

§5219-M. High-technology investment tax credit

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "High-technology activity" means:

- (1) The design, creation and production of computer software, computer equipment, supporting communications components and other accessories that are directly associated with computer software and computer equipment; and
- (2) The provision of Internet access services and advanced telecommunications services. [PL 2001, c. 358, Pt. M, §1 (AMD); PL 2001, c. 358, Pt. M, §6 (AFF).]

B. "Investment credit base" means the total adjusted basis of the eligible equipment for federal income tax purposes of the taxpayer on the date that the equipment was placed into service for the first time in the State by the taxpayer or other person during the tax year for which the credit is claimed. In computing the adjusted basis of the eligible equipment on the date placed in service for the first time in the State, the total allowable depreciation of the equipment for the tax year must be multiplied by a fraction the numerator of which is the number of days that the equipment was in service in the State during the tax year and the denominator of which is the total number of days that the equipment was in service during the tax year. [PL 1997, c. 668, §31 (AMD); PL 1997, c. 668, §42 (AFF).]

C. "Eligible equipment" means all computer equipment, electronics components and accessories, communications equipment and computer software placed into service in the State and used primarily in high-technology activity, provided that otherwise eligible equipment used in wire line telecommunications must be capable of transmitting data at 200 kilobits or more per second in at least one direction and otherwise eligible equipment used in wireless telecommunications equipment must be capable of transmitting data at 42 kilobits or more per second in at least one direction. [PL 2001, c. 358, Pt. M, §2 (AMD); PL 2001, c. 358, Pt. M, §6 (AFF).]

D. "Primarily" means more than 50% of the time. [PL 1999, c. 414, §47 (NEW).]

E. "Qualified lessor" means a person that leases or subleases eligible equipment to a person that is engaged primarily in high technology activity, but only when:

- (1) The eligible equipment is used primarily in the high technology activity engaged in by the lessee or sublessee;
- (2) The lessor derived aggregate total lease payments from personal property of at least 3 times the total payments received from eligible equipment during the taxable year; and
- (3) The lease or sublease upon which the credit is based qualifies as a lease of property for federal income tax purposes under the guidelines contained in Revenue Procedure 2001-28 of the United States Department of the Treasury, Internal Revenue Service. [PL 2003, c. 673, Pt. G, §1 (NEW); PL 2003, c. 673, Pt. G, §3 (AFF).]

[PL 2003, c. 673, Pt. G, §1 (AMD); PL 2003, c. 673, Pt. G, §3 (AFF).]

1-A. Credit allowed. The following persons are allowed a credit as follows.

A. Unless entitlement to the credit is waived by the user pursuant to paragraph B:

- (1) A person engaged primarily in high technology activity that purchases and uses eligible equipment in that activity may claim a credit in the amount of that person's investment credit base subject to the limitations provided by subsection 4; or
- (2) A person engaged primarily in a high technology activity that leases and uses eligible equipment in that activity may claim a credit in the amount of the lease payments made on the

eligible equipment in each tax year, except that if the eligible equipment is depreciable by that person for federal income tax purposes, the credit is based on that person's investment credit base subject to the limitations provided by [PL 2001, c. 358, Pt. M, §3 (AMD); PL 2001, c. 358, Pt. M, §6 (AFF).]

B. When a qualified lessor provides the assessor with satisfactory evidence that the lessee or sublessee of eligible equipment has waived its right to claim a credit under this section that it is otherwise entitled to claim with respect to that equipment:

(1) A qualified lessor that leases eligible equipment may claim a credit in the amount of the lessee's investment credit base to the extent of the credits waived by the lessee, net of any lease payments received for the eligible equipment in the taxable year, subject to the limitations provided by subsection 4; and

(2) A qualified lessor that subleases eligible equipment may claim a credit in the amount of the lease payments made on the eligible equipment in each tax year, net of sublease payments received in the taxable year, except that if the eligible equipment is depreciable by the sublessee for federal income tax purposes, the credit is based on the sublessee's investment credit base to the extent of the credits waived by the sublessee subject to the limitations provided by subsection 4. [PL 2003, c. 673, Pt. G, §2 (AMD); PL 2003, c. 673, Pt. G, §3 (AFF).]

[PL 2003, c. 673, Pt. G, §2 (AMD); PL 2003, c. 673, Pt. G, §3 (AFF).]

2. Purchaser of eligible equipment; credit allowed.

[PL 1997, c. 668, §33 (RP); PL 1997, c. 668, §42 (AFF).]

3. Lessor of eligible equipment; credit allowed.

[PL 1997, c. 668, §33 (RP); PL 1997, c. 668, §42 (AFF).]

4. Limitations. The credit allowed by this section, including amounts carried to the tax year pursuant to subsection 5, may not be used:

A. To reduce a person's tax liability under this Part to less than zero; [PL 2001, c. 358, Pt. M, §4 (NEW); PL 2001, c. 358, Pt. M, §6 (AFF).]

B. To reduce a person's tax liability under this Part to less than the amount of the taxpayer's tax liability in the preceding taxable year after the allowance of any other credits taken pursuant to this chapter; or [PL 2001, c. 358, Pt. M, §4 (NEW); PL 2001, c. 358, Pt. M, §6 (AFF).]

C. Except as otherwise provided by subsection 5, paragraph B, to reduce a person's tax liability by more than \$100,000, after the allowance of all other tax credits except for the credit allowed under section 5219-L. [PL 2015, c. 267, Pt. DD, §27 (AMD).]

[PL 2015, c. 267, Pt. DD, §27 (AMD).]

5. Carry over to succeeding years. Unused credits may be carried forward to succeeding tax years as follows.

A. A person entitled to a credit under this section for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 5 taxable years the portion of any unused credits. [PL 2001, c. 358, Pt. M, §4 (NEW); PL 2001, c. 358, Pt. M, §6 (AFF).]

B. Unused credits for which a person was eligible, but did not claim, for tax years ending prior to January 1, 2001 may be carried forward and applied to the tax liability for any one or more of the next succeeding 10 taxable years to the extent that those credits relate to equipment that meets the definition of eligible equipment in effect for tax years beginning on or after January 1, 2001. Credits carried forward that are allowed to a person pursuant to this paragraph are limited to \$100,000 per year, except that if a person's investment credit base for any taxable year beginning on or after January 1, 2001 is less than \$100,000, the credit allowed under this paragraph may be increased by an amount equal to the difference between \$100,000 and the person's investment credit

base, provided that the credit allowed by this section may in no event exceed \$200,000. [PL 2001, c. 358, Pt. M, §4 (NEW); PL 2001, c. 358, Pt. M, §6 (AFF).]
[PL 2001, c. 358, Pt. M, §4 (RPR); PL 2001, c. 358, Pt. M, §6 (AFF).]

6. Corporations filing combined return. In the case of corporations filing a combined return, a credit generated by an individual member corporation under the provisions of this section must first be applied against the tax liability attributable to that company under this Part. A member corporation with an excess high-technology investment tax credit may apply its excess credit against the tax liability of other group members to the extent that the other member corporations can use additional credits under the limitations of subsection 4. Unused, unexpired credits generated by a member corporation may be carried over from year to year by the individual corporation that generated the credit, subject to the limitations in subsection 5, and the rules set forth in this paragraph for applying the credit to the tax liability of other group members are applicable in the years to which credits are carried forward. [PL 2001, c. 358, Pt. M, §5 (AMD); PL 2001, c. 358, Pt. M, §6 (AFF).]

7. Application. Except for the credit allowed with respect to the carry-over of unused credit amounts pursuant to subsection 5, the tax credit allowed under this section does not apply to tax years beginning on or after January 1, 2016. [PL 2015, c. 267, Pt. DD, §28 (NEW).]

SECTION HISTORY

PL 1997, c. 557, §B10 (NEW). PL 1997, c. 557, §§B14,G1 (AFF). PL 1997, c. 668, §§31-34 (AMD). PL 1997, c. 668, §42 (AFF). PL 1999, c. 414, §47 (AMD). PL 2001, c. 358, §§M1-5 (AMD). PL 2001, c. 358, §M6 (AFF). PL 2003, c. 673, §§G1,2 (AMD). PL 2003, c. 673, §G3 (AFF). PL 2015, c. 267, Pt. DD, §§27, 28 (AMD).

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