Technical Memorandum
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Corporation Tax
Income Tax
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Clarification of Qualifications for Qualified Emerging Technology Company (QETC) Tax Credits

This memorandum clarifies the qualifications needed to claim Qualified Emerging Technology Company (QETC) tax credits.

Background

Chapter 56 of the Laws of 1998 and Chapter 63 of the Laws of 2005 made available three tax credits for companies that are qualified emerging technology companies (QETCs): the QETC employment credit; the QETC facilities, operations, and training credit; and the QETC capital tax credit. These credits are available for businesses that engage in qualifying activities, such as increasing employment, purchasing assets, spending for research and development, or providing training to their employees; or for investing in QETCs. [1]

For purposes of these credits, a business must be classified as a "qualified emerging technology company" as that term is defined in the Public Authorities Law (PAL). In the case of the QETC facilities, operations, and training credit, additional requirements must be met.

This memorandum clarifies that a business:

- must be engaged in creating or developing emerging technologies referenced in section 3102-e of the PAL to qualify under the *primary products or services test*;
- must qualify under the *primary products or services test* to claim the QETC facilities, operations, and training credit; and
- may use an alternative method to compute the *primary products or services test* if the business does not make sales of products or services.

Definition of a QETC under the Public Authorities Law

The PAL defines a qualified emerging technology company as "a company located in New York State:

- whose primary products or services are classified as emerging technologies and whose total annual product sales are $10 million or less [the *primary products or services test*]; or
- a company which has research and development activities in New York State and whose ratio of research and development funds to net sales equals or exceeds the

[1] See Tax Law §§210.12-E, 210.12-F , 210.12-G , 606(q), 606(r) and 606(nn).

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 $10 million or less [the *research and development test*]." [2]

If a business is deemed a QETC under either of these tests, the QETC may qualify for the QETC employment credit and its new investors may qualify for the QETC capital tax credit.

Additional requirements for the QETC facilities, operations, and training credit

In addition to qualifying as a QETC under the PAL as described above, the Tax Law imposes additional requirements that a business must meet to be able to claim the QETC facilities, operations, and training credit:

- the business must have 100 or fewer full-time employees, of which at least 75% are employed in New York State;
- the business must have a ratio of research and development funds to net sales of 6% or greater;
- the business and all its affiliated companies and related members must have gross revenues of $20 million or less for the immediately preceding tax year; and
- the business must qualify as a QETC specifically for the activities referenced in section 3102-e(1)(b) of the PAL. [3, 4]

To qualify as a QETC specifically for activities referenced in section 3102-e(1)(b) of the PAL, a business must meet the *primary products or services test*.

Primary products or services test

To meet the *primary products or services test*, a business must be engaged in creating or developing products or services that are classified as emerging technologies as defined in section 3102-e(1)(b) of the PAL. The mere use of a product or service classified as an emerging technology will not qualify a business under the *primary products or services test.* The business' primary products or services must be classified as emerging technologies, determined using either of the following methods:

- Determine the ratio of the business' receipts from the sale of its products and services classified as emerging technologies to the receipts from all sales of its products and services. If the ratio is greater than 50% for the tax year that the credit is claimed, the business satisfies the test.

[2] Public Authorities Law § 3102-e(1)(c).
[3] See Tax Law §§ 606(nn) and 210.12-G for requirements for the QETC facilities, operations, and training credit.
[4] See PAL §3102-e(1)(b) for a description of activities that are emerging technologies.

- Alternatively, if a business has no receipts from the sale of products or services, a different ratio may be used. For these businesses, if the ratio of the expenses attributable to its emerging technologies to all expenses is greater than 50% for the tax year that the credit is claimed, the business satisfies the test.

Effective date

Because this memorandum is a clarification of the language of the QETC credits as enacted, it applies to all tax years open under the statute of limitations. This memorandum applies to credit claims filed on original and amended returns on and after the date this memorandum is issued and also to credit claims that have already been filed with the Department of Taxation and Finance but have not yet been finally processed. This memorandum will not apply to credit claims that were paid out prior to the date this memorandum was issued.

See also: New information concerning qualified emerging technology company (QETC) tax credits.