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

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

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

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

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

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter, unless the shareholder has previously received a refund by reason of the application of this subparagraph, or this subsection as it was in effect for
taxable years beginning before nineteen hundred ninety-four.

With respect to the corporation's credit following credit under this section: hundred ten or section fourteen hundred fifty-six of this chapter is:

Investment tax credit Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten

Economic development Cost or other basis under subdivision twelve-B of section two hundred ten

Economic development Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six

Economic development zone Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen
Agricultural property tax Allowable school district property taxes under subdivision twenty-two of section two hundred ten.

Credit for employment Qualified first-year wages or qualified second-year wages of persons with disabilities under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six.

Employment incentive Applicable investment credit base under subdivision (a-1) twelve-D.

Economic development Applicable investment credit under subdivision (j-1) twelve-C.

Alternative fuels credit Cost under subdivision twenty-four.

Qualified emerging technology company employment credit under subdivision twelve-E.

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

(s) Qualified emerging technology company employment credit.

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

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

(B) the average number of individuals employed full time by such company in New York state during the taxable year is at least one hundred one percent of such company's base year employment. For the purposes of this subsection, "base year employment" means the average number of individuals employed full-time by such company in the state during the three taxable years immediately preceding the first taxable year in which the credit is claimed. Where such company provided full-time employment within the state during only a portion of such three-year period, then for purposes of this subsection, the term "three years" shall be deemed to refer instead to such portion,
provided, however, the first taxable year for which this credit may be taken with respect to such company shall be the next year following the first full taxable year that such company had full-time employment in New York state.

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

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

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

(5) If the amount of the credit and carryovers of such
credit allowed under this subsection for any taxable year shall exceed the taxpayer’s tax for such year, the excess, as well as any part of the credit or carryovers of such credit, or both, may be carried over to the following year or years and may be deducted from the taxpayer’s tax for such year or years. In lieu of carrying over any such excess, a taxpayer who (A) qualifies as an owner of a new business (in the case of such qualified emerging technology company) under paragraph ten of subsection (a) of this section without regard to subparagraph (C), and (B) the taxpayer has not operated such new business entity, in the case of a sole proprietorship, or where such new business entity is a partnership, such entity has not operated, for more than six taxable years (excluding short taxable years) prior to the taxable year with respect to which the taxpayer first becomes eligible for the credit herein provided for with respect to such company, or for more than eight taxable years if such new business entity’s primary business or product requires federal regulatory approval or involves the discovery and sale of substances requiring clinical trials as part of the federal drug administration’s required approval process for the use of such substances by humans, may, at his or her option, receive such excess as a refund. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section six hundred eighty-six of this article,
provided, however, that no interest shall be paid thereon.

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

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

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

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

(2)(A) If the amount of the credit and carryovers of such credit allowed under this subsection for any taxable year shall exceed the taxpayer’s tax for such year, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may
be deducted from the tax for such year or years. In addition, the
amount of such credit, and carryovers of such credit to the
taxable year, deducted from the tax otherwise due may not, in the
aggregate, exceed fifty percent of the tax imposed under section
six hundred one computed without regard to any credit provided
for by this section.

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

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

(3)(A) Where a taxpayer sells, transfers or otherwise
disposes of corporate stock, a partnership interest or other
ownership interest arising from the making of a qualified
investment which was the basis, in whole or in part, for the
allowance of the credit provided for under subparagraph (A) of
paragraph one of this subsection, or where an investment which
was the basis for such allowance is, in whole or in part,
recovered by such taxpayer, and such disposition or recovery
occurs during the taxable year or within forty-eight months from
the close of the taxable year with respect to which such credit
is allowed, the taxpayer shall add back, with respect to the
taxable year in which the disposition or recovery described above
occurred, the required portion of the credit originally allowed.

(B) Where a taxpayer sells, transfers or otherwise disposes
of corporate stock, a partnership interest or other ownership
interest arising from the making of a qualified investment which
was the basis, in whole or in part, for the allowance of the
credit provided for under subparagraph (B) of paragraph one of
this subsection, or where an investment which was the basis for
such allowance is in any manner, in whole or in part, recovered
by such taxpayer, and such disposition or recovery occurs during
the taxable year or within one hundred eight months from the
close of the taxable year with respect to which such credit is
allowed, the taxpayer shall add back, with respect to the taxable
year in which the disposition or recovery described in
subparagraph one of this paragraph occurred the required portion
of the credit originally allowed.
(C) The required portion of the credit originally allowed shall be the product of (i) the portion of such credit attributable to the property disposed of and (ii) the applicable percentage.

(D) The applicable percentage shall be:

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

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

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

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

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

(ii) for credits allowed pursuant to subparagraph (B) of
paragraph one of this subsection:

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

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

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

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

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

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