

# STATE OF NEW YORK

5238

2013-2014 Regular Sessions

## IN SENATE

May 15, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to authorizing any city having a population of one million or more to provide an angel investor credit against the unincorporated business tax and personal income tax of such city for certain qualified emerging companies and medical technology companies

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

1 Section 1. Section 1201-a of the tax law is amended by adding a new  
2 subdivision (e) to read as follows:

3 (e) Angel investor credit. 1. Any city in this state having a popu-  
4 lation of one million or more, acting through its local legislative  
5 body, is hereby authorized to adopt and amend local laws to allow an  
6 angel investor credit against the unincorporated business tax imposed  
7 pursuant to the authority of chapter seven hundred seventy-two of the  
8 laws of nineteen hundred sixty-six to an eligible taxpayer that: (A) is  
9 an accredited investor as defined in rule 501 of regulation D of the  
10 securities and exchange commission of the United States pursuant to the  
11 Securities Exchange Act of 1933, as amended; (B) makes a qualified  
12 investment in a qualified emerging technology company, as defined in  
13 paragraph (c) of subdivision one of section thirty-one hundred two-e of  
14 the public authorities law, except that such company shall mean a compa-  
15 ny located in such city, that engages in the activities referenced in  
16 subparagraph five of paragraph b of subdivision one of section thirty-  
17 one hundred two-e of the public authorities law, or makes a qualified  
18 investment in a company that engages in medical technology, as defined  
19 in parts 3345 and 3394 of the North American Industry Classification  
20 System; (C) has no more than one hundred full-time employees, of which  
21 at least seventy-five percent are employed in such city, has a ratio of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 research and development funds to net sales, as referred to in section  
2 thirty-one hundred two-e of the public authorities law, which equals or  
3 exceeds six percent during its taxable year, and has gross revenues,  
4 along with the gross revenues of its affiliates and related members, not  
5 exceeding twenty million dollars for the taxable year immediately  
6 preceding the year the taxpayer is allowed a credit under this subdivi-  
7 sion; and (D) owns less than fifty percent of the qualified emerging  
8 technology company or medical technology company after the qualified  
9 investment; provided, however, no credit authorized by this subdivision  
10 for a qualified investment shall be granted to a taxpayer if such  
11 taxpayer is granted an angel investor credit against the taxes imposed  
12 pursuant to article thirty of this chapter for such qualified invest-  
13 ment. The amount of the credit shall be equal to the sum of the amounts  
14 specified in paragraph two of this subdivision. For the purposes of this  
15 subdivision, a "qualified investment" shall mean the contribution of  
16 property to a corporation in exchange for original issue capital stock  
17 or other ownership interest, the contribution of property to a partner-  
18 ship in exchange for an interest in the partnership, and similar  
19 contributions in the case of a business entity not in corporate or part-  
20 nership form in exchange for an ownership interest in such entity;  
21 provided, however, a qualified investment shall not include investments  
22 made by or on behalf of an owner of the business, including, but not  
23 limited to, a stockholder, partner or sole proprietor, or any related  
24 person, as defined in subparagraph (C) of paragraph three of subsection  
25 (b) of section four hundred sixty-five of the internal revenue code. For  
26 purposes of this subdivision, the term "related member" shall mean a  
27 person, corporation, or other entity, including an entity that is treat-  
28 ed as a partnership or other pass-through vehicle for purposes of feder-  
29 al taxation, whether such person, corporation or entity is a taxpayer or  
30 not, where one such person, corporation, or entity, or set of related  
31 persons, corporations or entities, directly or indirectly owns or  
32 controls a controlling interest in another entity. Such entity or enti-  
33 ties may include all taxpayers under articles nine, nine-A, thirteen,  
34 twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter.  
35 For purposes of this subdivision, the term "affiliates" shall mean those  
36 corporations that are members of the same affiliated group, as defined  
37 in section fifteen hundred four of the internal revenue code, as the  
38 taxpayer.

39 2. (A) The percentage of the credit allowed to a taxpayer under this  
40 subdivision shall be two percent per each qualified investment made  
41 during the taxable year and the succeeding four years provided the cred-  
42 it is properly claimed pursuant to the rules established by the New York  
43 city department of finance, up to a maximum allowed credit of twenty  
44 thousand dollars per taxable year. The total amount of credit allowable  
45 to a taxpayer under this subdivision for all years, taken in the aggre-  
46 gate, shall not exceed one hundred thousand dollars. If the taxpayer is  
47 a partner in a partnership or member in an unincorporated business, then  
48 the limit imposed by the preceding sentence shall be applied at the  
49 entity level, so that the aggregate credit allowed to all the partners  
50 in such partnership or members in such unincorporated business in any  
51 taxable year does not exceed twenty thousand dollars, and the total  
52 amount of credit allowable to all the partners in such partnership or  
53 members in such unincorporated business for all years, taken in the  
54 aggregate, shall not exceed one hundred thousand dollars. The credit  
55 allowed under this subdivision shall not be allowed to a taxpayer with  
56 respect to any unincorporated business tax paid for any taxable year

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1 beginning before January first, two thousand fourteen. The credit  
2 allowed under this subdivision for any taxable year shall be deemed to  
3 be an overpayment of tax by the taxpayer to be credited or refunded,  
4 without interest, in accordance with the provisions of section 11-526 of  
5 the administrative code of the city of New York.

6 (B) If, at any time during the five year period beginning on the date  
7 that the qualified investment is made by the taxpayer there is a recap-  
8 ture event with respect to such investment, then the unincorporated tax  
9 owed by such taxpayer for the taxable year in which such event occurs  
10 shall be increased by the credit recapture amount.

11 (1) For purposes of this subparagraph, the credit recapture amount is  
12 an amount equal to the sum of: (i) the aggregate decrease in the credits  
13 allowed to the taxpayer under this subdivision for all prior taxable  
14 years which would have resulted if no credit had been determined under  
15 this subdivision with respect to such qualified investment, plus (ii)  
16 interest at the underpayment rate established by the New York city  
17 department of finance for each prior taxable year for the period begin-  
18 ning on the due date for filing the return for the prior taxable year  
19 involved.

20 (2) For purposes of this subparagraph, a recapture event shall mean if  
21 at the close of any taxable year in the five-year period: (i) the quali-  
22 fied emerging technology company or medical technology company no longer  
23 qualifies as a qualified emerging technology company or medical technol-  
24 ogy company; (ii) the qualified emerging technology company or medical  
25 technology company has been sold by the taxpayer investing in such  
26 company; or (iii) the taxpayer has withdrawn the taxpayer's investment  
27 wholly or partially from the qualified emerging technology company or  
28 medical technology company.

29 3. The New York city department of finance shall establish by rule by  
30 October thirty-first, two thousand thirteen procedures for the allo-  
31 cation of tax credits as required by paragraph two of this subdivision.  
32 Such rules shall include provisions describing the application process,  
33 the due dates for such applications, the standards that shall be used to  
34 evaluate the applications, the documentation that will be provided to  
35 taxpayers to substantiate the amount of tax credits allocated to such  
36 taxpayers, and such other provisions as deemed necessary and appropri-  
37 ate.

38 4. Any local law adopted pursuant to this subdivision may provide for  
39 a credit as authorized by this subdivision for a maximum of three  
40 consecutive calendar years, provided, however, that any such credit may  
41 not apply to taxable years beginning before January first, two thousand  
42 fourteen or beginning on or after January first, two thousand seventeen.

43 § 2. Section 1310 of the tax law is amended by adding a new subsection  
44 (g) to read as follows:

45 (g) Angel investor credit. (1) Notwithstanding any other provision of  
46 law to the contrary, any city having a population of one million or  
47 more, acting through its local legislative body, is hereby authorized  
48 and empowered to adopt and amend local laws granting in any such city,  
49 an angel investor credit against the taxes authorized in this article to  
50 an eligible taxpayer that: (A) is an accredited investor as defined in  
51 rule 501 of regulation D of the securities and exchange commission of  
52 the United States pursuant to the Securities Exchange Act of 1933, as  
53 amended; (B) makes a qualified investment in a qualified emerging tech-  
54 nology company, as defined in paragraph (c) of subdivision one of  
55 section thirty-one hundred two-e of the public authorities law, except  
56 that such company shall mean a company located in such city, that

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1 engages in the activities referenced in subparagraph five of paragraph b  
2 of subdivision one of section thirty-one hundred two-e of the public  
3 authorities law, or makes a qualified investment in a company that  
4 engages in medical technology, as defined in parts 3345 and 3394 of the  
5 North American Industry Classification System; (C) has no more than one  
6 hundred full-time employees, of which at least seventy-five percent are  
7 employed in such city, has a ratio of research and development funds to  
8 net sales, as referred to in section thirty-one hundred two-e of the  
9 public authorities law, which equals or exceeds six percent during its  
10 taxable year, and has gross revenues, along with the gross revenues of  
11 its affiliates and related members, not exceeding twenty million dollars  
12 for the taxable year immediately preceding the year the taxpayer is  
13 allowed a credit under this subsection; and (D) owns less than fifty  
14 percent of the qualified emerging technology company or medical technol-  
15 ogy company after their qualified investment; provided, however, no  
16 credit authorized by this subsection for a qualified investment shall be  
17 granted to a taxpayer if such taxpayer is granted an angel investor  
18 credit against the unincorporated business tax imposed pursuant to the  
19 authority of chapter seven hundred seventy-two of the laws of nineteen  
20 hundred sixty-six for such qualified investment. The amount of the cred-  
21 it shall be equal to the sum of the amounts specified in paragraph two  
22 of this subsection subject to the limitations in paragraphs three and  
23 four of this subsection. For purposes of this subsection, a "qualified  
24 investment" shall mean the contribution of property to a corporation in  
25 exchange for original issue capital stock or other ownership interest,  
26 the contribution of property to a partnership in exchange for an inter-  
27 est in the partnership, and similar contributions in the case of a busi-  
28 ness entity not in corporate or partnership form in exchange for an  
29 ownership interest in such entity; provided, however, a qualified  
30 investment shall not include investments made by or on behalf of an  
31 owner of the business, including, but not limited to, a stockholder,  
32 partner or sole proprietor, or any related person, as defined in subpar-  
33 agraph (C) of paragraph three of subsection (b) of section four hundred  
34 sixty-five of the internal revenue code. For purposes of this subsection  
35 a "related member" shall mean a person, corporation, or other entity,  
36 including an entity that is treated as a partnership or other pass-  
37 through vehicle for purposes of federal taxation, whether such person,  
38 corporation or entity is a taxpayer or not, where one such person,  
39 corporation, or entity, or set of related persons, corporations or enti-  
40 ties, directly or indirectly owns or controls a controlling interest in  
41 another entity. Such entity or entities may include all taxpayers under  
42 articles nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or  
43 thirty-three-A of this chapter. For purposes of this subsection, "affil-  
44 iates" shall mean those corporations that are members of the same affil-  
45 iated group, as defined in section fifteen hundred four of the internal  
46 revenue code, as the taxpayer.

47 (2) (A) The percentage of the credit allowed to a taxpayer under this  
48 subsection shall be two percent per each qualified investment made  
49 during the taxable year and the succeeding four years provided the cred-  
50 it is properly claimed pursuant to the rules established by the New York  
51 city department of finance, up to a maximum allowed credit of twenty  
52 thousand dollars per taxable year. The total amount of credit allowable  
53 to a taxpayer under this subsection for all years, taken in the aggre-  
54 gate, shall not exceed one hundred thousand dollars. If the taxpayer is  
55 a partner in a partnership or member in an unincorporated business, then  
56 the limit imposed by the preceding sentence shall be applied at the

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1 entity level, so that the aggregate credit allowed to all the partners  
2 in such partnership or members in such unincorporated business in any  
3 taxable year does not exceed twenty thousand dollars, and the total  
4 amount of credit allowable to all the partners in such partnership or  
5 members in such unincorporated business for all years, taken in the  
6 aggregate, shall not exceed one hundred thousand dollars. The credit  
7 allowed under this subsection shall not be allowed to a taxpayer with  
8 respect to any city personal income tax imposed under this article paid  
9 for any taxable year beginning before January first, two thousand four-  
10 teen.

11 (B) If, at any time during the five year period beginning on the date  
12 that the qualified investment is made by the taxpayer there is a recap-  
13 ture event with respect to such investment, then the city personal  
14 income tax owed by such taxpayer for the taxable year in which such  
15 event occurs shall be increased by the credit recapture amount. For  
16 purposes of this subparagraph, the credit recapture amount is an amount  
17 equal to the sum of: (i) the aggregate decrease in the credits allowed  
18 to the taxpayer under this subsection for all prior taxable years which  
19 would have resulted if no credit had been determined under this  
20 subsection with respect to such qualified investment, plus (ii) interest  
21 at the underpayment rate established by the New York City department of  
22 finance for each prior taxable year for the period beginning on the due  
23 date for filing the return for the prior taxable year involved. For  
24 purposes of this subparagraph, a "recapture event" shall mean if at the  
25 close of any taxable year in the five-year period: (i) the qualified  
26 emerging technology company or medical technology company no longer  
27 qualifies as a qualified emerging technology company or a medical tech-  
28 nology company; (ii) the qualified emerging technology company or the  
29 medical technology company has been sold by the taxpayer investing in  
30 such company; or (iii) the taxpayer has withdrawn the taxpayer's invest-  
31 ment wholly or partially from the qualified emerging technology company  
32 or the medical technology company.

33 (3) In the case of a resident taxpayer, the credit provided by local  
34 law adopted pursuant to this subsection shall be allowed against the  
35 taxes authorized by this article for the taxable year reduced by the  
36 credits permitted by this article. If the credit exceeds the tax as so  
37 reduced, the taxpayer may receive, and the comptroller, subject to a  
38 certificate of the commissioner of the New York city department of  
39 finance, shall pay as an overpayment, without interest, the amount of  
40 such excess.

41 (4) If a taxpayer changes status during the taxable year from resident  
42 to nonresident, or from nonresident to resident, the credit shall be  
43 prorated according to the number of months in the period of residence.

44 (5) Subject to the provisions of paragraph three of this subsection,  
45 in the case of a husband and wife who file a joint return, but who are  
46 required to determine their city personal income taxes separately, the  
47 credit authorized pursuant to this subsection may be applied against the  
48 tax of either or divided between them as they may elect. In the case of  
49 a husband and wife who are not required to file a federal return, the  
50 credit under this subsection shall be allowed only if such taxpayers  
51 file a joint city personal income tax return.

52 (6) The New York city department of finance shall establish by rule by  
53 October thirty-first, two thousand thirteen procedures for the allo-  
54 cation of tax credits as required by paragraphs two and three of this  
55 subsection. Such rules shall include provisions describing the applica-  
56 tion process, the due dates for such applications, the standards that

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1 shall be used to evaluate the applications, the documentation that will  
2 be provided to taxpayers to substantiate the amount of tax credits allo-  
3 cated to such taxpayers, and such other provisions as deemed necessary  
4 and appropriate.

5 (7) Any local law adopted pursuant to this subsection may provide for  
6 a credit as authorized by this subsection for a maximum of three consec-  
7 utive calendar years, provided, however, that any such credit may not  
8 apply to taxable years beginning January first, two thousand fourteen or  
9 beginning on or after January first, two thousand seventeen.

10 § 3. The aggregate amount of tax credits allowed under this act in any  
11 calendar year shall be up to three million dollars. Such aggregate  
12 amount of credits shall be allocated by the New York city department of  
13 finance among taxpayers in order of priority based upon the date of  
14 filing an application for allocation of an angel investor credit with  
15 such department. If the total amount of allocated credits applied for in  
16 any particular year exceeds the aggregate amount of tax credits allowed  
17 for such year, such excess shall be treated as having been applied for  
18 on the first day of the subsequent year.

19 § 4. A certified copy of the local law enacted pursuant to this act  
20 shall be mailed by registered mail to the state department of taxation  
21 and finance at its office in Albany within fifteen days of its enact-  
22 ment. However, the state department of taxation and finance may allow  
23 additional time for such certified copy to be mailed if it deems such  
24 action to be consistent with its duties under this act.

25 § 5. This act shall take effect immediately.

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**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S5238

**SPONSOR:** GOLDEN

**TITLE OF BILL:** An act to amend the tax law, in relation to authorizing any city having a population of one million or more to provide an angel investor credit against the unincorporated business tax and personal income tax of such city for certain qualified emerging companies and medical technology companies

**SUMMARY OF PROVISIONS:** Section 1 enables any city with a population of one million or more to allow an angel investor credit to an eligible taxpayer against the unincorporated business tax. Such credit would be allowed to an eligible taxpayer that 1) is an accredited investor; 2) makes a qualified investment in a company located in the city that engages in biotechnology or medical technology; 3) has no more than 100 full-time employees, of which at least 75% are employed in the city of New York, has 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 its taxable year, and has gross revenues, along with the gross revenues of its affiliates and related members, not exceeding \$20 million for the taxable year immediately preceding the year the taxpayer is allowed a credit under this subdivision; and (4) own less than 50% of the qualified emerging technology company ("QETC") or medical technology company after their qualified investment.

Eligible taxpayers granted an angel investor credit for a qualified investment against the city personal income tax shall be ineligible for an angel investor credit against the unincorporated business tax for such investment.

Sets forth definitions for 1) a "qualified investment", 2) "related member", and 3) "affiliates".

Such credit shall be refundable and allowed against the unincorporated business tax paid on or after January 1, 2013.

No later than October 1, 2012, the NYC Department of Finance shall establish by rule procedures for the allocation of the angel investor credit to eligible taxpayers.

Any local law adopted pursuant to this Act may provide for a credit for a maximum of 3 consecutive calendar years, but shall not apply to taxable years beginning on or before January 1, 2013 or after January 1, 2016.

Section 2 mirrors the provisions of section 1, except that:

1. Such section applies to the city personal income tax,
2. Eligible taxpayers granted an angel investor credit for a qualified

investment against the unincorporated business tax shall be ineligible for an angel investor credit against the city personal income tax for such investment;

3. In the case of a resident taxpayer, the credit provided shall be against the credit provided shall be allowed against the city personal income tax for the taxable year reduced by the credits already taken

against the PIT. If the credit exceeds the tax as so reduced, the credit shall be refundable;

4. If a taxpayer changes residency status during the taxable year from resident to nonresident, or from nonresident to resident, the credit shall be prorated according to the number of months in the period of residence; and

5. In the case of a husband and wife who file a joint return, but who are required to determine their city personal income taxes separately, the angel investor credit may be applied against the tax of either or divided between them as they may elect. In the case of a husband and wife who are not required to file a federal return, the credit under this subsection shall be allowed only if such taxpayers file a joint city personal income tax return.

Section 3 provides that the aggregate amount of tax credits allowed under this act in any calendar year shall be up to \$3 million. Such aggregate amount of credits shall be allocated by the New York City department of finance among taxpayers in order of priority based upon the date of filing an application for allocation of the angel investor credit with such department. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year, such excess shall be treated as having been applied for on the first day of the subsequent year.

**STATEMENT IN SUPPORT:** The Angel Investor Tax Credit would provide an incentive for investment in small, early stage biotech and medtech businesses in New York City. It is designed to aid the formation of promising firms by lowering their cost of capital. It would provide accredited investors with a credit of up to 10% of their investment. Angel Investors look for fast growing firms and as a result Angel Credits can be a significant source of job growth over time. Investors would receive a refundable credit equal to 10% of eligible investment Credits would be limited to a maximum credit of \$100,000 payable over 5 years (about \$20,000 per year) Given that nationally the typical angel's investment in a single firm is around \$325,000, we expect most credits to be well under the limit. The credit would be against the City's personal income tax, or for partnerships; against the unincorporated business tax. The total credits that the City could issue in a given year will be capped at \$3 million. Why an Angel Credit? Like the City's Biotech Tax Credit, an angel investor tax credit for biotech and medtech would attract capital to a promising sector in the city and could be viewed as part of a long term effort to diversify the City economy. Nationally, this is a rapidly growth export sector that makes use of growing demand in the world economy.

**BACKGROUND** Angel Investors An angel investor is an affluent individual who provides personal capital to start-up companies, often through a trust, fund, or business. They are distinct from venture capitalists who invest other persons' capital through a professionally-managed fund.



Angel investors are particularly critical for small start-ups seeking capital, because most venture capital funds are not interested in investments of less than \$1 million. Indeed, angel investments are highly sought after by high-growth start-ups, particularly after spending their own personal resources.

Angel investments in the United States account for almost as much in aggregate as those of venture capitalists. In 2010 angel investors provided \$20.1 billion in capital. Angel investors however, furnish capital to 20 times as many businesses as do venture capitalists. In 2010 61,900 firms were served by angel investors, versus 3,047 businesses by venture capitalists. According to the Center for Venture Research, there were 258,000 angel investors in the United States in 2007. In 2010 healthcare/medical firms accounted for 30% of angel investments. In comparison, software, biotech and industrial/energy firms comprised 16%, 15%, and 8% of angel investments respectively.

Angel Credits in Other States. Currently, more than 20 states have some form of an Angel Investor Credit. New Jersey is among them.

**FISCAL IMPACT:** The credit will have no impact on the New York State Budget. The New York City Council Finance Division estimates that the credit will reduce City personal income tax and unincorporated business tax revenues by \$600,000 in City Fiscal Year 2014, rising to \$1.8 million in City Fiscal Year 2016.

**EFFECTIVE DATE:** Immediate

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# STATE OF NEW YORK

2355

2013-2014 Regular Sessions

## IN ASSEMBLY

January 14, 2013

Introduced by M. of A. SCARBOROUGH -- read once and referred to the  
Committee on Ways and Means

AN ACT to amend the tax law, in relation to authorizing any city having  
a population of one million or more to provide an angel investor cred-  
it against the unincorporated business tax and personal income tax of  
such city for certain qualified emerging companies and medical tech-  
nology companies

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

1 Section 1. Section 1201-a of the tax law is amended by adding a new  
2 subdivision (e) to read as follows:

3 (e) Angel investor credit. 1. Any city in this state having a popu-  
4 lation of one million or more, acting through its local legislative  
5 body, is hereby authorized to adopt and amend local laws to allow an  
6 angel investor credit against the unincorporated business tax imposed  
7 pursuant to the authority of chapter seven hundred seventy-two of the  
8 laws of nineteen hundred sixty-six to an eligible taxpayer that: (A) is  
9 an accredited investor as defined in rule 501 of regulation D of the  
10 securities and exchange commission of the United States pursuant to the  
11 Securities Exchange Act of 1933, as amended; (B) makes a qualified  
12 investment in a qualified emerging technology company, as defined in  
13 paragraph (c) of subdivision one of section thirty-one hundred two-e of  
14 the public authorities law, except that such company shall mean a compa-  
15 ny located in such city, that engages in the activities referenced in  
16 subparagraph five of paragraph b of subdivision one of section thirty-  
17 one hundred two-e of the public authorities law, or makes a qualified  
18 investment in a company that engages in medical technology, as defined  
19 in parts 3345 and 3394 of the North American Industry Classification  
20 System; (C) has no more than one hundred full-time employees, of which  
21 at least seventy-five percent are employed in such city, has a ratio of  
22 research and development funds to net sales, as referred to in section

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[-] is old law to be omitted.

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1 thirty-one hundred two-e of the public authorities law, which equals or  
2 exceeds six percent during its taxable year, and has gross revenues,  
3 along with the gross revenues of its affiliates and related members, not  
4 exceeding twenty million dollars for the taxable year immediately  
5 preceding the year the taxpayer is allowed a credit under this subdivi-  
6 sion; and (D) owns less than fifty percent of the qualified emerging  
7 technology company or medical technology company after the qualified  
8 investment; provided, however, no credit authorized by this subdivision  
9 for a qualified investment shall be granted to a taxpayer if such  
10 taxpayer is granted an angel investor credit against the taxes imposed  
11 pursuant to article thirty of this chapter for such qualified invest-  
12 ment. The amount of the credit shall be equal to the sum of the amounts  
13 specified in paragraph two of this subdivision. For the purposes of this  
14 subdivision, a "qualified investment" shall mean the contribution of  
15 property to a corporation in exchange for original issue capital stock  
16 or other ownership interest, the contribution of property to a partner-  
17 ship in exchange for an interest in the partnership, and similar  
18 contributions in the case of a business entity not in corporate or part-  
19 nership form in exchange for an ownership interest in such entity;  
20 provided, however, a qualified investment shall not include investments  
21 made by or on behalf of an owner of the business, including, but not  
22 limited to, a stockholder, partner or sole proprietor, or any related  
23 person, as defined in subparagraph (C) of paragraph three of subsection  
24 (b) of section four hundred sixty-five of the internal revenue code. For  
25 purposes of this subdivision, the term "related member" shall mean a  
26 person, corporation, or other entity, including an entity that is treat-  
27 ed as a partnership or other pass-through vehicle for purposes of feder-  
28 al taxation, whether such person, corporation or entity is a taxpayer or  
29 not, where one such person, corporation, or entity, or set of related  
30 persons, corporations or entities, directly or indirectly owns or  
31 controls a controlling interest in another entity. Such entity or enti-  
32 ties may include all taxpayers under articles nine, nine-A, thirteen,  
33 twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter.  
34 For purposes of this subdivision, the term "affiliates" shall mean those  
35 corporations that are members of the same affiliated group, as defined  
36 in section fifteen hundred four of the internal revenue code, as the  
37 taxpayer.

38 2. (A) The percentage of the credit allowed to a taxpayer under this  
39 subdivision shall be two percent per each qualified investment made  
40 during the taxable year and the succeeding four years provided the cred-  
41 it is properly claimed pursuant to the rules established by the New York  
42 city department of finance, up to a maximum allowed credit of twenty  
43 thousand dollars per taxable year. The total amount of credit allowable  
44 to a taxpayer under this subdivision for all years, taken in the aggre-  
45 gate, shall not exceed one hundred thousand dollars. If the taxpayer is  
46 a partner in a partnership or member in an unincorporated business, then  
47 the limit imposed by the preceding sentence shall be applied at the  
48 entity level, so that the aggregate credit allowed to all the partners  
49 in such partnership or members in such unincorporated business in any  
50 taxable year does not exceed twenty thousand dollars, and the total  
51 amount of credit allowable to all the partners in such partnership or  
52 members in such unincorporated business for all years, taken in the  
53 aggregate, shall not exceed one hundred thousand dollars. The credit  
54 allowed under this subdivision shall not be allowed to a taxpayer with  
55 respect to any unincorporated business tax paid for any taxable year  
56 beginning before January first, two thousand fourteen. The credit

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1 allowed under this subdivision for any taxable year shall be deemed to  
2 be an overpayment of tax by the taxpayer to be credited or refunded,  
3 without interest, in accordance with the provisions of section 11-526 of  
4 the administrative code of the city of New York.

5 (B) If, at any time during the five year period beginning on the date  
6 that the qualified investment is made by the taxpayer there is a recap-  
7 ture event with respect to such investment, then the unincorporated tax  
8 owed by such taxpayer for the taxable year in which such event occurs  
9 shall be increased by the credit recapture amount.

10 (1) For purposes of this subparagraph, the credit recapture amount is  
11 an amount equal to the sum of: (i) the aggregate decrease in the credits  
12 allowed to the taxpayer under this subdivision for all prior taxable  
13 years which would have resulted if no credit had been determined under  
14 this subdivision with respect to such qualified investment, plus (ii)  
15 interest at the underpayment rate established by the New York city  
16 department of finance for each prior taxable year for the period begin-  
17 ning on the due date for filing the return for the prior taxable year  
18 involved.

19 (2) For purposes of this subparagraph, a recapture event shall mean if  
20 at the close of any taxable year in the five-year period: (i) the quali-  
21 fied emerging technology company or medical technology company no longer  
22 qualifies as a qualified emerging technology company or medical technol-  
23 ogy company; (ii) the qualified emerging technology company or medical  
24 technology company has been sold by the taxpayer investing in such  
25 company; or (iii) the taxpayer has withdrawn the taxpayer's investment  
26 wholly or partially from the qualified emerging technology company or  
27 medical technology company.

28 3. The New York city department of finance shall establish by rule by  
29 October thirty-first, two thousand thirteen procedures for the allo-  
30 cation of tax credits as required by paragraph two of this subdivision.  
31 Such rules shall include provisions describing the application process,  
32 the due dates for such applications, the standards that shall be used to  
33 evaluate the applications, the documentation that will be provided to  
34 taxpayers to substantiate the amount of tax credits allocated to such  
35 taxpayers, and such other provisions as deemed necessary and appropri-  
36 ate.

37 4. Any local law adopted pursuant to this subdivision may provide for  
38 a credit as authorized by this subdivision for a maximum of three  
39 consecutive calendar years, provided, however, that any such credit may  
40 not apply to taxable years beginning before January first, two thousand  
41 fourteen or beginning on or after January first, two thousand seventeen.

42 § 2. Section 1310 of the tax law is amended by adding a new subsection  
43 (g) to read as follows:

44 (g) Angel investor credit. (1) Notwithstanding any other provision of  
45 law to the contrary, any city having a population of one million or  
46 more, acting through its local legislative body, is hereby authorized  
47 and empowered to adopt and amend local laws granting in any such city,  
48 an angel investor credit against the taxes authorized in this article to  
49 an eligible taxpayer that: (A) is an accredited investor as defined in  
50 rule 501 of regulation D of the securities and exchange commission of  
51 the United States pursuant to the Securities Exchange Act of 1933, as  
52 amended; (B) makes a qualified investment in a qualified emerging tech-  
53 nology company, as defined in paragraph (c) of subdivision one of  
54 section thirty-one hundred two-e of the public authorities law, except  
55 that such company shall mean a company located in such city, that  
56 engages in the activities referenced in subparagraph five of paragraph b

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1 of subdivision one of section thirty-one hundred two-e of the public  
2 authorities law, or makes a qualified investment in a company that  
3 engages in medical technology, as defined in parts 3345 and 3394 of the  
4 North American Industry Classification System; (C) has no more than one  
5 hundred full-time employees, of which at least seventy-five percent are  
6 employed in such city, has a ratio of research and development funds to  
7 net sales, as referred to in section thirty-one hundred two-e of the  
8 public authorities law, which equals or exceeds six percent during its  
9 taxable year, and has gross revenues, along with the gross revenues of  
10 its affiliates and related members, not exceeding twenty million dollars  
11 for the taxable year immediately preceding the year the taxpayer is  
12 allowed a credit under this subsection; and (D) owns less than fifty  
13 percent of the qualified emerging technology company or medical technol-  
14 ogy company after their qualified investment; provided, however, no  
15 credit authorized by this subsection for a qualified investment shall be  
16 granted to a taxpayer if such taxpayer is granted an angel investor  
17 credit against the unincorporated business tax imposed pursuant to the  
18 authority of chapter seven hundred seventy-two of the laws of nineteen  
19 hundred sixty-six for such qualified investment. The amount of the cred-  
20 it shall be equal to the sum of the amounts specified in paragraph two  
21 of this subsection subject to the limitations in paragraphs three and  
22 four of this subsection. For purposes of this subsection, a "qualified  
23 investment" shall mean the contribution of property to a corporation in  
24 exchange for original issue capital stock or other ownership interest,  
25 the contribution of property to a partnership in exchange for an inter-  
26 est in the partnership, and similar contributions in the case of a busi-  
27 ness entity not in corporate or partnership form in exchange for an  
28 ownership interest in such entity; provided, however, a qualified  
29 investment shall not include investments made by or on behalf of an  
30 owner of the business, including, but not limited to, a stockholder,  
31 partner or sole proprietor, or any related person, as defined in subpar-  
32 agraph (C) of paragraph three of subsection (b) of section four hundred  
33 sixty-five of the internal revenue code. For purposes of this subsection  
34 a "related member" shall mean a person, corporation, or other entity,  
35 including an entity that is treated as a partnership or other pass-  
36 through vehicle for purposes of federal taxation, whether such person,  
37 corporation or entity is a taxpayer or not, where one such person,  
38 corporation, or entity, or set of related persons, corporations or enti-  
39 ties, directly or indirectly owns or controls a controlling interest in  
40 another entity. Such entity or entities may include all taxpayers under  
41 articles nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or  
42 thirty-three-A of this chapter. For purposes of this subsection, "affil-  
43 iates" shall mean those corporations that are members of the same affil-  
44 iated group, as defined in section fifteen hundred four of the internal  
45 revenue code, as the taxpayer.

46 (2) (A) The percentage of the credit allowed to a taxpayer under this  
47 subsection shall be two percent per each qualified investment made  
48 during the taxable year and the succeeding four years provided the cred-  
49 it is properly claimed pursuant to the rules established by the New York  
50 city department of finance, up to a maximum allowed credit of twenty  
51 thousand dollars per taxable year. The total amount of credit allowable  
52 to a taxpayer under this subsection for all years, taken in the aggre-  
53 gate, shall not exceed one hundred thousand dollars. If the taxpayer is  
54 a partner in a partnership or member in an unincorporated business, then  
55 the limit imposed by the preceding sentence shall be applied at the  
56 entity level, so that the aggregate credit allowed to all the partners

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1 in such partnership or members in such unincorporated business in any  
2 taxable year does not exceed twenty thousand dollars, and the total  
3 amount of credit allowable to all the partners in such partnership or  
4 members in such unincorporated business for all years, taken in the  
5 aggregate, shall not exceed one hundred thousand dollars. The credit  
6 allowed under this subsection shall not be allowed to a taxpayer with  
7 respect to any city personal income tax imposed under this article paid  
8 for any taxable year beginning before January first, two thousand four-  
9 teen.

10 (B) If, at any time during the five year period beginning on the date  
11 that the qualified investment is made by the taxpayer there is a recap-  
12 ture event with respect to such investment, then the city personal  
13 income tax owed by such taxpayer for the taxable year in which such  
14 event occurs shall be increased by the credit recapture amount. For  
15 purposes of this subparagraph, the credit recapture amount is an amount  
16 equal to the sum of: (i) the aggregate decrease in the credits allowed  
17 to the taxpayer under this subsection for all prior taxable years which  
18 would have resulted if no credit had been determined under this  
19 subsection with respect to such qualified investment, plus (ii) interest  
20 at the underpayment rate established by the New York City department of  
21 finance for each prior taxable year for the period beginning on the due  
22 date for filing the return for the prior taxable year involved. For  
23 purposes of this subparagraph, a "recapture event" shall mean if at the  
24 close of any taxable year in the five-year period: (i) the qualified  
25 emerging technology company or medical technology company no longer  
26 qualifies as a qualified emerging technology company or a medical tech-  
27 nology company; (ii) the qualified emerging technology company or the  
28 medical technology company has been sold by the taxpayer investing in  
29 such company; or (iii) the taxpayer has withdrawn the taxpayer's invest-  
30 ment wholly or partially from the qualified emerging technology company  
31 or the medical technology company.

32 (3) In the case of a resident taxpayer, the credit provided by local  
33 law adopted pursuant to this subsection shall be allowed against the  
34 taxes authorized by this article for the taxable year reduced by the  
35 credits permitted by this article. If the credit exceeds the tax as so  
36 reduced, the taxpayer may receive, and the comptroller, subject to a  
37 certificate of the commissioner of the New York city department of  
38 finance, shall pay as an overpayment, without interest, the amount of  
39 such excess.

40 (4) If a taxpayer changes status during the taxable year from resident  
41 to nonresident, or from nonresident to resident, the credit shall be  
42 prorated according to the number of months in the period of residence.

43 (5) Subject to the provisions of paragraph three of this subsection,  
44 in the case of a husband and wife who file a joint return, but who are  
45 required to determine their city personal income taxes separately, the  
46 credit authorized pursuant to this subsection may be applied against the  
47 tax of either or divided between them as they may elect. In the case of  
48 a husband and wife who are not required to file a federal return, the  
49 credit under this subsection shall be allowed only if such taxpayers  
50 file a joint city personal income tax return.

51 (6) The New York city department of finance shall establish by rule by  
52 October thirty-first, two thousand thirteen procedures for the allo-  
53 cation of tax credits as required by paragraphs two and three of this  
54 subsection. Such rules shall include provisions describing the applica-  
55 tion process, the due dates for such applications, the standards that  
56 shall be used to evaluate the applications, the documentation that will

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1 be provided to taxpayers to substantiate the amount of tax credits allo-  
2 cated to such taxpayers, and such other provisions as deemed necessary  
3 and appropriate.

4 (7) Any local law adopted pursuant to this subsection may provide for  
5 a credit as authorized by this subsection for a maximum of three consec-  
6 utive calendar years, provided, however, that any such credit may not  
7 apply to taxable years beginning January first, two thousand fourteen or  
8 beginning on or after January first, two thousand seventeen.

9 § 3. The aggregate amount of tax credits allowed under this act in any  
10 calendar year shall be up to three million dollars. Such aggregate  
11 amount of credits shall be allocated by the New York city department of  
12 finance among taxpayers in order of priority based upon the date of  
13 filing an application for allocation of an angel investor credit with  
14 such department. If the total amount of allocated credits applied for in  
15 any particular year exceeds the aggregate amount of tax credits allowed  
16 for such year, such excess shall be treated as having been applied for  
17 on the first day of the subsequent year.

18 § 4. A certified copy of the local law enacted pursuant to this act  
19 shall be mailed by registered mail to the state department of taxation  
20 and finance at its office in Albany within fifteen days of its enact-  
21 ment. However, the state department of taxation and finance may allow  
22 additional time for such certified copy to be mailed if it deems such  
23 action to be consistent with its duties under this act.

24 § 5. This act shall take effect immediately.

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**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A2355

**SPONSOR:** Scarborough

**TITLE OF BILL:** An act to amend the tax law, in relation to authorizing any city having a population of one million or more to provide an angel investor credit against the unincorporated business tax and personal income tax of such city for certain qualified emerging companies and medical technology companies

**PURPOSE OR GENERAL IDEA OF BILL:**

Provides an angel investor credit against certain taxes imposed in a city if one million or more for investment in certain qualified emerging companies.

**SUMMARY OF SPECIFIC PROVISIONS:**

Section 1 enables any city with a population of one million or more to allow an angel investor credit to an eligible taxpayer against the unincorporated business tax.

Such credit would be allowed to an eligible taxpayer that 1) is an accredited investor; 2) makes a qualified investment in a company located in the city that engages in biotechnology or medical technology; 3) has no more than 100 full-time employees, of which at least 75% are employed in the city of New York, has 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 its taxable year, and has gross revenues, along with the gross revenues of its affiliates and related members, not exceeding \$20 million for the taxable year immediately preceding the year the taxpayer is allowed a credit under this subdivision; and 4) own less than 50% of the qualified emerging technology company ("QETC") or medical technology company. after their qualified investment.

Eligible taxpayers granted an angel investor credit for a qualified investment against the city personal income tax shall be ineligible for an angel investor credit against the unincorporated business tax for such investment.

Sets forth definitions for 1) a "qualified investment"; 2) "related member"; and 3) "affiliates".

The percentage of the credit shall be 2% per each qualified investment made during a taxable year and the next succeeding 4 years, up to \$20,000 per taxable year, and \$100,000 in the aggregate for all years taken. If the taxpayer is a partner in a partnership or member in an unincorporated business, then such limits shall be applied at the entity level.

Such credit shall be refundable and allowed against the unincorporated business tax paid on or after January 1, 2013.



If, during the 5 year period, there is an recapture event (the QETC or medical technology company no longer qualifies as such; the taxpayer sells the QETC or medical technology company or investment withdrawal), then the unincorporated business tax owed by the taxpayer shall be increased by the credit recapture amount, which is the aggregate decrease in the angel investor credit provided for all prior taxable years which would have resulted if no such credit had been determined with respect to such qualified investment, plus interest. No later than October 1, 2012, the NYC Department of Finance shall establish by rule procedures for the allocation of the angel investor credit to eligible taxpayers.

Any local law adopted pursuant to this Act may provide for a credit for a maximum of 3 consecutive calendar years, but shall not apply to taxable years beginning on or before January 1, 2013 or after January 1, 2016.

Section 2 mirrors the provisions of section 1, except that:

1. Such section applies to the city personal income tax;
2. Eligible taxpayers granted an angel investor credit for a qualified investment against the unincorporated business tax shall be ineligible for an angel investor credit against the city personal income tax for such investment;
3. In the case of a resident taxpayer, the credit provided shall be allowed against the city personal income tax for the taxable year reduced by the credits already taken against the PIT. If the credit exceeds the tax as so reduced, the credit shall be refundable;
4. If a taxpayer changes residency status during the taxable year from resident to nonresident, or from nonresident to resident, the credit shall be prorated according to the number of months in the period of residence; and
5. In the case of a husband and wife who file a joint return, but who are required to determine their city personal income taxes separately, the angel investor credit may be applied against the tax of either or divided between them as they may elect. In the case of a husband and wife who are not required to file a federal return, the credit under this subsection shall be allowed only if such taxpayers file a joint city personal income tax return.

Section 3 provides that the aggregate amount of tax credits allowed under this act in any calendar year shall be up to \$3 million. Such aggregate amount of credits shall be allocated by the New York City department of finance among taxpayers in order of priority based upon the date of filing an application for allocation of the angel investor credit with such department. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year, such excess shall be treated as having been applied for on the first day of the subsequent year.

Section 4 provides that a certified copy of the local law enacted pursuant to this act shall be mailed by registered mail to the state department of taxation and finance at its office in Albany within fifteen days of its enactment. However, the state department of taxation and finance may allow additional time for such certified copy to be mailed if it

deems such action to be consistent with its duties under this act.

Section 5 provides that the Act will take effect immediately.

#### JUSTIFICATION:

The Angel Investor Tax Credit would provide an incentive for investment in small, early stage biotech and medtech businesses in New York City. It is designed to aid the formation of promising firms by lowering their cost of capital. It would provide accredited investors with a credit of up to 10% of their investment. Angel Investors look for fast growing firms and as a result Angel Credits can be a significant source of job growth over time.{1}

Who would be eligible?

Accredited investors who invest in eligible firms could receive the credit. The investments would have to be for a period of at least five years. Investments would have to be at arm's length; in other words the firm's founders, principal owners, and their families would not be eligible.

What could they invest in?

Eligible businesses would be small early stage startups with the majority of their employment within the City in the biotech and medtech sectors.{2}

Small biotech firms in the City tend to be focused on the early stage development of new drugs and similar products. The sector is complementary to the City's university/hospital-based research sector.

Medtech consists of firms involved with the research and manufacturing of various medical devices.{3} The City has approximately 287 firms in the industry, with around 2,200 employees who were paid an average salary of \$52,000. Like biotech, the medtech sector is complementary to the City's university/hospital based research sector.

What would investors receive?

Investors would receive a refundable credit equal to 10% of eligible investment. Credits would be limited to a maximum credit of \$100,000 payable over 5 years (about \$20,000 per year). Given that nationally the typical angel's investment in a single firm is around \$325,000, we expect most credits to be well under the limit.{4} The credit would be against the City's personal income tax, or for partnerships, against the unincorporated business tax. The total credits that the City could issue in a given year will be capped at \$3 million.

Why an Angel Credit?

Like the City's Biotech Tax Credit, an angel investor tax credit for biotech and medtech would attract capital to a promising sector in the city and could be viewed as part of a long term effort to diversify the City economy. Nationally, this is a rapidly growth export sector that makes use of growing demand in the world economy.

#### BACKGROUND

Angel Investors

An angel investor is an affluent individual who provides personal capital to start-up companies, often through a trust, fund, or business. They are distinct from venture capitalists who invest other persons'

capital through a professionally-managed fund. Angel investors are particularly critical for small start-ups seeking capital, because most venture capital funds are not interested in investments of less than \$1 million. Indeed, angel investments are highly sought after by high-growth start-ups, particularly after spending their own personal resources.

Angel investments in the United States account for almost as much in aggregate as those of venture capitalists. In 2010 angel investors provided \$20.1 billion in capital.{5} Angel investors however, furnish capital to 20 times as many businesses as do venture capitalists. In 2010 61,900 firms were served by angel investors versus 3,047 businesses by venture capitalists.{6} According to the Center for Venture Research, there were 258,000 angel investors in the United States in 2007. In 2010 healthcare/medical firms accounted for 30% of angel investments. In comparison, software, biotech and industrial/energy firms comprised 16%, 15%, and 8% of angel investments respectively.{7}

#### Angel Credits in Other States.

Currently, more than 20 states have some form of an Angel Investor Credit. New Jersey is among them, but New York is not. However, the capital component of the Qualified Emerging Technology Companies (QETC) Credit, while not specifically targeted to angels, may apply to some investors in this group.

#### PRIOR LEGISLATIVE HISTORY:

New Bill. 2012: Referred to Ways and Means.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

The credit will have no impact on the New York State Budget. The New York City Council Finance Division estimates that the credit will reduce City personal income tax and unincorporated business tax revenues by \$600,000 in City Fiscal Year 2014, rising to \$1.8 million in City Fiscal Year 2016.

#### EFFECTIVE DATE:

This act shall take affect immediately.

{1} National Governor's Association Center for Best Practices, "Slate Strategies to Promote Angel Investment for Economic Growth", <http://www.nga.org/files/live/sites/NGA/files/pdf/0802ANGELINVESTMENT.PDF;jsessionid=B5A866F063B8961F11DD0414DCF29A09>

{2} Firm size and New York employment requirements would be similar to the City's existing biotech credit.

{3} In the Census North American Industrial Classification system (NAICS) medtech is sectors 3345 and 3391.

{4} New York City Council Finance Division calculations based on: Volpe, Deborah (Q2 2011). "Second Quarter 2011 MoneyTree Report Summary". The Money Tree Report.PriceWaterhouseCoopers.

{5} Sohl, Jeffrey (2011-04-12). "Full Year 2010 Angel Market Trends". University of New Hampshire Center for Venture Research.

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{6} Volpe, Deborah (Q2 2011). "Second Quarter 2011 MoneyTree Report Summary". The Money Tree Report.PriceWaterhouseCoopers.

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{7} Sohl, Jeffrey (2010-03-31). "Full Year 2009 Angel Market Trends".

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[http://wsbe.unh.edu/files/2009\\_Angel\\_Market\\_Press\\_Release](http://wsbe.unh.edu/files/2009_Angel_Market_Press_Release).

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