

STATE OF NEW YORK

3077

2017-2018 Regular Sessions

IN SENATE

January 19, 2017

Introduced by Sen. PARKER -- 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, in relation to providing for direct private assistance to emerging technology companies through the trading of their existing but unused research and development credits and their existing but unused net operating loss deductions to existing corporations and partnerships in return for private assistance

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Small New York Based High-Technology Business Investment Tax Credit
3 Act".

4 § 2. The tax law is amended by adding a new section 212 to read as
5 follows:

6 § 212. Corporation business tax benefit certificate transfer program.
7 1. (a) The department shall establish a corporation business tax benefit
8 certificate transfer program to allow new or expanding emerging technol-
9 ogy and biotechnology companies in this state having unused amounts of
10 research and development tax credits otherwise allowable pursuant to
11 subparagraph (i) of paragraph (b) of subdivision one of section two
12 hundred ten-B of this article, which cannot be applied for the credit's
13 tax year, and unused net operating loss carryovers pursuant to section
14 two hundred eight of this article to surrender those tax benefits for
15 use by other corporations established under the business corporation law
16 and subject to the provisions of this article in exchange for private
17 financial assistance to be provided those taxpayers or expanding emerg-
18 ing technology and biotechnology companies. Such taxpayers shall be
19 provided with a corporation business tax benefit certificate to be
20 developed by the commissioner.

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

LBD05819-01-7

(b) The commissioner, in cooperation with the commissioner of economic development, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this state having unused but otherwise allowable carryovers of research and development tax credits and otherwise allowable net operating loss carryovers pursuant to subparagraph (i) of paragraph (b) of subdivision one of section two hundred ten-B of this article and section two hundred eight, respectively, to surrender those tax benefits in exchange for private financial assistance to be made to a corporation filing pursuant to this article, which has obtained a corporation business tax benefit certificate in an amount equal to at least seventy-five percent of the amount of the surrendered tax benefits.

(c) The commissioner shall calculate the value of the net operating loss carryover for purposes of the benefit certificate equal to the amount of the carryover times the applicable business allocation percentage and tax rate of the emerging technology or biotechnology company.

(d) The commissioner, in cooperation with the commissioner of economic development, shall review and approve applications by taxpayers pursuant to the provisions of this article to acquire surrendered tax benefits approved pursuant to paragraph (b) of this subdivision, which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least seventy-five percent of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the state. The private financial assistance shall assist in funding expenses incurred in connection with the operation of a new or expanding emerging technology or biotechnology company in the state, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research, and development expenditures.

(e) The commissioner shall coordinate the applications, in conjunction with the department of economic development, for surrender and acquisition of unused but otherwise allowable tax benefits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to new and expanding emerging technology and biotechnology companies in this state into a written agreement with such company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this state.

2. (a) A taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of paragraph (b) of this subdivision that includes the right to a net operating loss carryover deduction shall attach that certificate to any return the taxpayer is required to file and shall otherwise apply the net operating loss carryover deduction as evidenced by the certificate according to the provisions of paragraph (b) of subdivision one of this section and any rules or regulations the commissioner may adopt to carry out the provisions of this section.

(b) A new or expanding emerging technology or biotechnology company that has surrendered an unused net operating loss carryover pursuant to the provisions of section two hundred eight of this article shall not be allowed a net operating loss carryover deduction based upon the right to

1 such a deduction, as evidenced by such corporation business tax benefit
2 certificate, and shall attach a copy of the certificate to any return
3 the taxpayer is required to file.

4 3. (a) A taxpayer that has acquired a corporation business tax benefit
5 certificate pursuant to subdivision one of this section that includes
6 the right to a research and development tax credit carryover pursuant to
7 subparagraph (i) of paragraph (b) of subdivision one of section two
8 hundred ten-B of this article shall attach that certificate to any
9 return the taxpayer is required to file and shall otherwise apply the
10 credit carryover, as evidenced by the certificate, according to the
11 provisions of paragraph (b) of subdivision one of this section and any
12 rules or regulations the commissioner may adopt to carry out the
13 provisions of this section.

14 (b) A new or expanding technology or biotechnology company that has
15 surrendered an unused research and development tax credit carryover
16 shall not be allowed a research and development tax credit carryover
17 based upon the right to such a credit carryover, as evidenced by the
18 corporation business tax benefit certificate, and shall attach a copy of
19 the certificate to any return the taxpayer is required to file.

20 4. For the purposes of this section, the following terms have the
21 following meanings:

22 (a) "Advanced computing" means a technology used in the designing and
23 developing of computing hardware and software, including innovations in
24 designing the full spectrum of hardware from hand-held calculators to
25 super computers, and peripheral equipment.

26 (b) "Advanced materials" means materials with engineered properties
27 created through the development of specialized processing and synthesis
28 technology, including ceramics, high value-added metals, electronic
29 materials, composites, polymers, and biomaterials.

30 (c) "Biotechnology" means the continually expanding body of fundamen-
31 tal knowledge about the function of biological systems from the macro
32 level to the molecular and subatomic levels, as well as novel products,
33 services, technologies, and sub-technologies developed as a result of
34 insights gained from research advances which add to that body of funda-
35 mental knowledge.

36 (d) "Control", with respect to a corporation, means ownership, direct-
37 ly or indirectly, of stock possessing eighty percent or more of the
38 total combined voting power of all classes of the stock of the corpo-
39 ration entitled to vote; and "control", with respect to a trust, means
40 ownership, directly or indirectly, of eighty percent or more of the
41 beneficial interest in the principal or income of the trust. The owner-
42 ship of stock in a corporation, of a capital or profits interest in a
43 partnership or association, or of a beneficial interest in a trust shall
44 be determined in accordance with the rules for constructive ownership of
45 stock provided in subsection (c) of section 267 of the federal Internal
46 Revenue Code of 1986, 26 U.S.C. §267, other than paragraph (3) of
47 subsection (c) of such section.

48 (e) "Controlled group" means one or more chains of corporations
49 connected through stock ownership with a common parent corporation if
50 stock possessing at least eighty percent of the voting power of all
51 classes of stock of each of the corporations is owned directly or indi-
52 rectly by one or more of the corporations and the common parent owns
53 directly stock possessing at least eighty percent of the voting power of
54 all classes of stock of at least one of the other corporations.

55 (f) "Electronic device technology" means a technology involving micro-
56 electronics, semiconductors, electronic equipment, and instrumentation,

1 radio frequency, microwave, and millimeter electronics, and optical and
2 optic-electrical devices, or data and digital communications and imaging
3 devices.

4 (g) "Environmental technology" means assessment and prevention of
5 threats or damage to human health or the environment, environmental
6 cleanup, or the development of alternative energy sources.

7 (h) "Medical device technology" means a technology involving any
8 medical equipment or product (other than a pharmaceutical product) that
9 has therapeutic value, diagnostic value, or both, and is regulated by
10 the federal Food and Drug Administration.

11 (i) "Partnership" means a syndicate, group, pool, joint venture, or
12 other unincorporated organization through or by means of which any busi-
13 ness, financial operation, or venture is carried on, and which is not a
14 trust or estate, a corporation, or a sole proprietorship.

15 (j) "Pilot scale manufacturing" means design, construction, and test-
16 ing of preproduction prototypes and models in the fields of advanced
17 computing, advanced materials, biotechnology, electronic device technol-
18 ogy, environmental technology, and medical device technology, other than
19 for commercial sale, excluding sales of prototypes or sales for market
20 testing, if total gross receipts from such sales of the product,
21 service, or process do not exceed one million dollars.

22 (k) "Qualified investment" means the non-refundable investment at risk
23 in a small New York-based high technology business by a taxpayer that is
24 not a related person of the small New York based high-technology busi-
25 ness, the transfer of which is in connection with a transaction in
26 exchange for stock, interest in partnerships or joint ventures, licenses
27 (exclusive or non-exclusive), right to use technology, marketing rights,
28 warrants, options, or any item similar to those included in this para-
29 graph, including but not limited to options or rights to acquire any of
30 the items included in this paragraph.

31 (l) "Qualified research expenses" means qualified research expenses,
32 as defined in section 41 of the federal Internal Revenue Code of 1986,
33 26 U.S.C. § 41, as in effect on June thirtieth, nineteen hundred nine-
34 ty-two, in the fields of environmental technology or medical device
35 technology.

36 (m) "Related person" means:

37 (1) a corporation, partnership, association, or trust by the taxpayer;

38 (2) an individual, corporation, partnership, association, or trust
39 that is in the control of the taxpayer;

40 (3) a corporation, partnership, association, or trust controlled by an
41 individual, corporation, partnership, association, or trust that is in
42 the control of the taxpayer; or

43 (4) a member of the same controlled group as a taxpayer.

44 (n) "Small New York based high-technology business" means a corpo-
45 ration doing business employing or owning capital or property, or main-
46 taining an office, in this state that has qualified research expenses
47 paid or incurred for research conducted in this state or conducts pilot
48 scale manufacturing in this state, and has fewer than two hundred twen-
49 ty-five employees, of whom seventy-five percent are New York-based
50 employees filling a position or job in this state.

51 (o) "Tax year" means the fiscal or calendar accounting year of a
52 taxpayer.

53 § 3. The tax law is amended by adding a new section 606-a to read as
54 follows:

55 § 606-a. Noncorporation tax benefit certificate transfer program. (a)

56 (1) The department shall establish a corporation business tax benefit

1 certificate transfer program to allow new or expanding emergin
2 g technology and biotechnology companies in this state having unused amounts of
3 research and development tax credits otherwise allowable pursuant to
4 subparagraph (A) of paragraph two of subsection (a) of section six
5 hundred six of this article, which cannot be applied for the credit's
6 tax year, and unused net operating loss carryover pursuant to subsection
7 (b) of section six hundred seventeen and subsection (b) of section six
8 hundred thirty-three of this article to surrender such tax benefits for
9 use by other entities subject to the provisions of this article in
10 exchange for private financial assistance to be provided such taxpayers
11 or expanding emerging technology and biotechnology companies. Such
12 taxpayers shall be provided with a noncorporation business tax benefit
13 certificate to be developed by the commissioner.

14 (2) The commissioner, in cooperation with the commissioner of the
15 department of economic development, shall review and approve applica-
16 tions by new or expanding technology and biotechnology companies in this
17 state having unused but otherwise allowable carryover of research and
18 development tax credits and otherwise allowable net operating loss
19 carryovers pursuant to either subparagraph (A) of paragraph two of
20 subsection (a) of section six hundred six or subsection (b) of section
21 six hundred seventeen or subsection (b) of section six hundred thirty-
22 three of this article, respectively, to surrender those tax benefits in
23 exchange for private financial assistance to be made to a taxpayer
24 filing pursuant to this article who has obtained a noncorporation busi-
25 ness tax benefit certificate in an amount equal to at least seventy-five
26 percent of the amount of the surrendered tax benefits.

27 (3) The commissioner shall calculate the value of the net operating
28 loss carryover for purposes of the benefit certificate equal to the
29 amount of the carryover times the applicable business allocation
30 percentage and tax rate of the emerging technology or biotechnology
31 company.

32 (4) The commissioner, in cooperation with the commissioner of the
33 department of economic development, shall review and approve applica-
34 tions by taxpayers subject to the provisions of this article to acquire
35 surrendered tax benefits approved pursuant to paragraph two of this
36 subsection, which shall be issued in the form of noncorporation business
37 tax benefit transfer certificates, in exchange for private financial
38 assistance to be made by the taxpayer in an amount equal to at least
39 seventy-five percent of the amount of the surrendered tax benefit of an
40 emerging technology or biotechnology company in the state. The private
41 financial assistance shall assist in funding expenses incurred in
42 connection with the operation of a new or expanding emerging technology
43 or biotechnology company in the state, including but not limited to the
44 expenses of fixed assets, such as the construction and acquisition and
45 development of real estate, materials, start-up, tenant fit-out, working
46 capital, salaries, research, and development expenditures.

47 (5) The commissioner shall coordinate the applications, in conjunction
48 with the department of economic development, for surrender and acquisi-
49 tion of unused but otherwise allowable tax benefits pursuant to this
50 section in a manner that can best stimulate and encourage the extension
51 of private financial assistance to new and expanding emerging technology
52 and biotechnology companies in this state into a written agreement with
53 such company concerning the terms and conditions of the private finan-
54 cial assistance made in exchange for the certificate. The written agree-
55 ment may contain terms concerning the maintenance by the new or expand-

1 ing emerging technology or biotechnology company of a headquarters or a
2 base of operation in this state.

3 (b)(1) A taxpayer that has acquired a noncorporation business tax
4 benefit certificate pursuant to the provisions of paragraph two of
5 subsection (a) of this section that includes the right to a net operat-
6 ing loss carryover deduction shall attach that certificate to any return
7 the taxpayer is required to file and shall otherwise apply the net oper-
8 ating loss carryover deduction, as evidenced by the certificate, accord-
9 ing to the provisions of paragraph two of subsection (a) of this section
10 and any rules or regulations the commissioner may adopt to carry out the
11 provisions of this section.

12 (2) A new or expanding emerging technology or biotechnology company
13 that has surrendered an unused net operating loss carryover pursuant to
14 the provisions of subsection (b) of section six hundred seventeen and
15 subsection (b) of section six hundred thirty-three of this article shall
16 not be allowed a net operating loss carryover deduction based upon the
17 right to such a deduction, as evidenced by such noncorporation business
18 tax benefit certificate, and shall attach a copy of the certificate to
19 any return the taxpayer is required to file.

20 (c) (1) A taxpayer that has acquired a noncorporation business tax
21 benefit certificate pursuant to subsection (a) of this section that
22 includes the right to a research and development tax credit carryover
23 shall attach that certificate to any return the taxpayer is required to
24 file and shall otherwise apply the credit carryover, as evidenced by the
25 certificate, according to the provisions of paragraph two of subsection
26 (a) of this section and any rules or regulations the commissioner may
27 adopt to carry out the provisions of this section.

28 (2) A new or expanding emerging technology or biotechnology company
29 that has surrendered an unused research and development tax credit
30 carryover shall not be allowed a research and development tax credit
31 carryover based upon the right to such a credit carryover, as evidenced
32 by the noncorporation business tax benefit certificate, and shall attach
33 a copy of the certificate to any return the taxpayer is required to
34 file.

35 (d) For the purposes of this section, the following terms shall have
36 the following meanings:

37 (1) "Advanced computing" means a technology used in designing and
38 developing computing hardware and software, including innovations in
39 designing the full spectrum of hardware from hand-held calculators to
40 super computers, and peripheral equipment.

41 (2) "Advanced materials" means materials with engineered properties
42 created through the development of specialized processing and synthesis
43 technology, including ceramics, high value-added metals, electronic
44 materials, composites, polymers, and biomaterials.

45 (3) "Biotechnology" means the continually expanding body of fundamen-
46 tal knowledge about the function of biological systems from the macro
47 level to the molecular and subatomic levels, as well as novel products,
48 services, technologies, and sub-technologies developed as a result of
49 insights gained from research advances which add to that body of funda-
50 mental knowledge.

51 (4) "Control", with respect to a corporation, means ownership, direct-
52 ly or indirectly, of stock possessing eighty percent or more of the
53 total combined voting power of all classes of the stock of the corpo-
54 ration entitled to vote; and "control", with respect to a trust, means
55 ownership, directly or indirectly, of eighty percent or more of the
56 beneficial interest in the principal or income of the trust. The owner-

1 ship of stock in a corporation, of a capital or profits interest in a
2 partnership or association, or of a beneficial interest in a trust shall
3 be determined in accordance with the rules for constructive ownership of
4 stock provided in subsection (c) of section 267 of the federal Internal
5 Revenue Code of 1986, 26 U.S.C. § 267, other than paragraph (3) of
6 subsection (c) of such section.

7 (5) "Controlled group" means one or more chains of corporations
8 connected through stock ownership with a common parent corporation if
9 stock possessing at least eighty percent of the voting power of all
10 classes of stock of each of the corporations is owned directly or indi-
11 rectly by one or more of the corporations and the common parent owns
12 directly stock possessing at least eighty percent of the voting power of
13 all classes of stock of at least one of the other corporations.

14 (6) "Electronic device technology" means a technology involving micro-
15 electronics, semiconductors, electronic equipment, and instrumentation,
16 radio frequency, microwave, and millimeter electronics, and optical and
17 optic-electrical devices, or data and digital communications and imaging
18 devices.

19 (7) "Environmental technology" means assessment and prevention of
20 threats or damage to human health or the environment, environmental
21 cleanup, or the development of alternative energy sources.

22 (8) "Medical device technology" means a technology involving any
23 medical equipment or product (other than a pharmaceutical product) that
24 has therapeutic value, diagnostic value, or both, and is regulated by
25 the federal Food and Drug Administration.

26 (9) "Partnership" means a syndicate, group, pool, joint venture or
27 other unincorporated organization through or by means of which any busi-
28 ness, financial operation, or venture is carried on, and which is not a
29 trust or estate, a corporation, or a sole proprietorship.

30 (10) "Pilot scale manufacturing" means design, construction, and test-
31 ing of preproduction prototypes and models in the fields of advanced
32 computing, advanced materials, biotechnology, electronic device technol-
33 ogy, environmental technology, and medical device technology, other than
34 for commercial sale, excluding sales of prototypes or sales for market
35 testing, if total gross receipts from such sales of the product,
36 service, or process do not exceed one million dollars.

37 (11) "Qualified investment" means the non-refundable investment at
38 risk in a small New York-based high technology business by a taxpayer
39 that is not a related person of the small New York based high-technology
40 business, the transfer of which is in connection with a transaction in
41 exchange for stock, interest in partnerships or joint ventures, licenses
42 (exclusive or non-exclusive), rights to use technology, marketing
43 rights, warrants, options, or rights to acquire any of the items similar
44 to those included in this paragraph, including but not limited to
45 options or rights to acquire any of the items included in this para-
46 graph.

47 (12) "Qualified research expenses" means qualified research expenses,
48 as defined in section 41 of the federal Internal Revenue Code of 1986,
49 26 U.S.C. § 41, as in effect on June thirtieth, nineteen hundred nine-
50 ty-two, in the fields of environmental technology or medical device
51 technology.

52 (13) "Related person" means:

53 (A) a corporation, partnership, association, or trust by the taxpayer;

54 (B) an individual, corporation, partnership, association, or trust
55 that is in the control of the taxpayer;

1 (C) a corporation, partnership, association, or trust controlled by an
2 individual, corporation, partnership, association, or trust that is in
3 the control of the taxpayer; or

4 (D) a member of the same controlled group as the taxpayer.

5 (14) "Small New York based high-technology business" means a corpo-
6 ration doing business employing or owning capital or property, or main-
7 taining an office, in this state that has qualified research expenses
8 paid or incurred for research conducted in this state or conducts pilot
9 scale manufacturing in this state, and has fewer than two hundred twen-
10 ty-five employees, of whom seventy-five percent are New York-based
11 employees filling a position or job in this state.

12 (15) "Tax year" means the fiscal or calendar accounting year of a
13 taxpayer.

14 § 4. This act shall take effect immediately and shall apply to taxable
15 years which commence on or after January 1, 2018.