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

7045--A

2015-2016 Regular Sessions

I N A S S E M B L Y

April 21, 2015

Introduced by M. of A. SCHIMMINGER, JAFFEE, MAGNARELLI, BLAKE, STIRPE, RIVERA, ENGLEBRIGHT, SKARTADOS, SCHIMEL -- Multi-Sponsored by -- M. of A. ABBATE, COOK, SOLAGES, THIELE -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the creation of a biotechnology research and development investment tax credit

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

Section 1. The tax law is amended by adding a new section 24-b to read as follows:

S 24-B. BIOSCIENCE AND MEDICAL TECHNOLOGY (BIO/MED) RESEARCH AND DEVELOPMENT TAX CREDIT. (A) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS" MEANS QUALIFIED RESEARCH EXPENSES AND BASIC RESEARCH PAYMENTS AS DEFINED IN SECTIONS 41 (B) AND (E) OF THE INTERNAL REVENUE CODE, EXCEPT IT DOES NOT INCLUDE EXPENSES INCURRED FOR QUALIFIED RESEARCH OR BASIC RESEARCH CONDUCTED OUTSIDE OF NEW YORK STATE, FOR PURPOSES OF DEVELOPING A PRODUCT OR PHARMACEUTICAL, INSTRUMENT, APPARATUS, MACHINE, CONTRIVANCE, IMPLANT OR OTHER SIMILAR OR RELATED ARTICLE, INCLUDING A COMPONENT PART OR ACCESSORY THAT ARE APPLICABLE TO THE PREVENTION, TREATMENT OR CURE OF A DISEASE OR CONDITION OF HUMAN BEINGS.

(2) "QUALIFIED BIO/MED COMPANY" IS A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP OR OTHER ENTITY WHICH IS ENGAGED IN THE PRODUCTION OF A PRODUCT OR PHARMACEUTICAL, INSTRUMENT, APPARATUS, MACHINE, CONTRIVANCE, IMPLANT OR OTHER SIMILAR OR RELATED ARTICLE, INCLUDING A COMPONENT PART OR ACCESSORY THAT ARE APPLICABLE TO THE PREVENTION, TREATMENT OR CURE OF A DISEASE OR CONDITION OF HUMAN BEINGS.

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

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(B) (1) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A QUALIFIED BIO/MED COMPANY, SOLE PROPRIETOR OR A MEMBER OF A PARTNERSHIP, AND WHICH IS SUBJECT TO TAX UNDER ARTICLES NINE-A OR TWENTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS HEREINAFTER PROVIDED.

(2) THE AMOUNT OF THE CREDIT SHALL BE THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF FIFTEEN PERCENT AND THE QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS PAID OR INCURRED IN THE STATE. THE CREDIT SHALL BE ALLOWED FOR THE TAXABLE YEAR IN WHICH THE QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT ACTIVITY OCCURS. IF THE AMOUNT OF THE CREDIT IS AT LEAST ONE MILLION DOLLARS BUT LESS THAN FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED OVER A TWO YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH THE CREDIT MAY BE CLAIMED AND IN THE NEXT SUCCEEDING TAXABLE YEAR, WITH ONE-HALF OF THE AMOUNT OF CREDIT ALLOWED BEING CLAIMED IN EACH YEAR. IF THE AMOUNT OF THE CREDIT IS AT LEAST FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED OVER A THREE YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH THE CREDIT MAY BE CLAIMED AND IN THE NEXT TWO SUCCEEDING TAXABLE YEARS, WITH ONE-THIRD OF THE AMOUNT OF THE CREDIT ALLOWED BEING CLAIMED IN EACH YEAR.

(3) NO QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS USED BY A TAXPAYER EITHER AS THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION OR USED IN THE CALCULATION OF THE CREDIT PROVIDED FOR UNDER THIS SECTION SHALL BE USED BY SUCH TAXPAYER TO CLAIM ANY OTHER CREDIT ALLOWED PURSUANT TO THIS CHAPTER.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9-A: SECTION 210-B: SUBDIVISION 49.

(2) ARTICLE 22: SECTION 606: SUBSECTION (CCC).

(D) ALLOCATION OF CREDIT. (1) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SECTION, SUBDIVISION FORTY-NINE OF SECTION TWO HUNDRED TEN-B AND SUBSECTION (CCC) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER IN ANY CALENDAR YEAR SHALL BE FIFTY MILLION DOLLARS IN TWO THOUSAND SIXTEEN, AND EACH SUCCEEDING YEAR UP TO AND INCLUDING TWO THOUSAND NINETEEN.

(2) FOR THE PERIOD TWO THOUSAND SEVENTEEN THROUGH TWO THOUSAND TWENTY, IN ADDITION TO THE AMOUNT OF CREDIT ESTABLISHED IN PARAGRAPH ONE OF THIS SUBDIVISION, A TAXPAYER SHALL BE ALLOWED A CREDIT EQUAL TO THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF FIVE PERCENT AND THE AMOUNT OF THE QUALIFIED BIO/MED RESEARCH AND DEVELOPMENT COSTS BY A QUALIFIED BIO/MED COMPANY IN ONE OF THE COUNTIES SPECIFIED IN THIS PARAGRAPH. FOR PURPOSES OF THIS ADDITIONAL CREDIT, THE SERVICES MUST BE PERFORMED OR THE PERSONAL PROPERTY MUST BE INSTALLED IN ONE OR MORE OF THE FOLLOWING COUNTIES: ALBANY, ALLEGANY, BROOME, CATTARAUGUS, CAYUGA, CHAUTAUQUA, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, CORTLAND, DELAWARE, DUTCHESS, ERIE, ESSEX, FRANKLIN, FULTON, GENESEE, GREENE, HAMILTON, HERKIMER, JEFFERSON, LEWIS, LIVINGSTON, MADISON, MONROE, MONTGOMERY, NIAGARA, ONEIDA, ONONDAGA, ONTARIO, ORLEANS, OSWEGO, OTSEGO, RENSSELAER, SARATOGA, SCHENECTADY, SCHOHARIE, SCHUYLER, SENECA, ST. LAWRENCE, STEUBEN, SULLIVAN, TIOGA, TOMPKINS, ULSTER, WARREN, WASHINGTON, WAYNE, WYOMING, OR YATES. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED PURSUANT TO THE AUTHORITY OF THIS PARAGRAPH SHALL BE TEN MILLION DOLLARS EACH YEAR DURING THE PERIOD TWO THOUSAND SEVENTEEN THROUGH TWO THOUSAND TWENTY OF THE ANNUAL ALLOCATION MADE AVAILABLE TO THE PROGRAM PURSUANT TO THIS SUBDIVISION. IF THE TOTAL AMOUNT OF ALLO-

CATED CREDITS APPLIED FOR UNDER THIS PARAGRAPH IN ANY YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS PARAGRAPH, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE NEXT YEAR. IF THE TOTAL AMOUNT OF ALLOCATED TAX CREDITS APPLIED FOR UNDER THIS PARAGRAPH AT THE CONCLUSION OF ANY YEAR IS LESS THAN TEN MILLION DOLLARS, THE REMAINDER SHALL BE TREATED AS PART OF THE ANNUAL ALLOCATION MADE AVAILABLE TO THE PROGRAM PURSUANT TO SUBDIVISION (D) OF THIS SECTION. HOWEVER, IN NO EVENT MAY THE TOTAL OF THE CREDITS ALLOCATED UNDER THIS PARAGRAPH EXCEED TEN MILLION DOLLARS IN ANY YEAR DURING THE PERIOD TWO THOUSAND SEVENTEEN THROUGH TWO THOUSAND TWENTY.

S 2. Section 210-B of the tax law is amended by adding a new subdivision 49 to read as follows:

49. BIO/MED RESEARCH AND DEVELOPMENT INVESTMENT CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-FOUR-B OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. IN NO EVENT SHALL THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT OR IF THE TAXPAYER OTHERWISE PAYS TAX BASED ON THE FIXED DOLLAR MINIMUM AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND 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) BIO/MED RESEARCH AND DEVELOPMENT INVESTMENT CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-FOUR-B OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE. 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. This act shall take effect immediately.