

STATE OF NEW YORK

5136

2019-2020 Regular Sessions

IN ASSEMBLY

February 7, 2019

Introduced by M. of A. SCHIMMINGER, MAGNARELLI -- read once and referred to the Committee on Ways and Means

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.

21 (b) The commissioner, in cooperation with the commissioner of economic
22 development, shall review and approve applications by new or expanding

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

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1 emerging technology and biotechnology companies in this state having
2 unused but otherwise allowable carryovers of research and development
3 tax credits and otherwise allowable net operating loss carryovers pursu-
4 ant to subparagraph (i) of paragraph (b) of subdivision one of section
5 two hundred ten-B of this article and section two hundred eight, respec-
6 tively, to surrender those tax benefits in exchange for private finan-
7 cial assistance to be made to a corporation filing pursuant to this
8 article, which has obtained a corporation business tax benefit certif-
9 icate in an amount equal to at least seventy-five percent of the amount
10 of the surrendered tax benefits.

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

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

31 (e) The commissioner shall coordinate the applications, in conjunction
32 with the department of economic development, for surrender and acquisi-
33 tion of unused but otherwise allowable tax benefits pursuant to this
34 section in a manner that can best stimulate and encourage the extension
35 of private financial assistance to new and expanding emerging technology
36 and biotechnology companies in this state into a written agreement with
37 such company concerning the terms and conditions of the private finan-
38 cial assistance made in exchange for the certificate. The written agree-
39 ment may contain terms concerning the maintenance by the new or expand-
40 ing emerging technology or biotechnology company of a headquarters or a
41 base of operation in this state.

42 2. (a) A taxpayer that has acquired a corporation business tax benefit
43 certificate pursuant to the provisions of paragraph (b) of this subdivi-
44 sion that includes the right to a net operating loss carryover deduction
45 shall attach that certificate to any return the taxpayer is required to
46 file and shall otherwise apply the net operating loss carryover
47 deduction as evidenced by the certificate according to the provisions of
48 paragraph (b) of subdivision one of this section and any rules or regu-
49 lations the commissioner may adopt to carry out the provisions of this
50 section.

51 (b) A new or expanding emerging technology or biotechnology company
52 that has surrendered an unused net operating loss carryover pursuant to
53 the provisions of section two hundred eight of this article shall not be
54 allowed a net operating loss carryover deduction based upon the right to
55 such a deduction, as evidenced by such corporation business tax benefit

1 certificate, and shall attach a copy of the certificate to any return
2 the taxpayer is required to file.

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

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

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

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

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

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

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

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

54 (f) "Electronic device technology" means a technology involving micro-
55 electronics, semiconductors, electronic equipment, and instrumentation,
56 radio frequency, microwave, and millimeter electronics, and optical and

1 optic-electrical devices, or data and digital communications and imaging
2 devices.

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

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

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

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

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

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

35 (m) "Related person" means:

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

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

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

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

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

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

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

54 § 606-a. Noncorporation tax benefit certificate transfer program. (a)

55 (1) The department shall establish a corporation business tax benefit
56 certificate transfer program to allow new or expanding emerging technol-

ogy and biotechnology companies in this state having unused amounts of research and development tax credits otherwise allowable pursuant to subparagraph (A) of paragraph two of subsection (a) of section six hundred six of this article, which cannot be applied for the credit's tax year, and unused net operating loss carryover pursuant to subsection (b) of section six hundred seventeen and subsection (b) of section six hundred thirty-three of this article to surrender such tax benefits for use by other entities subject to the provisions of this article in exchange for private financial assistance to be provided such taxpayers or expanding emerging technology and biotechnology companies. Such taxpayers shall be provided with a noncorporation business tax benefit certificate to be developed by the commissioner.

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

(3) 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.

(4) The commissioner, in cooperation with the commissioner of the department of economic development, shall review and approve applications by taxpayers subject to the provisions of this article to acquire surrendered tax benefits approved pursuant to paragraph two of this subsection, which shall be issued in the form of noncorporation 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.

(5) 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.

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

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

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

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

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

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

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

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

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

1 be determined in accordance with the rules for constructive ownership of
2 stock provided in subsection (c) of section 267 of the federal Internal
3 Revenue Code of 1986, 26 U.S.C. § 267, other than paragraph (3) of
4 subsection (c) of such section.

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

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

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

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

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

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

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

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

50 (13) "Related person" means:

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

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

54 (C) a corporation, partnership, association, or trust controlled by an
55 individual, corporation, partnership, association, or trust that is in
56 the control of the taxpayer; or

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

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

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

11 § 4. This act shall take effect immediately and shall apply to taxable
12 years which commence on or after January 1, 2020.