



New York State

ASSEMBLY

Sheldon Silver - Speaker

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Bill No.: A08682

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#### A08682 Summary:

BILL NO A08682

SAME AS SAME AS [A08831](#)

SPONSOR Kellner

COSPNSR

MLTSPNSR

Amd S606, Tax L

Provides a maximum \$200 tax credit for taxpayer expenses associated with the development of open source and free software license programs.

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#### A08682 Actions:

BILL NO A08682

10/27/2011 referred to ways and means

01/04/2012 referred to ways and means

06/19/2012 held for consideration in ways and means

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#### A08682 Votes:

*There are no votes for this bill in this legislative session.*

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#### A08682 Memo:

BILL NUMBER:A8682

TITLE OF BILL: An act to amend the tax law, in relation to providing a tax credit to individuals for up to two hundred dollars of expenses related to the development and posting of an open source or free license program

PURPOSE OR GENERAL IDEA OF BILL: The purpose of this bill is to incentivize individuals to develop Open Source Software with a tax credit.

SUMMARY OF SPECIFIC PROVISIONS: Section tt(1) amends S 606 of the Tax Law by providing for an Open Source tax credit to the creators of Open Source software.

Section tt(2) amends S 606 of the Tax Law by providing for the type of programs that qualify for the Open Source tax credit.

Section tt(3) amends S 606 of the Tax Law by providing to whom the Open Source tax credit applies. Section tt(4) amends S 606 of the Tax Law by providing the limits and regulations of the tax credit itself.

JUSTIFICATION:.. "Open Source" refers to software offered for free online download along with its instruction set ("source code"), The New York State Assembly currently uses Open Source programs such as Mozilla for email, Firefox for web browsing, and WebCal for electronic calendars. The Assembly's use of this software has led to significant cost savings for the Assembly's operating budget.

Once an Open Source program is downloaded with its source code, anyone can view the instructions, modify the program, and redistribute it with the same freedoms. A 2006 report authored by John Irons and Carl Malamud from the Center for American Progress details how Open Source software provides a high social value amongst the group, but a relatively low

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economic incentive for individual developers. By allowing open access to-the technology's source code, Open Source software enhances a broader dissemination of knowledge and ideas,

Although large corporations such as IBM develop and use Open Source programs, most Open Source software is written by individuals volunteering from home. Currently, corporations and self-employed individuals who create Open Source technology are eligible for a tax deduction for their software development costs. The vast majority of Open Source software creators (individual volunteers), however, do not receive this tax credit.

This legislation creates a similar tax credit incentive for individuals who currently have no means to deduct these expenses. The tax credit would apply only to out-of-pocket expenses such as Internet hosting and depreciated cost of capital expenses such as computers and education. The increased incentive for individuals would attract more Open Source developers to New York State, resulting in job creation and a reinvigoration of our State's technology sector. Additionally, an influx of Open

Source software would lower operating costs for larger agencies (such as the Assembly), by providing usable software without charge.

PRIOR LEGISLATIVE HISTORY: 2010-11: A.1163 (Bing) referred to Ways & Means; S.43 (Squadron) Referred to Investigations and Government Operations.  
2009-10; A.6380 (Bing) Referred to Ways & Means; S.4046 (Squadron) Referred to Investigations and Government Operations.

FISCAL IMPLICATIONS: Undetermined.

EFFECTIVE DATE: This act will take effect immediately and shall apply to taxable years beginning on and after the first of January next succeeding the date on which it shall have become a law.

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#### A08682 Text:

#### STATE OF NEW YORK

8682

2011-2012 Regular Sessions

IN ASSEMBLY

October 27, 2011

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

AN ACT to amend the tax law, in relation to providing a tax credit to individuals for up to two hundred dollars of expenses related to the development and posting of an open source or free license program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 606 of the tax law is amended by adding a new
- 2 subsection (tt) to read as follows:
- 3 (TT) OPEN SOURCE OR FREE LICENSE CREDIT. (1) A TAXPAYER SHALL BE
- 4 ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBSECTION, AGAINST
- 5 THE TAX IMPOSED PURSUANT TO SECTION SIX HUNDRED ONE OF THIS PART. THE
- 6 AMOUNT OF CREDIT SHALL EQUAL UP TO TWENTY PERCENT OF THE TOTAL
- 7 OUT-OF-POCKET EXPENSES OF THE TAXPAYER USED IN THE DEVELOPMENT OF A
- 8 PROGRAM THAT IS PROVIDED TO THE PUBLIC UNDER AN OPEN SOURCE OR FREE
- 9 SOFTWARE LICENSE, UP TO A MAXIMUM OF TWO HUNDRED DOLLARS.
- 10 (2) FOR THE PURPOSES OF THIS SUBSECTION, A PROGRAM SHALL QUALIFY FOR
- 11 THE CREDIT PROVIDED BY THIS SUBSECTION IF THE CODE FOR SUCH PROGRAM HAS
- 12 BEEN RELEASED UNDER AN OPEN SOURCE LICENSE RECOGNIZED BY THE OPEN SOURCE
- 13 INITIATIVE, OR HAS BEEN RELEASED UNDER A FREE SOFTWARE LICENSE RECOGNIZED BY THE FREE SOFTWARE FOUNDATION.
- 14 (3) THIS SUBSECTION SHALL APPLY TO ANY INDIVIDUAL FOR ANY TAXABLE YEAR
- 15 ONLY IF SUCH INDIVIDUAL ELECTS TO HAVE THIS SECTION APPLY FOR SUCH TAXABLE YEAR. AN ELECTION TO HAVE THIS SECTION APPLY MAY NOT BE MADE FOR ANY
- 16 TAXABLE YEAR IF SUCH ELECTION IS IN EFFECT WITH RESPECT TO SUCH INDIVIDUAL FOR ANY OTHER TAXABLE YEAR AND PERTAINING TO THE SAME PROGRAM OR ANY
- 17 PORTION THEREOF.
- 18 (4) IN NO EVENT SHALL THE AMOUNT OF THE CREDIT PROVIDED BY THIS
- 19 SUBSECTION EXCEED THE TAXPAYER'S TAX FOR THE TAXABLE YEAR. HOWEVER, IF
- 20 THE AMOUNT OF CREDIT OTHERWISE ALLOWABLE PURSUANT TO THIS SUBSECTION FOR
- 21 ANY TAXABLE YEAR RESULTS IN SUCH EXCESS AMOUNT, ANY AMOUNT OF CREDIT NOT

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

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1 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING  
2 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR  
3 OR YEARS.  
4 S 2. This act shall take effect immediately and shall apply to taxable  
5 years beginning on and after the first of January next succeeding the  
6 date on which it shall have become a law.

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