

STATE OF NEW YORK

6555

2017-2018 Regular Sessions

IN ASSEMBLY

March 9, 2017

Introduced by M. of A. KOLB, OAKS, WALTER, MONTESANO, PALMESANO, LOPEZ, RAIA, HAWLEY, BARCLAY, KEARNS, FINCH, DiPIETRO -- Multi-Sponsored by -- M. of A. BLANKENBUSH, McLAUGHLIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to expanding eligibility for the investment tax credit to all businesses in the state (Part A); to amend the tax law, in relation to a qualified emerging technology tax credit (Part B); to amend the general municipal law, in relation to certified startup business enterprises; and to amend the tax law, in relation to the angel tax credit (Part C)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law components of legislation relating
2 to "Invest-NY". Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular
3 provision contained within such Part is set forth in the last section of
4 such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section
5 "of this act", when used in connection with that particular component,
6 shall be deemed to mean and refer to the corresponding section of the
7 Part in which it is found. Section three of this act sets forth the
8 general effective date of this act.
9
10

11 PART A

12 Section 1. Subparagraph (i) of paragraph (b) of subdivision 1 of
13 section 210-B of the tax law, as amended by section 31 of part T of
14 chapter 59 of the laws of 2015, is amended to read as follows:

15 (i) A credit shall be allowed under this subdivision with respect to
16 tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable
17

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

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1 pursuant to section one hundred sixty-seven of the internal revenue
2 code, have a useful life of four years or more, are acquired by purchase
3 as defined in section one hundred seventy-nine (d) of the internal
4 revenue code, have a situs in this state and are (A) principally used by
5 the taxpayer in the production of goods by manufacturing, processing,
6 assembling, refining, mining, extracting, farming, agriculture, horti-
7 culture, floriculture, viticulture or commercial fishing, (B) industrial
8 waste treatment facilities or air pollution control facilities, used in
9 the taxpayer's trade or business, (C) research and development property,
10 or (D) principally used in the ordinary course of the taxpayer's trade
11 or business as a broker or dealer in connection with the purchase or
12 sale (which shall include but not be limited to the issuance, entering
13 into, assumption, offset, assignment, termination, or transfer) of
14 stocks, bonds or other securities as defined in section four hundred
15 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as
16 defined in section four hundred seventy-five (e) of the Internal Revenue
17 Code, (E) principally used in the ordinary course of the taxpayer's
18 trade or business of providing investment advisory services for a regu-
19 lated investment company as defined in section eight hundred fifty-one
20 of the Internal Revenue Code, or lending, loan arrangement or loan orig-
21 ination services to customers in connection with the purchase or sale
22 (which shall include but not be limited to the issuance, entering into,
23 assumption, offset, assignment, termination, or transfer) of securities
24 as defined in section four hundred seventy-five (c)(2) of the Internal
25 Revenue Code, (F) principally used in the ordinary course of the taxpay-
26 er's business as an exchange registered as a national securities
27 exchange within the meaning of sections 3(a)(1) and 6(a) of the Securi-
28 ties Exchange Act of 1934 or a board of trade as defined in subparagraph
29 one of paragraph (a) of section fourteen hundred ten of the not-for-pro-
30 fit corporation law or as an entity that is wholly owned by one or more
31 such national securities exchanges or boards of trade and that provides
32 automation or technical services thereto, ~~[or]~~ (G) principally used as a
33 qualified film production facility including qualified film production
34 facilities having a situs in an empire zone designated as such pursuant
35 to article eighteen-B of the general municipal law, where the taxpayer
36 is providing three or more services to any qualified film production
37 company using the facility, including such services as a studio lighting
38 grid, lighting and grip equipment, multi-line phone service, broadband
39 information technology access, industrial scale electrical capacity,
40 food services, security services, and heating, ventilation and air
41 conditioning, or (H) principally used in the ordinary course of any
42 trade or business of the taxpayer not otherwise described in clauses (A)
43 through (G) of this subparagraph. For purposes of clauses (D), (E) and
44 (F) of this subparagraph, property purchased by a taxpayer affiliated
45 with a regulated broker, dealer, registered investment advisor, national
46 securities exchange or board of trade, is allowed a credit under this
47 subdivision if the property is used by its affiliated regulated broker,
48 dealer, registered investment advisor, national securities exchange or
49 board of trade in accordance with this subdivision. For purposes of
50 determining if the property is principally used in qualifying uses, the
51 uses by the taxpayer described in clauses (D) and (E) of this subpara-
52 graph may be aggregated. In addition, the uses by the taxpayer, its
53 affiliated regulated broker, dealer and registered investment advisor
54 under either or both of those clauses may be aggregated. Provided,
55 however, a taxpayer shall not be allowed the credit provided by clauses
56 (D), (E) and (F) of this subparagraph unless the property is first

placed in service before October first, two thousand fifteen and (i) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state or (ii) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (iii) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (iii) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subdivision, the term "goods" shall not include electricity.

§ 2. Subparagraph (A) of paragraph 2 of subsection (a) of section 606 of the tax law, as amended by chapter 637 of the laws of 2008, is amended to read as follows:

(A) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (i) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (ii) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section 475(e) of the Internal Revenue Code, (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue

1 Code, or lending, loan arrangement or loan origination services to
2 customers in connection with the purchase or sale (which shall include
3 but not be limited to the issuance, entering into, assumption, offset,
4 assignment, termination, or transfer) of securities as defined in
5 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
6 ~~[or]~~ (vi) principally used as a qualified film production facility
7 including qualified film production facilities having a situs in an
8 empire zone designated as such pursuant to article eighteen-B of the
9 general municipal law, where the taxpayer is providing three or more
10 services to any qualified film production company using the facility,
11 including such services as a studio lighting grid, lighting and grip
12 equipment, multi-line phone service, broadband information technology
13 access, industrial scale electrical capacity, food services, security
14 services, and heating, ventilation and air conditioning, or (vii) prin-
15 cipally used in the ordinary course of any trade or business of the
16 taxpayer not otherwise described in clauses (i) through (vi) of this
17 subparagraph. For purposes of clauses (iv) and (v) of this subpara-
18 graph, property purchased by a taxpayer affiliated with a regulated
19 broker, dealer, or registered investment adviser is allowed a credit
20 under this subsection if the property is used by its affiliated regu-
21 lated broker, dealer or registered investment adviser in accordance with
22 this subsection. For purposes of determining if the property is princi-
23 pally used in qualifying uses, the uses by the taxpayer described in
24 clauses (iv) and (v) of this subparagraph may be aggregated. In addi-
25 tion, the uses by the taxpayer, its affiliated regulated broker, dealer
26 and registered investment adviser under either or both of those clauses
27 may be aggregated. Provided, however, a taxpayer shall not be allowed
28 the credit provided by clauses (iv) and (v) of this subparagraph unless
29 (I) eighty percent or more of the employees performing the administra-
30 tive and support functions resulting from or related to the qualifying
31 uses of such equipment are located in this state, or (II) the average
32 number of employees that perform the administrative and support func-
33 tions resulting from or related to the qualifying uses of such equipment
34 and are located in this state during the taxable year for which the
35 credit is claimed is equal to or greater than ninety-five percent of the
36 average number of employees that perform these functions and are located
37 in this state during the thirty-six months immediately preceding the
38 year for which the credit is claimed, or (III) the number of employees
39 located in this state during the taxable year for which the credit is
40 claimed is equal to or greater than ninety percent of the number of
41 employees located in this state on December thirty-first, nineteen
42 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
43 er in nineteen hundred ninety-eight, the last day of its first taxable
44 year ending after December thirty-first, nineteen hundred ninety-eight.
45 If the taxpayer becomes subject to tax in this state after the taxable
46 year beginning in nineteen hundred ninety-eight, then the taxpayer is
47 not required to satisfy the employment test provided in the preceding
48 sentence of this subparagraph for its first taxable year. For the
49 purposes of clause (III) of this subparagraph the employment test will
50 be based on the number of employees located in this state on the last
51 day of the first taxable year the taxpayer is subject to tax in this
52 state. If the uses of the property must be aggregated to determine
53 whether the property is principally used in qualifying uses, then either
54 each affiliate using the property must satisfy this employment test or
55 this employment test must be satisfied through the aggregation of the
56 employees of the taxpayer, its affiliated regulated broker, dealer, and

1 registered investment adviser using the property. For purposes of this
2 subsection, the term "goods" shall not include electricity.

3 § 3. This act shall take effect immediately and apply to taxable years
4 ending on or after January 1, 2017.

5 PART B

6 Section 1. Subparagraph (vii) of paragraph (a) of subdivision 1 of
7 section 210 of the tax law, as amended by section 12 of part T of chap-
8 ter 59 of the laws of 2015, is amended to read as follows:

9 (vii) For a taxpayer that is defined as a qualified emerging technolo-
10 gy company under paragraph (c) of subdivision one of section thirty-one
11 hundred two-e of the public authorities law regardless of the ten
12 million dollar limitation expressed in subparagraph one of such para-
13 graph (c) the amount prescribed by this paragraph shall be computed at
14 the rate of 5.7 percent for taxable years beginning on or after January
15 first, two thousand fifteen and before January first, two thousand
16 [~~sixteen, 5.5~~] eighteen, and zero percent for taxable years beginning on
17 or after January first, two thousand [~~sixteen and before January first,~~
18 ~~two thousand eighteen, and 4.875 percent for taxable years beginning on~~
19 ~~or after January first, two thousand eighteen~~]. In the case of a
20 combined report, each corporation included in the combined report must
21 qualify as a qualified emerging technology company in order for the tax
22 rates provided by this subparagraph to apply.

23 § 2. This act shall take effect immediately.

24 PART C

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

27 § 959-c. Certified startup business enterprise. (a) Certification. (i)
28 The commissioner shall approve applications for qualification of a busi-
29 ness enterprise as a certified startup business enterprise. As a condi-
30 tion for approval of such application, the commissioner is authorized to
31 specify certain requirements to be satisfied as a condition for approval
32 of a business enterprise as a certified startup business enterprise as
33 the commissioner deems necessary to ensure the qualifying angel invest-
34 ment will make a substantial contribution to the economic development of
35 this state, including the use of a system of evaluation of various
36 applicant business enterprises in a competitive fashion.

37 (ii) With respect to an approved application for qualification of a
38 business enterprise as a certified startup business enterprise, the
39 commissioner shall issue to such business enterprise a certificate of
40 qualification as a certified startup business enterprise setting forth
41 the effective date of the certification and the amount of qualifying
42 angel investment awarded to such business enterprise, which amount shall
43 be no less than one hundred thousand dollars and no more than two
44 million dollars.

45 (iii) For the period July first, two thousand seventeen through June
46 thirtieth, two thousand eighteen, the commissioner may certify up to
47 twenty million dollars in qualifying angel investment. For the period
48 July first, two thousand eighteen through June thirtieth, two thousand
49 nineteen, the commissioner may certify up to twenty million dollars in
50 qualifying angel investment. For the period July first, two thousand
51 nineteen through June thirtieth, two thousand twenty, the commissioner
52 may certify up to twenty 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;

(6) small scale systems integration and packaging; or

(7) manufacturing;

(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 two 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.

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

49. 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 fifty 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

1 than the amount prescribed in paragraph (d) of subdivision one of
2 section two hundred ten of this article. However, if the amount of
3 credit allowed under this subdivision for any taxable year reduces the
4 tax to such amount, any amount of credit thus not deductible in such
5 taxable year shall be treated as an overpayment of tax to be credited or
6 refunded in accordance with the provisions of section one thousand
7 eighty-six of this chapter. Provided, however, the provisions of
8 subsection (c) of section one thousand eighty-eight of this chapter
9 notwithstanding, no interest shall be paid thereon.

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

12 (ccc) Angel tax credit. (1) Allowance of credit. A taxpayer that has
13 made a qualifying angel investment, as such term is defined in paragraph
14 (iii) of subdivision (b) of section nine hundred fifty-nine-c of the
15 general municipal law, or that is a member of a partnership that has
16 made a qualifying angel investment, shall be allowed a credit equal to
17 fifty percent of the amount of such qualifying angel investment or, in
18 the case of a taxpayer who is a member of a partnership that has made a
19 qualifying angel investment, a portion of such qualifying angel invest-
20 ment equal to the portion of items of income, gain, loss and deduction
21 associated with the qualifying angel investment properly allocable to
22 such taxpayer under section 704 of the Internal Revenue Code for the
23 taxable year.

24 (2) Application of credit. If the amount of the credit allowed under
25 this subsection for any taxable year shall exceed the taxpayer's tax for
26 such year, the excess shall be treated as an overpayment of tax to be
27 credited or refunded in accordance with the provisions of section six
28 hundred eighty-six of this article, provided, however, that no interest
29 shall be paid thereon.

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

32 (dd) Angel tax credit. (1) Allowance of credit. A taxpayer that has
33 made a qualifying angel investment, as such term is defined in paragraph
34 (iii) of subdivision (b) of section nine hundred fifty-nine-c of the
35 general municipal law, shall be allowed a credit equal to fifty percent
36 of the amount of such qualifying angel investment.

37 (2) Application of credit. The credit allowed under this subdivision
38 for any taxable year shall not reduce the tax due for such year to less
39 than the minimum tax fixed by paragraph four of subdivision (a) of
40 section fifteen hundred two of this article or by section fifteen
41 hundred two-a of this article, whichever is applicable. However, if the
42 amount of credit allowed under this subdivision for any taxable year
43 reduces the tax to such amount, then any amount of credit thus not
44 deductible in such taxable year shall be treated as an overpayment of
45 tax to be credited or refunded in accordance with the provisions of
46 section one thousand eighty-six of this chapter. Provided, however, the
47 provisions of subsection (c) of section one thousand eighty-eight of
48 this chapter notwithstanding, no interest shall be paid thereon.

49 § 5. This act shall take effect immediately and apply to taxable years
50 after January 1, 2017.

51 § 2. Severability. If any clause, sentence, paragraph, section or part
52 of this act shall be adjudged by any court of competent jurisdiction to
53 be invalid and after exhaustion of all further judicial review, the
54 judgment shall not affect, impair, or invalidate the remainder thereof,
55 but shall be confined in its operation to the clause, sentence, para-

1 graph, section or part of this act directly involved in the controversy
2 in which the judgment shall have been rendered.

3 § 3. This act shall take effect immediately provided, however, that
4 the applicable effective date of Parts A through C of this act shall be
5 as specifically set forth in the last section of such Parts.