

7556

I N S E N A T E

April 21, 2010

Introduced by Sen. VALESKY -- (at request of the Governor) -- read twice
and ordered printed, and when printed to be committed to the Committee
on Investigations and Government Operations

AN ACT to amend the tax law, in relation to clarifying the application
of the credit for the rehabilitation of historic properties and
historic homes; and to amend chapter 239 of the laws of 2009 amending
the tax law and other laws relating to providing a tax credit for the
rehabilitation of historic properties, in relation to making permanent
the provisions thereof

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

1 Section 1. Paragraph 1 of subsection (oo) of section 606 of the tax
2 law, as amended by chapter 239 of the laws of 2009, is amended to read
3 as follows:
4 (1) (A) For taxable years beginning on or after January first, two
5 thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any
6 person, firm, partnership, limited liability company, corporation or
7 other business entity] A TAXPAYER shall be allowed a credit as herein-
8 after provided, against the tax imposed by this article, in an amount
9 equal to one hundred percent of the amount of credit allowed the taxpay-
10 er [for the same taxable year] with respect to a certified historic
11 structure under subsection [(c)] (A) (2) of section 47 of the federal
12 internal revenue code with respect to a certified historic structure
13 located within the state. Provided, however, the credit shall not
14 exceed five million dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER
15 JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CRED-
16 IT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN
17 AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE
18 TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION
19 (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT
20 TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE; PROVIDED,
21 HOWEVER, THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.
22 (B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER OF
23 A NEW YORK S CORPORATION, THEN THE CREDIT CAP IMPOSED IN SUBPARAGRAPH

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

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1 (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE
2 AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH
3 SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS
4 APPLICABLE IN THAT TAXABLE YEAR.

5 S 2. Subparagraphs (A) and (B) of paragraph 2 of subsection (pp) of
6 section 606 of the tax law, as amended by chapter 239 of the laws of
7 2009, are amended to read as follows:

8 (A) With respect to any particular residence of a taxpayer, the credit
9 allowed under paragraph one of this subsection shall not exceed fifty
10 thousand dollars FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
11 TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN AND
12 TWENTY-FIVE THOUSAND DOLLARS FOR TAXABLE YEARS BEGINNING ON OR AFTER
13 JANUARY FIRST, TWO THOUSAND FIFTEEN. In the case of a husband and wife,
14 the amount of the credit shall be divided between them equally or in
15 such other manner as they may both elect. If a taxpayer incurs qualified
16 rehabilitation expenditures in relation to more than one residence in
17 the same year, the total amount of credit allowed under paragraph one of
18 this subsection for all such expenditures shall not exceed [twenty-five]
19 FIFTY thousand dollars FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
20 FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN
21 AND TWENTY-FIVE THOUSAND DOLLARS FOR TAXABLE YEARS BEGINNING ON OR AFTER
22 JANUARY FIRST, TWO THOUSAND FIFTEEN.

23 (B) [If] FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO
24 THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, IF the
25 amount of credit allowable under this subsection shall exceed the
26 taxpayer's tax for such year, and the taxpayer's New York adjusted gross
27 income for such year does not exceed sixty thousand dollars, the excess
28 shall be treated as an overpayment of tax to be credited or refunded in
29 accordance with the provisions of section six hundred eighty-six of this
30 article, provided, however, that no interest shall be paid thereon. If
31 the taxpayer's New York adjusted gross income for such year exceeds
32 sixty thousand dollars, the excess credit that may be carried over to
33 the following year or years and may be deducted from the taxpayer's tax
34 for such year or years. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
35 FIRST, TWO THOUSAND FIFTEEN, IF THE AMOUNT OF CREDIT ALLOWABLE UNDER
36 THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE
37 EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE
38 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

39 S 3. Paragraphs 1, 3 and 4 of subdivision 40 of section 210 of the tax
40 law, as amended by chapter 239 of the laws of 2009, are amended to read
41 as follows:

42 (1) (A) For taxable years beginning on or after January first, two
43 thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any
44 person, firm, partnership, limited liability company, corporation or
45 other business entity] A TAXPAYER shall be allowed a credit as herein-
46 after provided, against the tax imposed by this article, in an amount
47 equal to one hundred percent of the amount of credit allowed the taxpay-
48 er [for the same taxable year] with respect to a certified historic
49 structure under subsection [(c)] (A) (2) of section 47 of the federal
50 internal revenue code with respect to a certified historic structure
51 located within the state. Provided, however, the credit shall not
52 exceed five million dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER
53 JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CRED-
54 IT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN
55 AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE
56 TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION

(A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

(B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK S CORPORATION, THEN THE CREDIT CAPS IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS APPLICABLE IN THAT TAXABLE YEAR.

(3) If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection must be added back in the same taxable year and in the same proportion as [such credit] THE FEDERAL RECAPTURE.

(4) [If] THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF the amount of the credit allowable under this subdivision for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be [applied] DEDUCTED from the taxpayer's tax for such year or years.

S 4. Subdivision 40 of section 210 of the tax law, as amended by chapter 239 of the laws of 2009, is amended by adding a new paragraph 5 to read as follows:

(5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION, THE REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE INTERNAL REVENUE CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST RECENT FEDERAL CENSUS.

S 5. Section 1456 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES. (1)(A) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED FIVE MILLION DOLLARS. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

(B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE CREDIT CAPS IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH

1 SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS
2 APPLICABLE IN THAT TAXABLE YEAR.

3 (2) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED
4 IN THE TAXABLE YEAR THAT THE QUALIFIED REHABILITATION IS PLACED IN
5 SERVICE UNDER SECTION 167 OF THE FEDERAL INTERNAL REVENUE CODE.

6 (3) IF THE CREDIT ALLOWED THE TAXPAYER PURSUANT TO SECTION 47 OF THE
7 INTERNAL REVENUE CODE WITH RESPECT TO A QUALIFIED REHABILITATION IS
8 RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE INTERNAL
9 REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION MUST
10 BE ADDED BACK IN THE SAME TAXABLE YEAR AND IN THE SAME PROPORTION AS THE
11 FEDERAL RECAPTURE.

12 (4) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR
13 SHALL NOT REDUCE THE TAX TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINI-
14 MUM TAX BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS
15 ARTICLE. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR
16 ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS MAY BE
17 CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM
18 THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

19 (5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBSECTION THE
20 REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA
21 RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE INTERNAL REVENUE
22 CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR
23 BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST
24 RECENT FEDERAL CENSUS.

25 S 6. Section 1511 of the tax law is amended by adding a new subsection
26 (y) to read as follows:

27 (Y) CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES. (1)(A) FOR TAXA-
28 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND
29 BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED
30 A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTI-
31 CLE, IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE AMOUNT OF CREDIT
32 ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE
33 UNDER SUBSECTION (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE
34 CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE
35 STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED FIVE MILLION
36 DOLLARS. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO
37 THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER
38 PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO
39 THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT
40 TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(2) OF SECTION 47
41 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTOR-
42 IC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT
43 SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

44 (B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, THEN THE CAP
45 IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE
46 ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS
47 OF SUCH PARTNERSHIP IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP
48 THAT IS APPLICABLE IN THAT TAXABLE YEAR.

49 (2) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED
50 IN THE TAXABLE YEAR THAT THE QUALIFIED REHABILITATION IS PLACED IN
51 SERVICE UNDER SECTION 167 OF THE FEDERAL INTERNAL REVENUE CODE.

52 (3) IF THE CREDIT ALLOWED THE TAXPAYER PURSUANT TO SECTION 47 OF THE
53 INTERNAL REVENUE CODE WITH RESPECT TO A QUALIFIED REHABILITATION IS
54 RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE INTERNAL
55 REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION IN

1 THE TAXABLE YEAR THE CREDIT WAS CLAIMED MUST BE ADDED BACK IN THE SAME
2 TAXABLE YEAR AND IN THE SAME PROPORTION AS THE FEDERAL RECAPTURE.

3 (4) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
4 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM
5 FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED
6 TWO OR SECTION FIFTEEN HUNDRED TWO-A OF THIS ARTICLE, WHICHEVER IS
7 APPLICABLE. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION
8 FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS MAY BE
9 CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM
10 THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

11 (5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION,
12 THE REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA
13 RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE INTERNAL REVENUE
14 CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR
15 BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST
16 RECENT FEDERAL CENSUS.

17 S 7. Section 5 of chapter 239 of the laws of 2009 amending the tax law
18 and other laws relating to providing a tax credit for the rehabilitation
19 of historic properties, is amended to read as follows:

20 S 5. This act shall take effect immediately and shall apply to taxable
21 years beginning on and after January 1, 2010 [and shall expire and be
22 deemed repealed December 31, 2014; provided, however, that the credit
23 shall be applied to any rehabilitation project commenced on or before
24 the date on which that act shall be deemed repealed].

25 S 8. This act shall take effect immediately.