



FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

Chapter 453 of the Laws of 2009 (the “enabling law”) added a new subdivision (d) to section 1201-a of the Tax Law to authorize the City of New York to enact a local law that allows a credit against unincorporated business tax and general corporation tax for certain expenses incurred by companies working in the field of biotechnology in the City of New York. The enabling law requires that no later than October 31, 2009, the New York City Department of Finance establish by rule, procedures for the allocation of tax credits among qualifying taxpayers in accordance with the enabling law, with provisions describing the process for application for the credit and standards that will be used to evaluate applications.

The enabling law was signed into law on September 16, 2009, which did not provide sufficient time prior to October 31, 2009 to allow for both the New York City Charter requirement of a thirty-day period for public comment on the proposed rule, and the additional Charter requirement that a rule is effective only after thirty days have passed after the final publication of the rule in the City Record. Early implementation of this rule is necessary to establish prior to the statutory deadline the procedures for application for the credit and the allocation of credits among eligible taxpayers.

Therefore, pursuant to section 1043(e)1(c) of the New York City Charter, the Department of Finance hereby finds that there is a substantial need for the earlier implementation of the Rules Relating to the Biotechnology Credit Against Unincorporated Business Tax and General Corporation Tax. Consequently, the attached Rules shall be effective upon the final publication of the rules in the City Record, and the requirement that thirty days first elapse after such publication shall not apply.

/s/David M. Frankel
Commissioner of Finance

Approved:

/s/Michael R. Bloomberg, Mayor

Dated: 10/28/09

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by section 1201-a(d)(4) of the Tax Law, and sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within Rules Relating to the Biotechnology Credit Against Unincorporated Business Tax and General Corporation Tax. These rules were published in proposed form on September 24, 2009. A hearing for public comment was held on October 26, 2009.

/s/David M. Frankel
Commissioner of Finance

Note: New matter underscored; old matter in brackets [] to be deleted.

Section 1. A new chapter 48 is added to Title 19 of the Rules of the City of New York to read as follows:

**Rules Relating to the Biotechnology Credit Against
Unincorporated Business Tax and General Corporation Tax**

§ 48-01 Purpose and scope of rules.

The purpose of these rules is to set forth the application and credit allocation process for the New York City biotechnology credit to be applied against New York City unincorporated business tax and general corporation tax. The Tax Law authorizes the New York City Department of Finance to promulgate rules to establish procedures for the allocation of such credits including, but not limited to, the application process, due dates for applications, the standards to be used for evaluating applications, documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to such taxpayers and any other provisions deemed necessary and appropriate. Although much of the law that established the New York City biotechnology credit is substantially identical to the law that established the New York State Qualified Emerging Technologies Facilities, Operations and Training Credit, these rules only apply to determination and implementation of the New York City credit. For purposes of this chapter, “credit” shall mean the New York City biotechnology credit.

§48-02. Application procedure.

(a) An applicant for the credit must submit an application on a form or in a format established by the Commissioner of Finance (“Commissioner”) to the Department of Finance (“Department”) no later than January 15 in the calendar year that immediately follows the calendar year for which the credit is sought.

(b) The Department shall make a determination on the application based upon the applicable provisions of State and local law and the criteria set forth in §48-03 of these rules.

(c) The Department may request additional documentation to support representations made in any credit application, including, but not limited to, copies of tax returns and financial statements.

(d) If any application is approved, the Department shall issue a certificate of eligibility for benefits to the applicant. If the application is denied, the Department shall provide the applicant with a notice of denial which shall state the reasons therefor. An applicant shall not receive a biotechnology credit against tax until the Department has issued the applicant a certificate of eligibility for benefits.

§48-03. Allocation of credit.

(a) Maximum aggregate amount of credits. The aggregate amount of biotechnology credits allowed for all applicants in any calendar year shall not exceed \$3 million.

(b) Allocated credit. In the event that for any calendar year, the Department approves credit applications which in the aggregate total more than \$3 million in credits, the Department shall allocate the amount of the credits for such calendar year among eligible applicants on a pro rata basis. The allocated credit to each applicant shall be determined by multiplying the amount of the original credit that was approved by the Department for such applicant by a fraction, the numerator of which is \$3 million, and the denominator of which is the aggregate amount of the credits approved by the Department for all applicants for the calendar year.

(c) Notice of allocated credit. The Department shall mail a notice substantiating the amount of the allocated credit to all applicants who qualified to receive an allocated credit.

(d) The amount of the credit determined in the manner described in subdivision (b) of this section shall be the final amount of the credit for such calendar year. An applicant may not carry over to a subsequent tax year the difference between the allocated credit and the original amount of approved credit.

§48-04. Criteria for evaluation of applications. Any of the following shall be grounds for the Department to deny an application:

(a) an application is not substantially complete;

(b) an application is not filed on a form or in a format established by the Commissioner of Finance;

(c) an application is submitted later than January 15 in the calendar year that immediately follows the calendar year for which the credit is sought;

(d) an applicant has not submitted any additional documentation requested by the Department as authorized by §48-02(c) of these rules; or

(e) the Department determines that an applicant knowingly submitted false or misleading information

§48-05. Examination of credit application and tax return; retention of records. The Commissioner of Finance, for the purpose of ascertaining the correctness of any application for credit or tax return on which a credit was claimed, shall have the power to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in an application for a credit or a return on which a credit is claimed.

Basis and Purpose of Rules

Chapter 453 of the laws of 2009 authorized the City of New York to enact a local law that allows a credit against unincorporated business tax, general corporation tax, and banking corporation tax for certain expenses incurred by companies working in the field of biotechnology in the City of New York, in a manner largely identical to the credit against New York State taxes previously enacted by the State. The enabling law requires the City to promulgate rules to establish procedures for the allocation of tax credits within the statute's budgetary limitation of the program, including, but not limited to, the application process, the due dates for such applications, the documentation that will be provided to qualified applicants to substantiate the amount of credits allocated to them, and other provisions deemed necessary and appropriate. These rules establish such procedures.