



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

Notice of Opportunity to Comment on Proposed
Rules Relating to the Biotechnology Credit Against
Unincorporated Business Tax and General Corporation Tax

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the 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, and in accordance with the requirements of section 1043 of the New York City Charter, that the New York City Department of Finance intends to adopt the following proposed Rules Relating to the Biotechnology Credit the Biotechnology Credit Against Unincorporated Business Tax and General Corporation Tax, which are necessary to carry out the powers and duties delegated to the Commissioner of Finance by section 1201-a(d) of the Tax Law and chapters 5 and 6 of title 11 of the New York City Administrative Code. This rulemaking proposal was not included in the regulatory agenda of the Department of Finance for fiscal year 2010 because the legislation to which the rulemaking relates was not enacted as of the date of publication of the agenda.

Written comments regarding these proposed rules must be submitted to the office of Dara Jaffee, Assistant Commissioner for Legal Affairs, One Centre Street, Room 500, New York, New York 10007 on or before October 26, 2009. Comments may be submitted electronically to Jaffeed@Finance.nyc.gov or to or to the NYC Rules website at rules@finance.nyc.gov.

A hearing for public comment shall be held on October 26, 2009 at 345 Adams Street, 3rd Floor, Brooklyn, New York at 10:30 A.M. Persons seeking to testify are requested to notify Joan Best at (718) 403-3669 at least three business days prior to the date scheduled for the hearing. Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to notify the above named person at the foregoing address no later than two weeks prior to the hearing.

Written comments and an audio tape recording of oral comments received at the hearing will be available for public review within a reasonable time after receipt, by appointment between the hours of 9:00 A.M. and 5:00 P.M. on weekdays at the office of Robert Dauman, Office of Legal Affairs, 345 Adams Street, 3rd Floor, Brooklyn, New York 11201, telephone number (718) 403-3600.

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) Application for biotechnology credit.

(1) 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.

(2) 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.

(3) 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.

(4) 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:

(1) an application is not substantially complete;

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

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

(4) an applicant has not submitted any additional documentation requested by the Department as authorized by §48-02(3) of these rules; or

(5) 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 Proposed 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 proposed rules establish such procedures.

David M. Frankel
Commissioner of Finance