

STATE OF NEW YORK

4680

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. KOLB, MONTESANO, PALMESANO, RAIA, HAWLEY,
BARCLAY, FINCH, DiPIETRO -- Multi-Sponsored by -- M. of A. BLANKENBUSH
-- 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.
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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 2 of part P of chapter 59 of the laws of 2017, is amended to read as follows:

14 (i) A credit shall be allowed under this subdivision with respect to
15 tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable
16 pursuant to section one hundred sixty-seven of the internal revenue
17
18

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

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

§ 2. Subparagraph (A) of paragraph 2 of subsection (a) of section 606 of the tax law, as amended by section 3 of part P of chapter 59 of the laws of 2017, 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

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

1 this employment test must be satisfied through the aggregation of the
2 employees of the taxpayer, its affiliated regulated broker, dealer, and
3 registered investment adviser using the property. For purposes of clause
4 (i) of this subparagraph, tangible personal property and other tangible
5 property shall not include property principally used by the taxpayer in
6 the production or distribution of electricity, natural gas after
7 extraction from wells, steam, or water delivered through pipes and
8 mains.

9 § 3. This act shall take effect immediately and apply to taxable years
10 ending on or after January 1, 2019.

11 PART B

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

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

29 § 2. This act shall take effect immediately.

30 PART C

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

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

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

51 (iii) For the period July first, two thousand nineteen through June
52 thirtieth, two thousand twenty, the commissioner may certify up to twen-

1 ty million dollars in qualifying angel investment. For the period July
2 first, two thousand twenty through June thirtieth, two thousand twenty-
3 one, the commissioner may certify up to twenty million dollars in quali-
4 ifying angel investment. For the period July first, two thousand twenty-
5 one through June thirtieth, two thousand twenty-two, the commissioner
6 may certify up to twenty million dollars in qualifying angel investment.

7 (b) Definitions. As used in this section, the following terms shall
8 have the following meanings:

9 (i) "Certified startup business enterprise" shall mean a business
10 enterprise located in New York state:

11 (1) with less than five million dollars in annual revenues;

12 (2) whose primary activity consists of a qualifying technology or
13 innovation activity; and

14 (3) that has been certified as a certified startup business enterprise
15 by the commissioner.

16 (ii) "Qualifying technology or innovation activity" shall mean:

17 (1) biotechnologies, which shall be defined as technologies involving
18 the scientific manipulation of living organisms, especially at the
19 molecular and/or the sub-molecular genetic level, to produce products
20 conducive to improving the lives and health of plants, animals, and
21 humans; and the associated scientific research, pharmacological, mechan-
22 ical, and computational applications and services connected with these
23 improvements;

24 (2) information and communication technologies, equipment and systems
25 that involve advanced computer software and hardware, visualization
26 technologies, and human interface technologies;

27 (3) advanced materials and processing technologies that involve the
28 development, modification, or improvement of one or more materials or
29 methods to produce devices and structures with improved performance
30 characteristics or special functional attributes, or to activate, speed
31 up, or otherwise alter chemical, biochemical, or medical processes;

32 (4) electronic and photonic devices and components for use in produc-
33 ing electronic, optoelectronic, mechanical equipment and products of
34 electronic distribution with interactive media content;

35 (5) energy efficiency, renewable energy and environmental technolo-
36 gies, products, devices and services;

37 (6) small scale systems integration and packaging; or

38 (7) manufacturing;

39 (iii) "Qualifying angel investment" shall mean a contribution to the
40 capital of a certified startup business enterprise, provided that such
41 contribution to capital is made within twelve months after the effective
42 date of the certified technology venture's certificate of qualification
43 as a certified technology venture and such contribution is applied by
44 the certified startup business enterprise against its allocation of
45 qualifying angel investment. Together with all other qualifying angel
46 investments made to a single certified startup business enterprise, the
47 total qualifying angel investment may not exceed two million dollars.
48 Nothing herein shall prohibit a person making a qualifying angel invest-
49 ment from making additional contributions to the capital of the certi-
50 fied startup business enterprise or making loans to or other investments
51 in the certified startup business enterprise, provided, however, that
52 such other contributions, loans and investments shall not be treated as
53 qualifying angel investments.

54 § 2. Section 210-B of the tax law is amended by adding a new subdivi-
55 sion 53 to read as follows:

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

6 (b) Application of credit. The credit allowed under this subdivision
7 for any taxable year shall not reduce the tax due for such year to less
8 than the amount prescribed in paragraph (d) of subdivision one of
9 section two hundred ten of this article. However, if the amount of
10 credit allowed under this subdivision for any taxable year reduces the
11 tax to such amount, any amount of credit thus not deductible in such
12 taxable year shall be treated as an overpayment of tax to be credited or
13 refunded in accordance with the provisions of section one thousand
14 eighty-six of this chapter. Provided, however, the provisions of
15 subsection (c) of section one thousand eighty-eight of this chapter
16 notwithstanding, no interest shall be paid thereon.

17 § 3. Section 606 of the tax law is amended by adding a new subsection
18 (jjj) to read as follows:

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

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

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

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

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

1 § 5. This act shall take effect immediately and apply to taxable years
2 after January 1, 2019.

3 § 2. Severability. If any clause, sentence, paragraph, section or part
4 of this act shall be adjudged by any court of competent jurisdiction to
5 be invalid and after exhaustion of all further judicial review, the
6 judgment shall not affect, impair, or invalidate the remainder thereof,
7 but shall be confined in its operation to the clause, sentence, para-
8 graph, section or part of this act directly involved in the controversy
9 in which the judgment shall have been rendered.

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