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

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I N S E N A T E

May 4, 2016

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the economic development law, in relation to the excelsior investment tax credit

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

Section 1. Subdivision (c) of section 31 of the tax law, as amended by section 47 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(c) Election of credit. A taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the investment tax credit provided for under subdivision one of section two hundred ten-B or subsection (a) of section six hundred six of this chapter, may claim either the excelsior investment tax credit component or the investment tax credit, but not both with regard to a particular piece of property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of this article, [as added by chapter one of the laws of two thousand three, may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. The election to claim the excelsior investment tax credit component, the investment tax credit or the brownfield tangible property credit component, with regard to the same property, is irrevocable] CAN CLAIM THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT ONLY TO THE EXTENT THAT QUALIFYING COSTS UNDER THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT ARE NOT QUALIFYING COSTS UNDER THE BROWNFIELD TANGIBLE PROPERTY CREDIT COMPONENT. NOTWITHSTANDING ANY LAW OR REGULATION TO THE CONTRARY, A TAXPAYER QUALIFIED TO CLAIM THE BROWNFIELD TANGIBLE PROPERTY CREDIT COMPONENT UNDER SECTION TWENTY-ONE OF THIS ARTICLE, SHALL ALSO BE ELIGIBLE TO CLAIM ANY OR ALL OF: (I) THE EXCELSIOR JOBS TAX CREDIT COMPONENT; (II)

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

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THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT COMPONENT; AND/OR (III) THE EXCELSIOR REAL PROPERTY TAX CREDIT COMPONENT.

S 2. Subdivision 2 of section 355 of the economic development law, as amended by section 4 of part G of chapter 61 of the laws of 2011, is amended to read as follows:

2. Excelsior investment tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on qualified investments. The credit shall be equal to two percent of the cost or other basis for federal income tax purposes of the qualified investment. A participant may not claim both the excelsior investment tax credit component and the investment tax credit set forth in subdivision twelve of section [two hundred ten]TWO HUNDRED TEN-B, subsection (a) of section six hundred six[, subsection (i) of section fourteen hundred fifty-six,] or subdivision (q) of section fifteen hundred eleven of the tax law for the same property in any taxable year, except that a participant may claim both the excelsior investment tax credit component and the investment tax credit for research and development property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of the tax law [may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. A credit may not be claimed until a business enterprise has received a certificate of tax credit, provided that qualified investments made on or after the issuance of the certificate of eligibility but before the issuance of the certificate of tax credit to the business enterprise, may be claimed in the first taxable year for which the business enterprise is allowed to claim the credit. Expenses incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the credit] CAN CLAIM THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT ONLY TO THE EXTENT THAT QUALIFYING COSTS UNDER THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT ARE NOT QUALIFYING COSTS UNDER THE BROWNFIELD TANGIBLE PROPERTY CREDIT COMPONENT.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2015.