

Part EEE

1 AN ACT to amend the tax law, in relation
2 to adding two credits, a qualified
3 emerging technology company
4 employment credit and a qualified
5 emerging technology capital tax
6 credit, to article 22

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

9 Section 1. Paragraph 1 of subsection (i) of section 606 of
10 the tax law, as separately amended by sections 56, 105 and 130 of
11 chapter 389 of the laws of 1997, is amended to read as follows:

12 (i) S corporation credits. (1) For purposes of determining
13 the application under this section of the credit provisions
14 enumerated in the following table, a shareholder of a New York S
15 corporation:

16 (A) shall be treated as the taxpayer with respect to his or
17 her pro rata share of the corresponding credit base of such
18 corporation, determined for the corporation's taxable year ending
19 with or within the shareholder's taxable year and

20 (B) shall be treated as the owner of a new business with
21 respect to such share if the corporation qualifies as a new
22 business pursuant to paragraph (j) of subdivision twelve of
23 section two hundred ten of this chapter, unless the shareholder
24 has previously received a refund by reason of the application of
25 this subparagraph, or this subsection as it was in effect for

1		hundred fifty-six
2	Agricultural property tax	Allowable school
3	credit under subsection (n)	district property taxes under
4		subdivision twenty-two of
5		section two hundred ten
6	Credit for employment	Qualified first-year wages or
7	of persons with dis-	qualified second-year wages
8	abilities under	under subdivision twenty-three
9	subsection (o)	of section two hundred ten or
10		subsection (f) of section
11		fourteen hundred fifty-six
12	Employment incentive	Applicable investment credit
13	credit under subsection	base under subdivision
14	(a-1)	twelve-D
15	Economic development	Applicable investment
16	zone employment incentive	credit under subdivision
17	credit under subsection (j-1)	twelve-C
18	Alternative fuels credit	Cost under subdivision
19	under subsection (p)	twenty-four
20	<u>Qualified emerging</u>	<u>Applicable credit base</u>
21	<u>technology company</u>	<u>under subdivision twelve-E</u>
22	<u>employment credit</u>	<u>of section two hundred ten</u>
23	<u>under subsection (s)</u>	
24	<u>Qualified emerging</u>	<u>Qualified investments under</u>

1 technology company subdivision twelve-F of
2 capital tax credit section two hundred ten
3 under subsection (t)

4 § 2. Section 606 of the tax law is hereby amended by adding
5 new subsections (s) and (t), to read as follows:

6 (s) Qualified emerging technology company employment credit.

7 (1) A taxpayer shall be allowed a credit, to be computed as
8 hereinafter provided, against the tax imposed by this article,
9 provided:

10 (A) the taxpayer is a sole proprietor of a qualified
11 emerging technology company, or a member of a partnership which
12 is a qualified emerging technology company, as defined in section
13 thirty-one hundred two-e of the public authorities law; and

14 (B) the average number of individuals employed full time by
15 such company in New York state during the taxable year is at
16 least one hundred one percent of such company's base year
17 employment. For the purposes of this subsection, "base year
18 employment" means the average number of individuals employed
19 full-time by such company in the state during the three taxable
20 years immediately preceding the first taxable year in which the
21 credit is claimed. Where such company provided full-time
22 employment within the state during only a portion of such three-
23 year period, then for purposes of this subsection, the term
24 "three years" shall be deemed to refer instead to such portion,

1 provided, however, the first taxable year for which this credit
2 may be taken with respect to such company shall be the next year
3 following the first full taxable year that such company had full-
4 time employment in New York state.

5 (2) The credit shall be allowed only in the first taxable
6 year in which the credit is claimed and in each of the next two
7 taxable years, provided that the conditions of paragraph one of
8 this subsection are satisfied in each taxable year.

9 (3) For the purposes of this subsection, average number of
10 individuals employed full-time shall be computed by adding the
11 number of such individuals employed by such company at the end of
12 each quarter during each taxable year or other applicable period
13 and dividing the sum so obtained by the number of such quarters
14 occurring within such taxable year or other applicable period;
15 provided, however, that in computing base year employment there
16 shall be excluded therefrom any employee with respect to whom a
17 credit provided for under subsection (k) of this section is
18 claimed for the taxable year.

19 (4) The amount of the credit shall equal the product of the
20 credit factor multiplied by the number of individuals employed
21 full-time by such company in the taxable year that are in excess
22 of one hundred percent of such company's base year employment.
23 The credit factor shall be fifteen hundred dollars.

24 (5) If the amount of the credit and carryovers of such

1 credit allowed under this subsection for any taxable year shall
2 exceed the taxpayer's tax for such year, the excess, as well as
3 any part of the credit or carryovers of such credit, or both, may
4 be carried over to the following year or years and may be
5 deducted from the taxpayer's tax for such year or years. In lieu
6 of carrying over any such excess, a taxpayer who (A) qualifies as
7 an owner of a new business (in the case of such qualified
8 emerging technology company) under paragraph ten of subsection
9 (a) of this section without regard to subparagraph (C), and (B)
10 the taxpayer has not operated such new business entity, in the
11 case of a sole proprietorship, or where such new business entity
12 is a partnership, such entity has not operated, for more than six
13 taxable years (excluding short taxable years) prior to the
14 taxable year with respect to which the taxpayer first becomes
15 eligible for the credit herein provided for with respect to such
16 company, or for more than eight taxable years if such new
17 business entity's primary business or product requires federal
18 regulatory approval or involves the discovery and sale of
19 substances requiring clinical trials as part of the federal drug
20 administration's required approval process for the use of such
21 substances by humans, may, at his or her option, receive such
22 excess as a refund. Any refund paid pursuant to this paragraph
23 shall be deemed to be a refund of an overpayment of tax as
24 provided in section six hundred eighty-six of this article,

1 provided, however, that no interest shall be paid thereon.

2 (t) Qualified emerging technology company capital tax
3 credit. (1) A taxpayer shall be allowed a credit against the tax
4 imposed by this article. The amount of the credit shall be equal
5 to one of the following percentages, per each qualified
6 investment in a qualified emerging technology company as defined
7 in section thirty-one hundred two-e of the public authorities
8 law, made during the taxable year, and certified by the
9 commissioner, either:

10 (A) for taxable years beginning after two thousand, twenty-
11 five percent, of qualified investments in qualified emerging
12 technology companies, except for investments made by or on behalf
13 of an owner of the business, including, but not limited to, a
14 stockholder, partner or sole proprietor, or any related person,
15 as defined in subparagraph (C) of paragraph three of subsection
16 (b) of section four hundred sixty-five of the internal revenue
17 code, and provided, however, that the taxpayer certifies to the
18 commissioner that the qualified investment will not be sold,
19 transferred, traded, or disposed of during the four years
20 following the year in which the credit is first claimed; or

21 (B) for taxable years beginning after two thousand, fifty
22 percent, of qualified investments in qualified emerging
23 technology companies, except for investments made by or on behalf
24 of an owner of the business, including, but not limited to, a

1 stockholder, partner or sole proprietor, or any related person,
2 as defined in subparagraph (C) of paragraph three of subsection
3 (b) of section four hundred sixty-five of the internal revenue
4 code, and provided, however, that the taxpayer certifies to the
5 commissioner that the qualified investment will not be sold,
6 transferred, traded, or disposed of during the nine years
7 following the year in which the credit is first claimed.

8 "Qualified investment" means the contribution of property to
9 a corporation in exchange for original issue capital stock or
10 other ownership interest, the contribution of property to a
11 partnership in exchange for an interest in the partnership, and
12 similar contributions in the case of a business entity not in
13 corporate or partnership form in exchange for an ownership
14 interest in such entity. The total amount of credit allowable to
15 a taxpayer under this provision for all years, taken in the
16 aggregate, shall not exceed five hundred thousand dollars in the
17 case of investments made pursuant to subparagraph (A) of this
18 paragraph and shall not exceed one million dollars in the case of
19 investments made pursuant to subparagraph (B) of this paragraph.

20 (2)(A) If the amount of the credit and carryovers of such
21 credit allowed under this subsection for any taxable year shall
22 exceed the taxpayer's tax for such year, any amount of credit or
23 carryovers of such credit thus not deductible in such taxable
24 year may be carried over to the following year or years and may

1 be deducted from the tax for such year or years. In addition, the
2 amount of such credit, and carryovers of such credit to the
3 taxable year, deducted from the tax otherwise due may not, in the
4 aggregate, exceed fifty percent of the tax imposed under section
5 six hundred one computed without regard to any credit provided
6 for by this section.

7 (B) In the case of a husband or wife who is required to file
8 a separate return, the limitations provided for in paragraph one
9 of this subsection shall be two hundred fifty thousand dollars in
10 lieu of five hundred thousand dollars, and five hundred thousand
11 dollars in lieu of one million dollars, unless the spouse of the
12 taxpayer has no credit allowable under this subsection for the
13 taxable year of such spouse which ends within or with the
14 taxpayer's taxable year.

15 (C) In the case of an estate or trust, the limitations
16 provided for in paragraph one of this subsection shall be reduced
17 to an amount which bears the same ratio to five hundred thousand
18 dollars and an amount which bears the same ratio to one million
19 dollars as the portion of the income of the estate or trust which
20 is not allocated to beneficiaries bears to the total income of
21 the estate or trust.

22 (3)(A) Where a taxpayer sells, transfers or otherwise
23 disposes of corporate stock, a partnership interest or other
24 ownership interest arising from the making of a qualified

1 investment which was the basis, in whole or in part, for the
2 allowance of the credit provided for under subparagraph (A) of
3 paragraph one of this subsection, or where an investment which
4 was the basis for such allowance is, in whole or in part,
5 recovered by such taxpayer, and such disposition or recovery
6 occurs during the taxable year or within forty-eight months from
7 the close of the taxable year with respect to which such credit
8 is allowed, the taxpayer shall add back, with respect to the
9 taxable year in which the disposition or recovery described above
10 occurred, the required portion of the credit originally allowed.

11 (B) Where a taxpayer sells, transfers or otherwise disposes
12 of corporate stock, a partnership interest or other ownership
13 interest arising from the making of a qualified investment which
14 was the basis, in whole or in part, for the allowance of the
15 credit provided for under subparagraph (B) of paragraph one of
16 this subsection, or where an investment which was the basis for
17 such allowance is in any manner, in whole or in part, recovered
18 by such taxpayer, and such disposition or recovery occurs during
19 the taxable year or within one hundred eight months from the
20 close of the taxable year with respect to which such credit is
21 allowed, the taxpayer shall add back, with respect to the taxable
22 year in which the disposition or recovery described in
23 subparagraph one of this paragraph occurred the required portion
24 of the credit originally allowed.

1 (C) The required portion of the credit originally allowed
2 shall be the product of (i) the portion of such credit
3 attributable to the property disposed of and (ii) the applicable
4 percentage.

5 (D) The applicable percentage shall be:

6 (i) for credits allowed pursuant to subparagraph (A) of
7 paragraph one of this subsection:

8 (I) one hundred percent, if the disposition or recovery
9 occurs within the taxable year with respect to which the credit
10 is allowed or within twelve months of the end of such taxable
11 year,

12 (II) seventy-five percent, if the disposition or recovery
13 occurs more than twelve but not more than twenty-four months
14 after the end of the taxable year with respect to which the
15 credit is allowed,

16 (III) fifty percent, if the disposition or recovery occurs
17 more than twenty-four months but not more than thirty-six months
18 after the end of the taxable year with respect to which the
19 credit is allowed, or

20 (IV) twenty-five percent, if the disposition or recovery
21 occurs more than thirty-six months but not more than forty-eight
22 months after the end of the taxable year with respect to which
23 the credit is allowed; or

24 (ii) for credits allowed pursuant to subparagraph (B) of

1 paragraph one of this subsection:

2 (I) one hundred percent, if the disposition or recovery
3 occurs within the taxable year with respect to which the credit
4 is allowed or within twelve months of the end of such taxable
5 year,

6 (II) eighty percent, if the disposition or recovery occurs
7 more than twelve but not more than forty-eight months after the
8 end of the taxable year with respect to which the credit is
9 allowed,

10 (III) sixty percent, if the disposition or recovery occurs
11 more than forty-eight months but not more than seventy-two months
12 after the end of the taxable year with respect to which the
13 credit is allowed,

14 (IV) forty percent, if the disposition or recovery occurs
15 more than seventy-two months but not more than ninety-six months
16 after the end of the taxable year with respect to which the
17 credit is allowed, or

18 (V) twenty percent, if the disposition or recovery occurs
19 more than ninety-six months but not more than one hundred eight
20 months after the end of the taxable year with respect to which
21 the credit is allowed.

22 § 3. This act shall take effect immediately and shall apply
23 to taxable years beginning on or after January 1, 2001.