New York State Tax Incentives for High-Tech Companies

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NEW YORK STATE FOUNDATION
FOR SCIENCE, TECHNOLOGY AND INNOVATION

Issued July 2006

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This summary is provided for informational purposes only. Due to the specific requirements of many of these credits, consult a tax advisor for applicability and limitations. Additional information on specific credits can be found in the applicable NYS tax form and instructions.

I. Relevant Terms

Credit vs. Deduction: A credit is a dollar for dollar reduction in taxable income. A deduction reduces taxable income by the applicable tax rate.

Refundable vs. Carryforward: Refundable means that if the amount of the credit reduces taxable income below a certain base level, the State will refund the difference putting cash back into the taxpayer's pocket. A carryforward means that excess credits or deductions can be used in a subsequent tax year, but not refunded.

II. Investment Tax Credit / Employment Incentive Credit

These credits are available to manufacturers. The Investment Tax Credit (ITC) is 5% of the first $350 million of new or expanded manufacturing production facilities and 4% of investments over $350 million. The employment incentive credit (EIC) is based on increases from base year employment and equals 1.5%, 2.0%, and 2.5% of the ITC amount if current year employment is 101%, 102%, or 103% of base year employment, respectively.

For research and development (R&D) property, taxpayers may use the regular ITC rate plus any applicable EIC or claim an optional 9% rate and not claim the EIC. R&D property is generally that used for experimental or laboratory work but *not for* testing, inspection or quality control.

Unused credits can be carried forward up to 15 years. A new business, which is generally one newly created in New York or relocated to New York, can receive a refund of unused ITC during its first five taxable years.

III. Qualified Emerging Technology Companies Credits

Provide credits for qualified emerging technology companies (QETC) that create new jobs or for corporate taxpayers that invest in emerging technology companies. Any eligible type of business formation is eligible for these credits (e.g., sole proprietor, partnership, corporation). The QETC credits are broken into three components: (1) Capital Tax Credit, (2) Employment Tax Credit, and (3) Facilities, Operations and Training Credit (which itself has three components).

To qualify for the Capital Tax Credit (#1) and the Employment Tax Credit (#2), the taxpayer must:

(a) be a company located in New York State. This is defined as a sole proprietorship, corporation, partnership, LLC, or other entity that, during the year the credit is claimed, owned or rented real property used in its emerging technology products, services or R&D.

and

(b) have total annual gross products sales of $10 million or less

and

(c) have its primary products or services classified as an "emerging technology." Emerging Technology generally includes advanced materials and processing technologies; engineering, production, and defense technologies; electronic and photonic devices and components; information and communication technologies, equipment, and systems; biotechnologies; and remanufacturing technologies.

or

(d) have a ratio of R&D expenditures to net sales of at least the average for typical R&D companies based upon National Science Foundation data (3.6% in 2005).

1. Capital Tax Credit

This credit encourages investments in a QETC and equals 10% of qualified investments held for 4 years up to $150,000 in aggregate for all 4 years *or* 20% of qualified investments held for 9 years up to $300,000 in aggregate for all 9 years. Taxpayer certifies to NYS Department of Tax and Finance that investment will be held for at least the four or nine year period. The credit may not exceed 50% of tax due prior to application of any other tax credits and is not refundable but may be carried forward. Qualified investments *do not* include those made by, or on behalf of, an owner or related person.

2. Employment Tax Credit

Credit is available for three years and equal to $1,000 for each new employee hired over base year employment. *Base year* is the average number of full-time NYS employees during the three tax years immediately preceding the first year the credit is claimed. Credit is refundable.

3. Facilities, Operations and Training Credit *

To qualify for the Facilities, Operations and Training Credit (#3), in addition to meeting the general QETC qualifications listed above the company must have:

(a) 100 or fewer full-time employees, 75 percent of which are employed in New York

and

(b) total R&D expenditures of at least 6% of net sales (gross sales minus returns and allowances) during the tax year

*** Effective for tax years beginning on or after January 1, 2005 through 2011**

and
(c) gross revenues not exceeding $20 million for the immediately preceding tax year.

This credit may be taken for four consecutive years, is capped at $250,000 per year, and is fully refundable. Importantly for incubator tenants, if *relocating* (e.g., graduating) from an academic incubator facility (one acting in partnership with an accredited post-secondary NYS college or university), the taxpayer is entitled to one additional year of the credit which can be deferred until the first year after relocating from the incubator. The credit consists of three components:

3a. R&D Property Credit:

18% of research and development property and costs/fees incurred in connection with emerging technology activities. For purposes of this credit, R&D property is generally that used for R&D in the experimental or laboratory sense and is also expanded to include testing, inspection, and quality control; fees for use of facilities for R&D activities; or production or distribution of materials resulting from R&D.

3b. Research Expenses Credit:

9% of qualified research expenses which are those associated with in-house research and processes, and costs associated with the dissemination of R&D results and patent costs, excluding advertising or promotion costs.

3c. High-Tech Training Credit:

100% of qualified high-tech training expenses, limited to $4,000 per employee per year. Qualified training is undergraduate courses where the employee receives at least a C (or equivalent) or graduate courses where the employee receives at least a B (or equivalent) at an accredited, degree-granting, post-secondary NYS college or university that relate to the QETC's activities and are intended to upgrade, retrain or improve the employee's skills. Classes in management, accounting, or law are not eligible.

For more information, visit
http://www.nystax.gov/pit/income_tax_2005/credits/qetc_tax_cr.htm

IV. Empire Zones Credits

The Empire Zones Program was enacted to stimulate growth in economically distressed communities and provides a package of tax incentives for businesses that invest or provide jobs in designated areas. Empire Zones are classified as either: Investment Zones (IZ) which encompass economically distressed areas or Development Zones (DZ) which are county zones. Credits apply to both IZ or DZ designations unless noted otherwise.

Certain projects can now also be located outside of the designated IZ or DZ for: manufacturers who create 50 or more jobs; agri-businesses; high-tech or biotech companies making a $10 million capital investment and creating 20 or more jobs; financial or insurance services firms or distribution centers creating 300 or more jobs; and clean coal electric generating facilities.

- **Wage Tax Credit:** 5 year credit for full-time employment increases in an Empire Zone. Credit is $1,500 per nontargeted employee, $3,000 per targeted employee (those with low incomes, on public assistance, or honorably discharged veterans), and an additional $500 for employees paid over $40,000 in wages located in an IZ. Unlimited carryforward; new businesses may elect to receive a 50% refund.

- **Investment Tax Credit and Employment Incentive Credit:** New investments in production property and equipment may qualify for tax credits up to 10% of the company's eligible investment. For employment increases excluding executive officers of at least 101% of the prior year average, an additional 3% credit may apply for 3 years. Unlimited carryforward; new businesses may elect to receive a 50% refund.

- **Real Property Tax Credit:** Refundable credit against business or income tax equal to a percentage of real property taxes paid in the zone based on 25% of total wages, health and retirement benefits paid to net new employees, up to the amount of real property taxes paid. Qualified Empire Zone Enterprises must pass an annual employment test from base year figures to receive this credit.

- **Tax Reduction Credit:** Credit against business or income tax equal to a percentage of taxes attributable to the zone enterprise based upon four factors including employment increases. Credit is non-refundable and may not be carried forward. Qualified Empire Zone Enterprises must pass an annual employment test from base year figures to receive this credit.

- **State Sales Tax Exemption:** For 10 years on purchases of goods and services including utility services used predominantly in the zone (local sales taxes may be exempt in certain localities). Qualified Empire Zone Enterprises must pass an annual employment test from base year figures to receive this credit.

- **Real Property Tax Abatement:** Empire Zones may offer tax abatements from an increased assessment, with the abatement value based on improvements to real property for up to 10 years. The abatement is 100% for the first seven years and decreases over the last three years of the exemption.

- **Sales and Use Taxes:** Refund or credit for sales and use taxes paid on materials used to expand, construct or restore certain industrial and commercial projects within a zone.

For more information, visit http://www.empire.state.ny.us/Tax_and_Financial_Incentives/Empire_Zones/descriptions_benefits.asp

V. General Sales Tax Exemptions

The following are generally exempt from state and local sales taxes:

- Property used in R&D
- Production machinery, equipment, parts, tools, supplies, and related services
- Fuel, gas, electric, refrigeration, and steam used in R&D or production
- Pollution control, prevention or abatement equipment
- Internet access service and computer hardware used in software development

VI. Other Credits

- **Fuel Cell Electricity Generating Equipment Credit:** Credit of 20% of qualified costs or $1,500 per unit, whichever is less, for qualified fuel cell electric generating equipment that uses proton exchange membrane fuel cells up to 100 kilowatts rated capacity. Unused credits may be carried forward.
- **Alternative Fuel Refueling Property:** Credit of 50% of alternative fuel refueling property which includes natural gas, liquefied petroleum gas, hydrogen, electricity, and other fuels which are at least 85% methanol, ethanol, and/or any other alcohol.
- **Industrial or Manufacturing Business Credit:** Equal to taxes paid by the taxpayer's suppliers for gas, electricity, steam, water or refrigeration used during the year. This credit expires for tax years ending on or after January 1, 2007.
- **Green Building Credit:** Construction, rehabilitation and maintenance of buildings with high environmental standards and energy efficiency. Consists of six different components, each with specific requirements. Taxpayer must be certified by Department of Environmental Conservation to be eligible for this credit which can be claimed for 5 years.
- **Brownfields Tax Credits:** Three refundable tax credits are available for taxpayers who remediate a brownfield: (1) A brownfield redevelopment credit of 10% to 22% is dependent on remediation level, location and type of taxpayer (personal or corporate); (2) A credit for real property taxes for remediated brownfields based on number of employees at the location can reach 100% of real property taxes; and (3) Environmental remediation insurance credit for remediation insurance premiums up to $30,000 or 50% of premium cost, whichever is less.

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