

STATE OF NEW YORK

4904

2019-2020 Regular Sessions

IN SENATE

March 29, 2019

Introduced by Sens. RANZENHOFER, ORTT -- 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 the creation of a biotech-
nology research and development investment tax credit

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

1 Section 1. The tax law is amended by adding a new section 24-b to read
2 as follows:

3 § 24-b. Bioscience and medical technology (Bio/Med) research and
4 development tax credit. (a) Definitions. As used in this section, the
5 following terms shall have the following meanings:

6 (1) "Qualified Bio/Med research and development costs" means qualified
7 research expenses and basic research payments as defined in sections 41
8 (b) and (e) of the internal revenue code, except it does not include
9 expenses incurred for qualified research or basic research conducted
10 outside of New York state, for purposes of developing a product or phar-
11 maceutical, instrument, apparatus, machine, contrivance, implant or
12 other similar or related article, including a component part or accesso-
13 ry that are applicable to the prevention, treatment or cure of a disease
14 or condition of human beings.

15 (2) "Qualified Bio/Med company" is a corporation, partnership, limited
16 partnership or other entity which is engaged in the production of a
17 product or pharmaceutical, instrument, apparatus, machine, contrivance,
18 implant or other similar or related article, including a component part
19 or accessory that are applicable to the prevention, treatment or cure of
20 a disease or condition of human beings.

21 (b) (1) Allowance of credit. A taxpayer which is a qualified Bio/Med
22 company, sole proprietor or a member of a partnership, and which is
23 subject to tax under articles nine-A or twenty-two of this chapter,
24 shall be allowed a credit against such tax, pursuant to the provisions

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

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1 referenced in subdivision (d) of this section, to be computed as herein-
2 after provided.

3 (2) The amount of the credit shall be the product (or pro rata share
4 of the product, in the case of a member of a partnership) of fifteen
5 percent and the qualified Bio/Med research and development costs paid or
6 incurred in the state. The credit shall be allowed for the taxable year
7 in which the qualified Bio/Med research and development activity occurs.
8 If the amount of the credit is at least one million dollars but less
9 than five million dollars, the credit shall be claimed over a two year
10 period beginning in the first taxable year in which the credit may be
11 claimed and in the next succeeding taxable year, with one-half of the
12 amount of credit allowed being claimed in each year. If the amount of
13 the credit is at least five million dollars, the credit shall be claimed
14 over a three year period beginning in the first taxable year in which
15 the credit may be claimed and in the next two succeeding taxable years,
16 with one-third of the amount of the credit allowed being claimed in each
17 year.

18 (3) No qualified Bio/Med research and development costs used by a
19 taxpayer either as the basis for the allowance of the credit provided
20 for under this section or used in the calculation of the credit provided
21 for under this section shall be used by such taxpayer to claim any other
22 credit allowed pursuant to this chapter.

23 (c) Cross-references. For application of the credit provided for in
24 this section, see the following provisions of this chapter:

25 (1) article 9-A: section 210-B: subdivision 53.

26 (2) article 22: section 606: subsection (jjj).

27 (d) Allocation of credit. (1) The aggregate amount of tax credits
28 allowed under this section, subdivision fifty-three of section two
29 hundred ten-B and subsection (jjj) of section six hundred six of this
30 chapter in any calendar year shall be fifty million dollars in two thou-
31 sand nineteen, and each succeeding year up to and including two thousand
32 twenty-two.

33 (2) For the period two thousand twenty through two thousand twenty-
34 three, in addition to the amount of credit established in paragraph one
35 of this subdivision, a taxpayer shall be allowed a credit equal to the
36 product (or pro rata share of the product, in the case of a member of a
37 partnership) of five percent and the amount of the qualified Bio/Med
38 research and development costs by a qualified Bio/Med company in one of
39 the counties specified in this paragraph. For purposes of this addi-
40 tional credit, the services must be performed or the personal property
41 must be installed in one or more of the following counties: Albany,
42 Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango,
43 Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin,
44 Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Living-
45 ston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario,
46 Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie,
47 Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins,
48 Ulster, Warren, Washington, Wayne, Wyoming, or Yates. The aggregate
49 amount of tax credits allowed pursuant to the authority of this para-
50 graph shall be ten million dollars each year during the period two thou-
51 sand twenty through two thousand twenty-three of the annual allocation
52 made available to the program pursuant to this subdivision. If the total
53 amount of allocated credits applied for under this paragraph in any year
54 exceeds the aggregate amount of tax credits allowed for such year under
55 this paragraph, such excess shall be treated as having been applied for
56 on the first day of the next year. If the total amount of allocated tax

1 credits applied for under this paragraph at the conclusion of any year
2 is less than ten million dollars, the remainder shall be treated as part
3 of the annual allocation made available to the program pursuant to this
4 subdivision. However, in no event may the total of the credits allocated
5 under this paragraph exceed ten million dollars in any year during the
6 period two thousand twenty through two thousand twenty-three.

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

9 53. Bio/Med research and development investment credit. A taxpayer
10 shall be allowed a credit, to be computed as provided in section twen-
11 ty-four-b of this chapter, against the tax imposed by this article. In
12 no event shall the credit allowed under this subdivision for any taxable
13 year reduce the tax due for such year to less than the amount prescribed
14 in paragraph (d) of subdivision one of section two hundred ten of this
15 article. However, if the amount of credit allowed under this subdivision
16 for any taxable year reduces the tax to such amount or if the taxpayer
17 otherwise pays tax based on the fixed dollar minimum amount, any amount
18 of credit thus not deductible in such taxable year shall be treated as
19 an overpayment of tax to be credited in accordance with the provisions
20 of section one thousand eighty-six of this chapter. Provided, however,
21 the provisions of subsection (c) of section one thousand eighty-eight of
22 this chapter notwithstanding, no interest shall be paid thereon.

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

25 (jjj) Bio/Med research and development investment credit. A taxpayer
26 shall be allowed a credit, to be computed as provided in section twen-
27 ty-four-b of this chapter, against the tax imposed by this article. If
28 the amount of the credit allowed under this subsection for any taxable
29 year shall exceed the taxpayer's tax for such year, the excess shall be
30 treated as an overpayment of tax to be credited or refunded in accord-
31 ance with the provisions of section six hundred eighty-six of this arti-
32 cle, provided, however, that no interest shall be paid thereon.

33 § 4. This act shall take effect immediately.