BEHALF OF AN OWNER OF THE BUSINESS, INCLUDING, BUT NOT LIMITED TO, A STOCKHOLDER, PARTNER OR SOLE PROPRIETOR, OR ANY RELATED PERSON AS DEFINED IN SECTION 465(B)(3)(C) OF THE INTERNAL REVENUE CODE.

(D) "QUALIFIED ANGEL NETWORK FUND INVESTMENT" SHALL MEAN THE AMOUNT OF COMMITTED CAPITAL A LIMITED PARTNER HAS ACTUALLY TRANSFERRED TO A SEED CAPITAL FUND, PROVIDED THAT SUCH FUND WAS ESTABLISHED SOLELY TO MAKE QUALIFIED ANGEL INVESTMENTS.

(2) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE SUM OF THE AMOUNTS SPECIFIED IN SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH.

(A) FORTY PERCENT OF A QUALIFIED ANGEL INVESTMENT, PROVIDED THAT TWENTY PERCENT OF THE QUALIFIED ANGEL INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE AND TEN PERCENT OF THE QUALIFIED ANGEL INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS SIX HUNDRED THOUSAND DOLLARS.

(B) TWENTY PERCENT OF A QUALIFIED ANGEL NETWORK FUND INVESTMENT, PROVIDED THAT TEN PERCENT OF THE QUALIFIED ANGEL NETWORK FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN THE TAXABLE YEAR IN WHICH THE THE INVESTMENT WAS MADE AND FIVE PERCENT OF THE QUALIFIED ANGEL NETWORK FUND INVESTMENT CAN BE TAKEN AS A CREDIT IN EACH OF THE NEXT TWO TAXABLE YEARS, AND FURTHER PROVIDED THAT SUCH INVESTMENT IS NOT SOLD, TRANSFERRED OR OTHERWISE RECOVERED BY THE TAXPAYER DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED. THE TOTAL AMOUNT OF CREDITS ALLOWABLE TO A TAXPAYER UNDER THIS SUBPARAGRAPH FOR ALL YEARS IS THREE HUNDRED THOUSAND DOLLARS.

(3) (A) IF THE AMOUNT OF THE CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAX FOR SUCH YEAR OR YEARS. IN ADDITION, THE AMOUNT OF SUCH CREDIT, AND CARRYOVERS OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE MAY NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER

SECTION SIX HUNDRED ONE OF THIS ARTICLE COMPUTED WITHOUT REGARD TO ANY CREDIT PROVIDED FOR BY THIS SECTION.

(B) IN THE CASE OF A HUSBAND OR WIFE WHO IS REQUIRED TO FILE A SEPARATE RETURN, THE LIMITATIONS PROVIDED FOR IN SUBPARAGRAPH (B) OF PARAGRAPH TWO OF THIS SUBSECTION SHALL BE ONE HUNDRED FIFTY THOUSAND DOLLARS IN LIEU OF THREE HUNDRED THOUSAND DOLLARS, AND THE LIMITATIONS PROVIDED FOR IN SUBPARAGRAPH (A) OF PARAGRAPH TWO OF THIS SUBSECTION SHALL BE THREE HUNDRED THOUSAND DOLLARS IN LIEU OF SIX HUNDRED THOUSAND DOLLARS, UNLESS THE SPOUSE OF THE TAXPAYER HAS NO CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR THE TAXABLE YEAR OF SUCH SPOUSE WHICH ENDS WITHIN OR WITH THE TAXPAYER'S TAXABLE YEAR.

(C) IN THE CASE OF AN ESTATE OR TRUST, THE LIMITATIONS PROVIDED FOR IN PARAGRAPH TWO OF THIS SUBSECTION SHALL BE REDUCED TO AN AMOUNT WHICH BEARS THE SAME RATIO TO THREE HUNDRED THOUSAND DOLLARS AND AN AMOUNT WHICH BEARS THE SAME RATIO TO SIX HUNDRED THOUSAND DOLLARS AS THE PORTION OF THE INCOME OF THE ESTATE OR TRUST WHICH IS NOT ALLOCATED TO BENEFICIARIES BEARS TO THE TOTAL INCOME OF THE ESTATE OR TRUST.

(4) WHERE A TAXPAYER SELLS, TRANSFERS, OR OTHERWISE RECOVERS THE INVESTMENT, IN WHOLE OR IN PART, WHICH WAS THE BASIS FOR THE ALLOWANCE OF CREDIT PROVIDED FOR UNDER SUBPARAGRAPHS (A) OR (B) OF PARAGRAPH TWO OF THIS SUBSECTION, DURING THE TAXABLE YEAR THE INVESTMENT WAS MADE OR WITHIN TWENTY-FOUR MONTHS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT WAS FIRST CLAIMED, THE TAXPAYER SHALL NOT BE ALLOWED THE PORTION OF CREDIT ATTRIBUTABLE TO SUCH INVESTMENT WITH RESPECT TO THE TAXABLE YEAR IN WHICH THE RECOVERY DESCRIBED ABOVE OCCURRED AND THE FOLLOWING TAXABLE YEARS.

S 3. Clause (xi) of subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 68 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(xi) [Qualified emerging technology company capital] ANGEL INVESTMENT tax credit under subsection (r)	Qualified investments under subdivision eight of section two hundred ten-B

S 4. This act shall take effect immediately and shall apply to taxable years beginning on and after the first of january next succeeding the date on which it shall have become a law and shall remain in effect for sixty months after it shall have become a law, when upon such date the provisions of this act shall expire and be deemed repealed.