

STATE OF NEW YORK

4845--B

2009-2010 Regular Sessions

IN SENATE

April 27, 2009

Introduced by Sens. DUANE, DILAN, MONTGOMERY, ONORATO, SCHNEIDERMAN, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to authorizing any city having a population of one million or more to provide a biotechnology credit against the general corporation tax, unincorporated business tax and banking corporation tax of such city

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

1 Section 1. Section 1201-a of the tax law is amended by adding a new
2 subdivision (d) to read as follows:
3 (d) Biotechnology credit. 1. Any city in this state having a popu-
4 lation of one million or more, acting through its local legislative
5 body, is hereby authorized to adopt and amend local laws to allow a
6 credit against the general corporation tax, unincorporated business tax
7 and the banking corporation tax imposed pursuant to the authority of
8 chapter seven hundred seventy-two of the laws of nineteen hundred
9 sixty-six which shall be substantially identical to the credit allowed
10 under subdivision twelve-G of section two hundred ten of this chapter,
11 except that (A) whenever subdivision twelve-G of section two hundred ten
12 of this chapter references the state, such words shall be read as refer-
13 encing the city, (B) such credit shall be allowed only to a taxpayer
14 that (1) is a qualified emerging technology company pursuant to the
15 provisions of paragraph (c) of subdivision one of section thirty-one
16 hundred two-e of the public authorities law, except that such company
17 shall mean a company located in such city, (2) engages in activities
18 referenced in subparagraph five of paragraph (b) of subdivision one of
19 section thirty-one hundred two-e of the public authorities law, and (3)

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

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1 meets the eligibility requirements in paragraph (b) of subdivision
2 twelve-G of section two hundred ten of this chapter, and (C) the effec-
3 tive date of such credit shall be as provided in local laws. Subject to
4 the limitations set forth in paragraph two of this subdivision, such
5 credit shall be applied in a manner consistent with the credit allowed
6 under subdivision twelve-G of section two hundred ten of this chapter
7 except as may be necessary to take into account differences between
8 article nine-A of this chapter and the general corporation tax, the
9 unincorporated business tax or the banking corporation tax.

10 2. (A) The percentage of the credit allowed to a taxpayer under this
11 subdivision in any calendar year shall be:

12 (1) If the average number of individuals employed full-time by a
13 taxpayer in the city during the calendar year in which the credit is
14 claimed is at least one hundred five percent of the taxpayer's base year
15 employment, one hundred percent, except that in no case shall the credit
16 allowed under this clause exceed two hundred fifty thousand dollars per
17 calendar year. Provided, however, the increase in base year employment
18 shall not apply to a taxpayer allowed a credit under this subdivision
19 that was, (i) located outside of the city, (ii) not doing business, or
20 (iii) did not have any employees, in the year preceding the first year
21 that the credit was claimed.

22 (2) If the average number of individuals employed full-time by a
23 taxpayer in the city during the calendar year in which the credit is
24 claimed is less than one hundred five percent of the taxpayer's base
25 year employment, fifty percent, except that in no case shall the credit
26 allowed under this clause exceed one hundred twenty-five thousand
27 dollars per calendar year. In the case of an entity located in the city
28 of New York receiving space and business support services by an academic
29 incubator facility, as defined in subparagraph (vi) of paragraph (e) of
30 subdivision twelve-G of section two hundred ten of this chapter, if the
31 average number of individuals employed full-time by such facility in the
32 city during the calendar year in which the credit allowed under this
33 subdivision is claimed is less than one hundred five percent of the
34 taxpayer's base year employment, the credit shall be zero.

35 (B) For the purposes of this subdivision, "base year employment" means
36 the average number of individuals employed full-time by the taxpayer in
37 the city in the year preceding the first calendar year in which the
38 credit is claimed.

39 (C) For the purposes of this subdivision, average number of individ-
40 uals employed full-time shall be computed by adding the number of such
41 individuals employed by the taxpayer at the end of each quarter during
42 each calendar year or other applicable period and dividing the sum so
43 obtained by the number of such quarters occurring within such calendar
44 year or other applicable period.

45 3. The aggregate amount of tax credits allowed under this subdivision
46 in any calendar year shall be up to three million dollars. Such aggre-
47 gate amount of credits shall be allocated by the New York city depart-
48 ment of finance among eligible taxpayers on a pro rata basis. Taxpayers
49 eligible for such pro rata allocation shall be determined by the New
50 York city department of finance no later than February twenty-eighth of
51 the succeeding calendar year in which the credit provided in this subdi-
52 vision is applied.

53 4. The New York city department of finance shall establish by rule by
54 October thirty-first, two thousand nine, procedures for the allocation
55 of tax credits as required by paragraph two of this subdivision. Such
56 rules shall include provisions describing the application process, the

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1 due dates for such applications, the standards that shall be used to
2 evaluate the applications, the documentation that will be provided to
3 taxpayers to substantiate the amount of tax credits allocated to such
4 taxpayers, and such other provisions as deemed necessary and appropri-
5 ate.

6 5. Any local law adopted pursuant to this subdivision may provide for
7 a credit as authorized by this subdivision for a maximum of three
8 consecutive calendar years, provided, however, that any such credit may
9 not apply to taxable years beginning before January first, two thousand
10 ten or beginning on or after January first, two thousand thirteen.

11 § 2. This act shall take effect immediately.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4845B

SPONSOR: DUANE

TITLE OF BILL:

An act to amend the tax law, in relation to authorizing any city having a population of one million or more to provide a biotechnology credit against the general corporation tax, unincorporated business tax and banking corporation tax of such city

SUMMARY OF SPECIFIC PROVISIONS:

This bill would amend Section 1201-a of the tax law by adding a new subdivision (d). In Section 1 of the bill, paragraph 1 of new subdivision (d) would allow New York City to create, by local law, a credit against the City's general corporation, unincorporated business and banking taxes, substantially identical to New York State's Qualified Emerging Technologies Facilities, Operations and Training Credit, as provided in subdivision 12-g of Section 210 of the tax law. New York City's credit, termed the "Biotechnology Credit" would be limited to companies in biotechnology as defined in Section 3102-e (b) (5) of the public authorities law.

While this credit is substantially identical to the New York State's Qualified Emerging Technologies, Facilities, Operations and Training State credit, this credit differs from the State's credit in several ways.

Paragraph 2 establishes a two-tiered credit. In the first tier, eligible firms will receive 100% of the credit available, up to \$250,000 per calendar year. Firms will be eligible for this tier of the credit if firms increase their employment level by 5% more than their employment level in their base year. Firms that are newly established, newly relocated, or did not have any employees in the year prior to which the credit is claimed are not subject to the base year employment increase, are eligible this tier of the credit. In the second tier, firms who increase their employment level by less than 5% of their base year employment, the maximum amount of the credit will be 50% of the maximum amount of the credit, not to exceed \$125,000. Firms in academic incubators are not eligible for the 50 percent credit. Base year employment is defined as the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year in which the credit is claimed.

Paragraph 3 provides that the maximum amount of tax credits in any year is \$3 million, to be allocated among tax payers on a pro rata basis by the New York City Department of Finance.

Paragraph 4 provides that the New York City Department of Finance shall establish rules related to the application process and due dates.

Paragraph 5 provides that such a local law may provide a credit for up to three consecutive years, but may not apply to taxable years starting

before January 1, 2010 or after January 1, 2013.

Section 2 of the bill provides that the act would take effect immediately.

STATEMENT IN SUPPORT:

9 world class research institutions, 26 medical centers, 175 hospitals, and an unparalleled talent pool, New York City has a natural advantage in the bioscience industry. Yet it lags behind other cities, such as Boston and San Diego, in the commercialization of new technologies.

The New York City Biotechnology credit is modeled after, and designed to work with, New York State's Qualified Emerging Technologies Facilities, Operations and Training Credit. Firms will be provided with a refundable credit, for three types of expenses: qualifying expenses related to acquiring research and development property, certain expenses related to training employees, and other research and development expenses. The credit is limited to small firms engaged in research and development that meet New York State standards as qualified emerging technology companies. Such qualified emerging technology companies will be eligible for the credit for up to 3 years (1). The credit will help a young firm equip a lab, train technicians, and fund access to high tech equipment that they do not own.

The credit will differ from New York State's in that it will be focused on growing firms. The allowable expenses and the credit based on those expenses will be the same as for the New York State credit for firms that increase their employment by at least 5 percent, compared to a base year. Those that do not grow will still be eligible for the credit, but at half the rate. Growing firms will have their credit capped at a maximum of \$250,000 per year and those that do not make the 5 percent threshold will have a maximum credit of \$125,000.

Under this legislation, the total credits for a given year are capped at \$3 million. If credits in a given year exceed the cap they will be allocated on a prorated basis by the New York City Department of Finance. The credit would be for three consecutive years starting in January 2010 and ending in December 2012

The credit is part of a policy to create an industry with sufficient size and density that it becomes a good place to make a career in biotech and to locate the kind of ancillary services that the industry needs. This credit works in conjunction with the development of laboratory space at the East River Science Park and in BioBAT at the Brooklyn Army Terminal. These spaces, along with existing facilities, will provide approximately 2 million square feet of laboratory space in the City.

(1) Firms that are located in academic incubators and relocate outside the incubator will be eligible for an additional year of the credit.

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

8131

2009-2010 Regular Sessions

IN ASSEMBLY

May 5, 2009

Introduced by M. of A. WEPRIN, BING, CASTRO, CHRISTENSEN, KELLNER, MAISEL, ROSENTHAL, TITONE, WRIGHT -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, CLARK, COOK, EDDINGTON, GREENE, JAFFEE, SCHIMEL -- read once and referred to the Committee on Ways and Means

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2 the limitations set forth in paragraph two of this subdivision, such
3 credit shall be applied in a manner consistent with the credit allowed
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9 § 2. This act shall take effect immediately.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8131

SPONSOR: Weprin (MS)

TITLE OF BILL:

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¹ Firms that are located in academic incubators and relocate outside the incubator will be eligible for an additional year of the credit.

PRIOR LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

The credit is capped at \$3 million per year. New York City Council Finance Division estimates that without a cap on total credits, the credit would cost approximately \$2 million in City fiscal year 2011 and rise to approximately \$3 million by City fiscal year 2013.

EFFECTIVE DATE:

This act shall take effect immediately.
