

4990

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. HANNON -- 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 the investment tax credits

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

1 Section 1. Subparagraph (i) of paragraph (b) of subdivision 12 of
2 section 210 of the tax law, as amended by chapter 637 of the laws of
3 2008, is amended to read as follows:
4 (i) A credit shall be allowed under this subdivision with respect to
5 tangible personal property and other tangible property, including build-
6 ings and structural components of buildings, which are: depreciable
7 pursuant to section one hundred sixty-seven of the [internal revenue
8 code] INTERNAL REVENUE CODE, have a useful life of four years or more,
9 are acquired by purchase as defined in section one hundred seventy-nine
10 (d) of the [internal revenue code] INTERNAL REVENUE CODE, have a situs
11 in this state and are (A) principally used by the taxpayer in the
12 production of goods by manufacturing, processing, assembling, refining,
13 mining, extracting, farming, agriculture, horticulture, floriculture,
14 viticulture or commercial fishing, (B) industrial waste treatment facil-
15 ities or air pollution control facilities, used in the taxpayer's trade
16 or business, (C) research and development property, (D) principally used
17 in the ordinary course of the taxpayer's trade or business as a broker
18 or dealer in connection with the purchase or sale (which shall include
19 but not be limited to the issuance, entering into, assumption, offset,
20 assignment, termination, or transfer) of stocks, bonds or other securi-
21 ties as defined in section four hundred seventy-five (c)(2) of the
22 Internal Revenue Code, or of commodities as defined in section four
23 hundred seventy-five (e) of the Internal Revenue Code, (E) principally
24 used in the ordinary course of the taxpayer's trade or business of
25 providing investment advisory services for a regulated investment compa-

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

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ny as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, (E-1) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I) THE TAXPAYER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGULATED BROKER OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT ADVISER UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF 1940, AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE HUNDRED MILLION DOLLARS, (F) principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in section 1410(a)(1) of the New York Not-for-Profit Corporation Law or as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto, or (G) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. For purposes of clauses (D), (E), (E-1) and (F) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment adviser, national securities exchange or board of trade, is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment adviser, national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D) [and], (E), AND (E-1) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser under [either or both] ANY of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E), (E-1) and (F) of this subparagraph unless (I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state or (II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six

1 months immediately preceding the year for which the credit is claimed,
2 or (III) the number of employees located in this state during the taxa-
3 ble year for which the credit is claimed is equal to or greater than
4 ninety percent of the number of employees located in this state on
5 December thirty-first, nineteen hundred ninety-eight or, if the taxpayer
6 was not a calendar year taxpayer in nineteen hundred ninety-eight, the
7 last day of its first taxable year ending after December thirty-first,
8 nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in
9 this state after the taxable year beginning in nineteen hundred ninety-
10 eight, then the taxpayer is not required to satisfy the employment test
11 provided in the preceding sentence of this subparagraph for its first
12 taxable year. For purposes of clause (III) of this subparagraph the
13 employment test will be based on the number of employees located in this
14 state on the last day of the first taxable year the taxpayer is subject
15 to tax in this state. If the uses of the property must be aggregated to
16 determine whether the property is principally used in qualifying uses,
17 then either each affiliate using the property must satisfy this employ-
18 ment test or this employment test must be satisfied through the aggre-
19 gation of the employees of the taxpayer, its affiliated regulated
20 broker, dealer, and registered investment adviser using the property.
21 For purposes of this subdivision, the term "goods" shall not include
22 electricity.

23 S 2. Subparagraph (A) of paragraph 2 of subsection (a) of section 606
24 of the tax law, as amended by chapter 637 of the laws of 2008, is
25 amended to read as follows:

26 (A) A credit shall be allowed under this subsection with respect to
27 tangible personal property and other tangible property, including build-
28 ings and structural components of buildings, which are: depreciable
29 pursuant to section one hundred sixty-seven of the internal revenue
30 code, have a useful life of four years or more, are acquired by purchase
31 as defined in section one hundred seventy-nine (d) of the internal
32 revenue code, have a situs in this state and are (i) principally used by
33 the taxpayer in the production of goods by manufacturing, processing,
34 assembling, refining, mining, extracting, farming, agriculture, horti-
35 culture, floriculture, viticulture or commercial fishing, (ii) indus-
36 trial waste treatment facilities or air pollution control facilities,
37 used in the taxpayer's trade or business, (iii) research and development
38 property, (iv) principally used in the ordinary course of the taxpayer's
39 trade or business as a broker or dealer in connection with the purchase
40 or sale (which shall include but not be limited to the issuance, enter-
41 ing into, assumption, offset, assignment, termination, or transfer) of
42 stocks, bonds or other securities as defined in section four hundred
43 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as
44 defined in section 475(e) of the Internal Revenue Code, (v) principally
45 used in the ordinary course of the taxpayer's trade or business of
46 providing investment advisory services for a regulated investment compa-
47 ny as defined in section eight hundred fifty-one of the Internal Revenue
48 Code, or lending, loan arrangement or loan origination services to
49 customers in connection with the purchase or sale (which shall include
50 but not be limited to the issuance, entering into, assumption, offset,
51 assignment, termination, or transfer) of securities as defined in
52 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
53 or (vi) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE
54 OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF
55 MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES
56 FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT

1 TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF
2 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I) THE TAXPAY-
3 ER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGULATED BROKER
4 OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT ADVISER
5 UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF 1940,
6 AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A REGULATED
7 INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE
8 INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE HUNDRED MILLION
9 DOLLARS, (VII) principally used as a qualified film production facility
10 including qualified film production facilities having a situs in an
11 empire zone designated as such pursuant to article eighteen-B of the
12 general municipal law, where the taxpayer is providing three or more
13 services to any qualified film production company using the facility,
14 including such services as a studio lighting grid, lighting and grip
15 equipment, multi-line phone service, broadband information technology
16 access, industrial scale electrical capacity, food services, security
17 services, and heating, ventilation and air conditioning. For purposes of
18 clauses (iv) [and], (v) AND (VI) of this subparagraph, property
19 purchased by a taxpayer affiliated with a regulated broker, dealer, or
20 registered investment adviser is allowed a credit under this subsection
21 if the property is used by its affiliated regulated broker, dealer or
22 registered investment adviser in accordance with this subsection. For
23 purposes of determining if the property is principally used in qualify-
24 ing uses, the uses by the taxpayer described in clauses (iv) [and], (v)
25 AND (VI) of this subparagraph may be aggregated. In addition, the uses
26 by the taxpayer, its affiliated regulated broker, dealer and registered
27 investment adviser under either or both of those clauses may be aggre-
28 gated. Provided, however, a taxpayer shall not be allowed the credit
29 provided by clauses (iv) [and], (v) AND (VI) of this subparagraph unless
30 (I) eighty percent or more of the employees performing the administra-
31 tive and support functions resulting from or related to the qualifying
32 uses of such equipment are located in this state, or (II) the average
33 number of employees that perform the administrative and support func-
34 tions resulting from or related to the qualifying uses of such equipment
35 and are located in this state during the taxable year for which the
36 credit is claimed is equal to or greater than ninety-five percent of the
37 average number of employees that perform these functions and are located
38 in this state during the thirty-six months immediately preceding the
39 year for which the credit is claimed, or (III) the number of employees
40 located in this state during the taxable year for which the credit is
41 claimed is equal to or greater than ninety percent of the number of
42 employees located in this state on December thirty-first, nineteen
43 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
44 er in nineteen hundred ninety-eight, the last day of its first taxable
45 year ending after December thirty-first, nineteen hundred ninety-eight.
46 If the taxpayer becomes subject to tax in this state after the taxable
47 year beginning in nineteen hundred ninety-eight, then the taxpayer is
48 not required to satisfy the employment test provided in the preceding
49 sentence of this subparagraph for its first taxable year. For the
50 purposes of clause (III) of this subparagraph the employment test will
51 be based on the number of employees located in this state on the last
52 day of the first taxable year the taxpayer is subject to tax in this
53 state. If the uses of the property must be aggregated to determine
54 whether the property is principally used in qualifying uses, then either
55 each affiliate using the property must satisfy this employment test or
56 this employment test must be satisfied through the aggregation of the

1 employees of the taxpayer, its affiliated regulated broker, dealer, and
2 registered investment adviser using the property. For purposes of this
3 subsection, the term "goods" shall not include electricity.

4 S 3. Paragraph 2 of subsection (i) of section 1456 of the tax law, as
5 amended by chapter 637 of the laws of 2008, is amended to read as
6 follows:

7 (2) A credit shall be allowed under this subsection with respect to
8 tangible personal property and other tangible property, including build-
9 ings and structural components of buildings, which are: depreciable
10 pursuant to section one hundred sixty-seven of the Internal Revenue
11 Code, have a useful life of four years or more, are acquired by purchase
12 as defined in section one hundred seventy-nine (d) of the Internal
13 Revenue Code, have a situs in this state and are (A) principally used in
14 the ordinary course of the taxpayer's trade or business as a broker or
15 dealer in connection with the purchase or sale (which shall include but
16 not be limited to the issuance, entering into, assumption, offset,
17 assignment, termination, or transfer) of stocks, bonds or other securi-
18 ties as defined in section four hundred seventy-five (c) (2) of the
19 Internal Revenue Code, or of commodities as defined in section four
20 hundred seventy-five (e) of the Internal Revenue Code, [or] (B) princi-
21 pally used in the ordinary course of the taxpayer's trade or business of
22 providing investment advisory services for a regulated investment compa-
23 ny as defined in section eight hundred fifty-one of the Internal Revenue
24 Code, or lending, loan arrangement or loan origination services to
25 customers in connection with the purchase or sale (which shall include
26 but not be limited to the issuance, entering into, assumption, offset,
27 assignment, termination, or transfer) of securities as defined in
28 section four hundred seventy-five (c) (2) of the Internal Revenue Code,
29 OR (C) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE
30 OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF
31 MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES
32 FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT
33 TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF
34 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I) THE TAXPAY-
35 ER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGULATED BROKER
36 OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT ADVISER
37 UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF 1940,
38 AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A REGULATED
39 INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE
40 INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE HUNDRED MILLION
41 DOLLARS. For purposes of subparagraphs (A) [and], (B) AND (C) of this
42 paragraph, property purchased by a taxpayer affiliated with a regulated
43 broker, dealer, or registered investment adviser is allowed a credit
44 under this subsection if the property is used by its affiliated regu-
45 lated broker, dealer, or registered investment adviser in accordance
46 with this subsection. For purposes of determining if the property is
47 principally used in qualifying uses, the uses by the taxpayer described
48 in subparagraphs (A) [and], (B) AND (C) of this paragraph may be aggre-
49 gated. In addition, the uses by the taxpayer, its affiliated regulated
50 broker, dealer and registered investment adviser under either or both of
51 such subparagraphs may be aggregated.

52 S 4. This act shall take effect immediately.