



Legislation Text

File #: Int 1065-2009, **Version:** *

Int. No. 1065

By Council Members Lappin, Garodnick, The Speaker (Council Member Quinn), Brewer, Comrie, Fidler, Gentile, Gerson, James, Stewart, Weprin, Nelson, Dilan, Gennaro, Jackson and Sears

A Local Law to amend the administrative code of the city of New York, in relation to providing a biotechnology credit against the general corporation tax, and the unincorporated business tax.

Be it enacted by the Council as follows:

Section 1. Section 11-604 of the administrative code of the city of New York is amended by adding a new subdivision 21 to read as follows:

21. Biotechnology Credit. (a) (1) A taxpayer that is a qualified emerging technology company, engages in biotechnologies, and meets the eligibility requirements of this subdivision, shall be allowed a credit against the tax imposed by this subchapter. The amount of credit shall be equal to the sum of the amounts specified in subparagraphs (3), (4), and (5) of this paragraph, subject to the limitations in subparagraph (7) of this paragraph and paragraph (b) of this subdivision. For the purposes of this subdivision, “qualified emerging technology company” shall mean a company located in city: (A) whose primary products or services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or (B) a company that has research and development activities in city and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department, and whose total annual product sales are ten million dollars or less. For the purposes of this subdivision, the definition of research and development funds shall be the same as that used by the National Science Foundation in the aforementioned survey. For the purposes of this subdivision, “biotechnologies”

shall mean the technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical, and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics.

(2) An eligible taxpayer shall (A) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, (B) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during the calendar year ending with or within the taxable year for which the credit is claimed, and (C) have gross revenues, along with the gross revenues of its “affiliates” and “related members” not exceeding twenty million dollars for the calendar year immediately preceding the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, “affiliates” shall mean those corporations that are members of the same affiliated group (as defined in section fifteen hundred four of the internal revenue code) as the taxpayer. For the purposes of this subdivision, the term “related members” shall mean a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under chapters five, eleven and seventeen of this title, and subchapters two and three of this chapter. A controlling interest shall mean, in the case of a corporation,

either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and placed in service during the calendar year that ends with or within the taxable year for which the credit is claimed. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (A) cost or other basis for federal income tax purposes for property used in the testing or inspection of materials and products, (B) the costs or expenses associated with quality control of the research and development, (C) fees for use of sophisticated technology facilities and processes, and (D) fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under activities relating to biotechnologies. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under this subchapter. For the purposes of this subdivision, "research and development property" shall mean property that is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of qualified research expenses paid or incurred by the taxpayer in the calendar year that ends with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "qualified research expenses" shall mean expenses associated with in-house research and processes, and costs associated with the dissemination of the results

of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall qualify as qualified research expenses. In no case shall the credit allowed under this subparagraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this subparagraph paid or incurred by the taxpayer during the calendar year that ends with or within the taxable year for which the credit is claimed.

(A) The amount of credit shall be one hundred percent of the training expenses described in clause (C) of this subparagraph, subject to a limitation of no more than four thousand dollars per employee per calendar year for such training expenses.

(B) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in city that (i) directly relates to biotechnology activities, and (ii) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level

course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(C) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a city higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(D) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within city, which provides space and business support services to taxpayers, to another site, the credit provided in this subdivision shall be allowed for all expenditures referenced in clause (C) of this subparagraph paid or incurred in the two preceding calendar years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such city site and are employed and primarily located by the taxpayer in city. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the calendar year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-

time, full-year employee of said taxpayer during the calendar year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in clause (C) of this subparagraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this paragraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(E) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(F) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in city. Such entity's primary activity must be in biotechnologies, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in city. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subdivision for three consecutive years. In no case shall the credit allowed by this subdivision to a taxpayer exceed two hundred fifty thousand dollars per

calendar year for eligible expenditures made during such calendar year.

(7) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in clause (4) of subparagraph (a) of paragraph E of subdivision one of this section. Provided, however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, that notwithstanding the provisions of section 11-679 of this chapter, no interest shall be paid thereon.

(8) The credit allowed under this subdivision shall only be allowed for taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirteen.

(b) (1) The percentage of the credit allowed to a taxpayer under this subdivision in any calendar year shall be:

(A) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is at least one hundred five percent of the taxpayer's base year employment, one hundred percent, except that in no case shall the credit allowed under this clause exceed two hundred fifty thousand dollars per calendar year. Provided, however, the increase in base year employment shall not apply to a taxpayer allowed a credit under this subdivision that was,

(i) located outside of the city, (ii) not doing business, or (iii) did not have any employees, in the year preceding the first year that the credit is claimed. Any such taxpayer shall be eligible for one hundred percent of the credit for the first calendar year that ends with or within the taxable year for which the credit is claimed, provided that such taxpayer locates in the city, begins doing business in the city or hires employees in the city during such calendar year and is otherwise eligible for the credit pursuant to the provisions of this subdivision.

(B) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is less than one hundred

five percent of the taxpayer's base year employment, fifty percent, except that in no case shall the credit allowed under this clause exceed one hundred twenty five thousand dollars per calendar year. In the case of an entity located in city receiving space and business support services by an academic incubator facility, if the average number of individuals employed full time by such entity in the city during the calendar year in which the credit allowed under this subdivision is claimed is less than one hundred five percent of the taxpayer's base year employment, the credit shall be zero.

(2) For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year that ends with or within the taxable year for which the credit is claimed.

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

(4) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

§2. Section 11-503 of the administrative code of the city of New York is amended by adding a new subdivision (o) to read as follows:

(o) Biotechnology Credit. (a) (1) A taxpayer that is a qualified emerging technology company, engages in biotechnologies, and meets the eligibility requirements of this subdivision, shall be allowed a credit against the tax imposed by this subchapter. The amount of credit shall be equal to the sum of the amounts specified in subparagraphs (3), (4), (5) of this paragraph, subject to the limitations in subparagraph (7) of this paragraph and paragraph (b) of this subdivision. For the purposes of this subdivision, "qualified emerging technology company" shall mean a company located in city: (A) whose primary products or

services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or (B) a company that has research and development activities in city and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department, and whose total annual product sales are ten million dollars or less. For the purposes of this subdivision, the definition of research and development funds shall be the same as that used by the National Science Foundation in the aforementioned survey. For the purposes of this subdivision, “biotechnologies” shall mean the technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical, and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics.

(2) An eligible taxpayer shall (A) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, (B) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during the calendar year ending with or within the taxable year for which the credit is claimed, and (C) have gross revenues, along with the gross revenues of its “affiliates” and “related members” not exceeding twenty million dollars for the calendar year immediately preceding the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, “affiliates” shall

mean those corporations that are members of the same affiliated group (as defined in section fifteen hundred four of the internal revenue code) as the taxpayer. For the purposes of this subdivision, “related members” shall mean a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under chapters six, eleven and seventeen of this title, and subchapters two and three of this chapter. A controlling interest shall mean, in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and placed in service during the calendar year that ends with or within the taxable year for which the credit is claimed. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (A) cost or other basis for federal income tax purposes for property used in the testing or inspection of materials and products, (B) the costs or expenses associated with quality control of the research and development, (C) fees for use of sophisticated technology facilities and processes, (D) fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under activities relating to biotechnologies. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under this subchapter. For the purposes of this subdivision, “research and development

property” shall mean property that is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of qualified research expenses paid or incurred by the taxpayer in the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, “qualified research expenses” shall mean expenses associated with in-house research and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall qualify as qualified research expenses. In no case shall the credit allowed under this paragraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this paragraph paid or incurred by the taxpayer during the calendar year that ends with or within the taxable year for which the credit is claimed.

(A) The amount of credit shall be one hundred percent of the training expenses described in subparagraph (C) of this paragraph, subject to a limitation of no more than four thousand dollars per employee per calendar year for such training expenses.

(B) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in city that (i) directly relates to biotechnology activities, and (ii) is intended to upgrade, retrain or

improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(C) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a city higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(D) If a taxpayer relocates from an academic business incubator facility partnered with an

accredited post-secondary education institution located within city, which provides space and business support services to taxpayers, to another site, the credit provided in this subdivision shall be allowed for all expenditures referenced in subparagraph (C) of this paragraph paid or incurred in the two preceding calendar years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such city site and are employed and primarily located by the taxpayer in city. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the calendar year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-time, full-year employee of said taxpayer during the calendar year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in subparagraph (C) of this paragraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this paragraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(E) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(F) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an

entity located in city. Such entity's primary activity must be in biotechnologies, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in city. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subdivision for three consecutive years. In no case shall the credit allowed by this subdivision to a taxpayer exceed two hundred fifty thousand dollars per calendar year for eligible expenditures made during such calendar year.

(7) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount computed in subdivision (a) of this section. Provided, however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter; provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon.

(8) The credit allowed under this subdivision shall only be allowed for taxable years beginning on or after January first, two thousand ten and before January first, two thousand thirteen.

(b)(1) The percentage of the credit allowed to a taxpayer under this subdivision in any calendar year shall be:

(A) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year which the credit is claimed is at least one hundred five percent of the taxpayer's base year employment, one hundred percent, except that in no case shall the credit allowed under this clause exceed two hundred fifty thousand dollars per calendar year. Provided, however, the increase in base year employment shall not apply to a taxpayer allowed a credit under this subdivision that was

(I) located outside of the city, (II) not doing business, or (III) did not have any employees, in the year preceding the first year that the credit is claimed. Any such taxpayer shall be eligible for one hundred percent of the credit for the first calendar year that ends with or within the taxable year for which the credit is claimed, provided that such taxpayer locates in the city, begins doing business in the city or hires employees in the city during such calendar year and is otherwise eligible for the credit pursuant to the provisions of this subdivision.

(B) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is less than one hundred five percent of the taxpayer's base year employment, fifty percent, except that in no case shall the credit allowed under this clause exceed one hundred twenty five thousand dollars per calendar year. In the case of an entity located in city receiving space and business support services by an academic incubator facility, if the average number of individuals employed full time by such entity in the city during the calendar year in which the credit allowed under this subdivision is claimed is less than one hundred five percent of the taxpayer's base year employment, the credit shall be zero.

(2) For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year that ends with or within the taxable year for which the credit is claimed.

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

(4) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by

all other credits permitted by this chapter.

§ 3. The aggregate amount of tax credits allowed under this local law in any calendar year shall be 3 million dollars. Such aggregate amount of credits shall be allocated by the department of finance of the city of New York among eligible taxpayers on a pro rata basis. Taxpayers eligible for such pro rata allocation shall be determined by the department of finance of the city of New York no later than February twenty-eighth of the succeeding calendar year in which the credit provided in this local law is applied.

§ 4. The department of finance of the city of New York shall establish by rule by October 31, 2009 procedures for the allocation of tax credits as required by section 3 of this local law. Such rules shall include provisions describing the application process, the due dates for such applications, the standards that shall be used to evaluate the applications, the documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to such taxpayers, and such other provisions as deemed necessary and appropriate.

§ 5. This local law shall take effect immediately; provided, however, that this local law shall apply to taxable years beginning on or after January 1, 2010 and before January 1, 2013.