

# STATE OF NEW YORK

532

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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

AN ACT to amend the tax law, in relation to the qualified solar and energy storage manufacturer facilities and operations credit

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

1 Section 1. Section 210-B of the tax law is amended by adding a new  
2 subdivision 53 to read as follows:

3 53. Qualified solar and energy storage manufacturer facilities and  
4 operations credit. (a) A taxpayer that is whole or part of an entity  
5 that serves as the principal operator of a facility primarily function-  
6 ing to fabricate solar energy equipment or energy storage equipment and  
7 that meets the eligibility requirements in paragraph (b) of this subdivi-  
8 vision, shall be allowed a credit against the tax imposed by this arti-  
9 cle. The amount of credit shall be equal to the sum of the amounts spec-  
10 ified in paragraphs (c) and (d) of this subdivision attributable to the  
11 taxpayer subject to the limitations in paragraph (e) of this subdivi-  
12 sion. For the purposes of this subdivision solar energy equipment shall  
13 mean the manufacturing of material components in New York state designed  
14 to produce electricity utilizing solar radiation as the energy source  
15 for such electricity; and energy storage equipment shall mean materials  
16 and devices intended to store some form of energy related to new energy  
17 technologies as described in subdivision one of section eighteen hundred  
18 fifty-four of the public authorities law. Such equipment may employ  
19 electrical, electrochemical, supercapacitor, compressed gas, mechanical,  
20 thermal or other demonstrable means singly or in combination. The  
21 determination of whether solar energy equipment or energy storage equip-  
22 ment qualifies for eligible costs under this subdivision shall be deter-  
23 mined by the commissioner and, if requested by the commissioner, the

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

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1 president of the New York state energy research and development authori-  
2 ty.

3 (b) An eligible taxpayer shall (i) have more than one hundred full-  
4 time employees employed in New York state, and (ii) have a ratio of  
5 research and development funds to net sales, as referred to in section  
6 thirty-one hundred two-e of the public authorities law, which equals or  
7 exceeds three percent during its taxable year.

8 (c) An eligible taxpayer shall be allowed a credit for twenty per  
9 centum of the attributable cost or similar basis for federal income tax  
10 purposes of research and development and manufacturing property as  
11 defined in clause (B) of subparagraph (ii) of paragraph (b) of subdivi-  
12 sion one of this section that is acquired by the taxpayer by purchase  
13 as defined in section 179(d) of the internal revenue code and placed in  
14 service during the taxable year. Provided, however, for the purposes of  
15 this paragraph only, an eligible taxpayer shall be allowed a credit for  
16 such percentage of the (i) attributable cost or similar basis for feder-  
17 al income tax purposes for property used in the testing or inspection of  
18 materials and products,

19 (ii) the attributable costs or expenses associated with quality  
20 control of the research and development or manufacturing operations,

21 (iii) attributable fees for use of sophisticated technology facilities  
22 and processes,

23 (iv) attributable fees for the production or eventual commercial  
24 distribution of materials and products resulting from the qualified  
25 manufacturing activities of an eligible taxpayer.

26 (v) The costs, expenses and other amounts for which a credit is  
27 allowed and claimed under this paragraph shall not be used in the calcu-  
28 lation of any other credit allowed under this article.

29 (d) An eligible taxpayer shall be allowed a credit for ten per centum  
30 of "qualified research and manufacturing expenses" paid or incurred by  
31 the taxpayer in the taxable year. For the purposes of this section, the  
32 term "qualified research and manufacturing expenses" shall mean attrib-  
33 utable expenses associated with in-house research and manufacturing  
34 processes, and attributable costs associated with the dissemination of  
35 the results of the products that directly result from such research and  
36 development and/or manufacturing activities; provided, however, that  
37 such costs shall not include advertising or promotion through paid  
38 media. In addition, costs associated with the preparation of patent  
39 applications, patent application filing fees, patent research fees,  
40 patent examinations fees, patent post allowance fees, patent maintenance  
41 fees, and grant application expenses and fees shall be eligible for such  
42 credit. In no case shall the credit allowed under this paragraph apply  
43 to expenses for litigation or the challenge of another entity's intel-  
44 lectual property rights, or for contract expenses involving outside paid  
45 consultants. The costs, expenses and other amounts for which a credit  
46 is allowed and claimed under this paragraph shall not be used in the  
47 calculation of any other credit allowed under this article.

48 (e) An eligible taxpayer may claim credits under this subdivision for  
49 four consecutive taxable years. In no case shall the credit allowed by  
50 this subdivision to a taxpayer exceed twenty-five million dollars per  
51 year.

52 (f) The credit allowed under this subdivision for any taxable year  
53 shall not reduce the tax due for such year to less than amount  
54 prescribed in paragraph (d) of subdivision one of section two hundred  
55 ten of this article. However, if the amount of credit allowed under  
56 this subdivision for any taxable year reduces the tax to such amount,

1 any amount of credit not deductible in such taxable year shall be treat-  
2 ed as an overpayment of tax to be credited or refunded in accordance  
3 with the provisions of section one thousand eighty-six of this chapter.  
4 Provided, however, the provisions of subsection (c) of section one thou-  
5 sand eighty-eight of this chapter notwithstanding, no interest shall be  
6 paid thereon.

7 § 2. Section 606 of the tax law is amended by adding a new subsection  
8 (jjj) to read as follows:

9 (jjj) Qualified solar and energy storage manufacturer facilities and  
10 operations credit. (1) A taxpayer who is a member of an entity consist-  
11 ing of one or more taxpayers that serves as the principal operator of a  
12 facility primarily functioning to fabricate solar energy equipment or  
13 energy storage equipment and that meets the eligibility requirements in  
14 paragraph two of this subsection, shall be allowed a credit against the  
15 tax imposed by this article. The amount of credit shall be equal to the  
16 sum (or pro rata share of the sum in the case of a partnership) of the  
17 amounts specified in paragraphs three and four of this subsection  
18 subject to the limitations in paragraph five of this subsection. For the  
19 purposes of this subsection solar energy equipment shall mean the manu-  
20 facturing of material components in New York state designed to produce  
21 electricity utilizing solar radiation as the energy source for such  
22 electricity; and energy storage equipment shall mean materials and  
23 devices intended to store some form of energy related to new energy  
24 technologies as described in subdivision one of section eighteen hundred  
25 fifty-four of the public authorities law. Such equipment may employ  
26 electrical, electrochemical, supercapacitor, compressed gas, mechanical,  
27 thermal or other means singly or in combination. The determination of  
28 whether solar energy equipment or energy storage equipment qualifies for  
29 eligible costs under this subsection shall be determined by the commis-  
30 sioner, and, if requested by the commissioner, the president of the New  
31 York state energy research and development authority.

32 (2) An eligible entity shall (i) have more than one hundred full-time  
33 employees employed in New York state, and (ii) have a ratio of research  
34 and development funds to net sales, as referred to in section thirty-one  
35 hundred two-e of the public authorities law, which equals or exceeds  
36 three percent during its taxable year.

37 (3) An eligible taxpayer shall be allowed a credit for twenty per  
38 centum of the cost or similar basis for federal income tax purposes  
39 incurred by the entity for research and development and manufacturing  
40 property as defined in clause (B) of subparagraph (ii) of paragraph (b)  
41 of subdivision one of section two hundred ten-B of this chapter that is  
42 acquired by purchase as defined in section 179(d) of the internal reven-  
43 ue code and placed in service during the taxable year. Provided, howev-  
44 er, for the purposes of this paragraph only, an eligible taxpayer shall  
45 be allowed a credit for such percentage of the (i) cost or similar basis  
46 for federal income tax purposes for property used in the testing or  
47 inspection of materials and products,

48 (ii) the costs or expenses associated with quality control of the  
49 research and development or manufacturing operations,

50 (iii) fees for use of sophisticated technology facilities and proc-  
51 esses,

52 (iv) fees for the production or eventual commercial distribution of  
53 materials and products resulting from the activities of an eligible  
54 taxpayer as long as such activities fall under the activities listed in  
55 paragraph (b) of subdivision one of section thirty-one hundred two-e of  
56 the public authorities law.

1 (v) The costs, expenses and other amounts for which a credit is  
2 allowed and claimed under this paragraph shall not be used in the calcu-  
3 lation of any other credit allowed under this article.

4 (4) An eligible taxpayer shall be allowed a credit for ten per centum  
5 of "qualified research and manufacturing expenses" paid or incurred by  
6 the entity in the taxable year. For the purposes of this section, the  
7 term "qualified research and manufacturing expenses" shall mean expenses  
8 associated with in-house research and manufacturing processes, and costs  
9 associated with the dissemination of the results of the products that  
10 directly result from such research and development and/or manufacturing  
11 activities; provided, however, that such costs shall not include adver-  
12 tising or promotion through paid media. In addition, costs associated  
13 with the preparation of patent applications, patent application filing  
14 fees, patent research fees, patent examinations fees, patent post allow-  
15 ance fees, patent maintenance fees, and grant application expenses and  
16 fees shall be eligible for such credit. In no case shall the credit  
17 allowed under this paragraph apply to expenses for litigation or the  
18 challenge of another entity's intellectual property rights, or for  
19 contract expenses involving outside paid consultants. The costs,  
20 expenses and other amounts for which a credit is allowed and claimed  
21 under this paragraph shall not be used in the calculation of any other  
22 credit allowed under this article.

23 (5) An eligible taxpayer may claim credits under this subsection for  
24 four consecutive taxable years. In no case shall the credit allowed by  
25 this subdivision to a taxpayer exceed twenty-five million dollars per  
26 year. If the taxpayer is a partner in a partnership or shareholder of a  
27 New York S corporation, then the cap imposed by this paragraph shall be  
28 applied at the entity level, so that the aggregate credit allowed to all  
29 the partners, shareholders, or other members of each such entity in the  
30 taxable year does not exceed twenty-five million dollars per year for up  
31 to four consecutive taxable years.

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

37 § 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
38 of the tax law is amended by adding a new clause (xliv) to read as  
39 follows:

40 <u>(xliv) Credit for</u>	<u>Amount of credit under</u>
41 <u>qualified solar and energy storage</u>	<u>subdivision fifty-three</u>
42 <u>manufacturer facilities</u>	<u>of section two hundred</u>
43 <u>and operations credit</u>	<u>ten-B</u>
44 <u>under subsection (jjj)</u>	

45 § 4. This act shall take effect immediately and shall apply to taxable  
46 years commencing on or after January 1, 2020.