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**THE COUNCIL**

**REPORT OF THE FINANCE DIVISION**  
**PRESTON NIBLACK, DIRECTOR**  
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**COMMITTEE ON FINANCE**  
**HON. DOMENIC M. RECCHIA, JR., Chair**  
**December 10, 2012**

**PROPOSED INT. 926-A:**

By Council Members Lappin, Garodnick, Brewer,  
Fidler, James, Koo, Lander, Recchia, Rodriguez,  
Halloran and Ulrich

**TITLE:**

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

**ADMINISTRATIVE CODE:**

Amends §11-604 and §11-503 of the Administrative  
Code.

Today, the Finance Committee will consider Proposed Int. 926-A, a Local Law to amend  
the administrative code of the city of New York, in relation to extending the biotechnology credit

against the general corporation tax, and the unincorporated business tax. This legislation extends the biotechnology credit, which currently sunsets December 31, 2012, to December 31, 2015.

## **Background**

### *Biotechnology in New York City*

Biotechnology is a form of technology involving the scientific manipulation of living organisms to produce products conducive to improving the lives and health of plants, animals and humans. This includes research on new drugs, medical devices and diagnostic tests.<sup>1</sup>

With 9 world class research institutions, 26 medical centers, 175 hospitals, and an unparalleled talent pool, New York City has a natural advantage in emerging technologies, particularly biotechnology, yet it lags behind other cities, such as Boston and San Diego, in the commercialization of new technologies. The recent development of laboratory space at the Alexandria Center for Life Sciences and in BioBAT at the Brooklyn Army Terminal, along with existing facilities, will provide approximately 2 million square feet of laboratory space in the City.

Currently, there is a New York State Qualified Emerging Technology Incentive program<sup>2</sup> that provides credits against the State personal income tax and corporation franchise tax for

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<sup>1</sup> Biotechnologies is defined as “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.” § 3102-e (b) (5) of the New York State Public Authorities law.

<sup>2</sup> Any eligible type of business formation is eligible for these credits (e.g., sole proprietor, partnership, and corporation). The QETC credits are broken into three components: (1) Capital Tax Credit, which encourages investment into QETC by providing a credit when a corporation, partnership, or other business entity makes a contribution of property to a QETC in exchange for stock or another ownership interest, in a QETC;(2) Employment Tax Credit, which encourages the creation of jobs in emerging technology companies by providing a credit to QETCs that increase employment by at least 1% of the average number of individuals employed by the QETC

qualified emerging technology companies (QETC)<sup>3</sup> that create new jobs, or for corporate taxpayers that invest in emerging technology companies.

### *New York City's Biotechnology Credit*

In the Spring of 2009, the New York City Council urged the State Legislature and worked with them to pass legislation authorizing New York City to provide a biotechnology credit that would mirror the State's New York State's Emerging Technologies Facilities, Operations and Training Credit. After successful passage by the State Legislature, on September 16, 2009, the Governor signed A.8131/S.4845-B into law, (codified as Chapter 453 of the Laws of 2009). Shortly thereafter, on September 17, 2009, the Council passed Int. 1065, subsequently codified as Local Law 67 of 2009, which provides a credit "substantially identical to" the New York State's Emerging Technologies Facilities, Operations and Training Credit<sup>4</sup> against the City's general corporation tax and the unincorporated business tax for QETCs located in New York City that focus primarily on biotechnology. The authorization term for the credit, as authorized by Chapter 453, is from January 1, 2010 to December 31, 2012.

New York City's credit, termed the "Biotechnology Credit", is modeled after, and designed to work with, New York State's Qualified Emerging Technologies Facilities,

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during the 3 taxable years preceding the first taxable year the credit is claimed. The credit is available for three years and equal to \$1,000 for each new employee hired over base year employment; and (3) Facilities, Operations and Training Credit, which encourages research and training in emerging technology by providing a credit for testing, inspection, qualified research expenses, and qualified high technology expenditures.

<sup>3</sup> A Qualified emerging technology company is a company located in New York State: (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 New York State 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.

<sup>4</sup> In order to claim the credit, the QETC must: 1) Have 100 full-time employees or less, with at least 75% of those employees employed in New York City; 2) Have a ratio of research and development funds to net sales, which equals or exceeds six percent (6%) during its tax year; and 3) Have gross revenues, along with the gross revenues of its affiliates and related members that did not exceed \$20 million dollars for the immediately preceding tax year.

Operations and Training Credit. Local Law 67 provides QETC firms 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.

### Qualifications

A taxpayer is entitled to a credit if the company:

- 1) is a qualified emerging technology company engaging in biotechnologies;
- 2) has no more than one hundred full-time employees, of which at least seventy-five percent are employed in the City;
- 3) has a ratio of research and development funds to net sales of at least six percent;
- 4) has gross revenues not exceeding twenty million dollars, including affiliates; and
- 5) has annual sales not exceeding ten million dollars. Such qualified emerging technology companies would be eligible for the credit for 3 consecutive years.

### Credit Amount

The City's biotechnology credit provides a refundable credit to small QETCs focusing on biotechnology in the following amount:

- a. Up to 18 percent of costs related to purchase or renting of equipment for testing, quality control or research;
- b. Up to 9 percent for qualified research expenses, primarily in-house research-related operating costs; and
- c. Up to \$4,000 per employee for certain training expenses.

For newly formed or newly located to the City firms, or those that have increased their employment in the City by at least 5 percent, the credit will be no more than \$250,000 per QETC. For existing biotechnology firms that have not increased their employment by at least 5 percent to be eligible for the credit, the credit is up to \$125,000, for the same expenses, but at half of the above rates. 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.

### **Credit Success**

Since the City's Biotechnology credit was initially authorized in 2009, the number of jobs in biotechnology research has increased by 11.6%, and the number of biotechnology firms has increased by 27%. The average wage in the City for biotechnology research jobs in the City is \$93,000.

For tax year 2010, 22 firms claimed the biotechnology credit, totaling approximately \$2 million in credits. For tax year 2011, 21 firms claimed the biotechnology credit, totaling approximately \$2 million in credits.

### **Authorizing Legislation**

On August 17, 2012, the Governor signed Chapter 429 of the Laws of 2012, which amended the Tax Law to allow New York City to extend its existing Biotechnology Credit through December 31, 2015.

### **Proposed Int. 926-A**

This legislation amends sections 1-604 and 11-503 of the Administrative Code to extend the biotechnology credit, which currently sunsets December 31, 2012, to December 31, 2015.

Proposed Int. 926-A

By Council Members Lappin, Garodnick, Brewer, Fidler, James, Koo, Lander, Recchia, Rodriguez, Halloran and Ulrich

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

Be it enacted by the Council as follows:

Section 1. Subparagraph 8 of paragraph (a) of subdivision (o) of section 11-503 of the administrative code of the city of New York, as added by local law number 67 for the year 2009, is amended to read as follows:

(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] sixteen.

§2. Subparagraph 8 of paragraph (a) of subdivision 21 of section 11-604 of the administrative code of the city of New York, as added by local law number 67 for the year 2009, is amended to read as follows:

(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] sixteen.

§ 3. Section 5 of local law number 67 for the year 2009 is amended to read as follows:

§ 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] 2016.

§ 4. This local law shall take effect immediately and, if it shall have become a law after December 31, 2012, shall be retroactive to and deemed to have been in full force and effect as of December 31, 2012.

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