

4990--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to an investment tax credit

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

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

LBD11236-02-1

1 providing investment advisory services for a regulated investment compa-
2 ny as defined in section eight hundred fifty-one of the Internal Revenue
3 Code, or lending, loan arrangement or loan origination services to
4 customers in connection with the purchase or sale (which shall include
5 but not be limited to the issuance, entering into, assumption, offset,
6 assignment, termination, or transfer) of securities as defined in
7 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
8 (E-1) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR
9 BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF
10 MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES
11 FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT
12 TERM IS DEFINED IN RULE FIVE HUNDRED ONE OF REGULATION D OF THE SECURI-
13 TIES ACT OF 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I)
14 THE TAXPAYER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGU-
15 LATED BROKER OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT
16 ADVISER UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF
17 1940, AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A
18 REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-
19 ONE OF THE INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE
20 HUNDRED MILLION DOLLARS, (F) principally used in the ordinary course of
21 the taxpayer's business as an exchange registered as a national securi-
22 ties exchange within the meaning of sections 3(a)(1) and 6(a) of the
23 Securities Exchange Act of 1934 or a board of trade as defined in
24 section 1410(a)(1) of the New York Not-for-Profit Corporation Law or as
25 an entity that is wholly owned by one or more such national securities
26 exchanges or boards of trade and that provides automation or technical
27 services thereto, or (G) principally used as a qualified film production
28 facility including qualified film production facilities having a situs
29 in an empire zone designated as such pursuant to article eighteen-B of
30 the general municipal law, where the taxpayer is providing three or more
31 services to any qualified film production company using the facility,
32 including such services as a studio lighting grid, lighting and grip
33 equipment, multi-line phone service, broadband information technology
34 access, industrial scale electrical capacity, food services, security
35 services, and heating, ventilation and air conditioning. For purposes of
36 clauses (D), (E), (E-1) and (F) of this subparagraph, property purchased
37 by a taxpayer affiliated with a regulated broker, dealer, registered
38 investment adviser, national securities exchange or board of trade, is
39 allowed a credit under this subdivision if the property is used by its
40 affiliated regulated broker, dealer, registered investment adviser,
41 national securities exchange or board of trade in accordance with this
42 subdivision. For purposes of determining if the property is principally
43 used in qualifying uses, the uses by the taxpayer described in clauses
44 (D) [and], (E), AND (E-1) of this subparagraph may be aggregated. In
45 addition, the uses by the taxpayer, its affiliated regulated broker,
46 dealer, and registered investment adviser under [either or both] ANY of
47 those clauses may be aggregated. Provided, however, a taxpayer shall
48 not be allowed the credit provided by clauses (D), (E), (E-1) and (F) of
49 this subparagraph unless (I) eighty percent or more of the employees
50 performing the administrative and support functions resulting from or
51 related to the qualifying uses of such equipment are located in this
52 state or (II) the average number of employees that perform the adminis-
53 trative and support functions resulting from or related to the qualify-
54 ing uses of such equipment and are located in this state during the
55 taxable year for which the credit is claimed is equal to or greater than
56 ninety-five percent of the average number of employees that perform

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

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

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

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

1 each affiliate using the property must satisfy this employment test or
2 this employment test must be satisfied through the aggregation of the
3 employees of the taxpayer, its affiliated regulated broker, dealer, and
4 registered investment adviser using the property. For purposes of this
5 subsection, the term "goods" shall not include electricity.

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

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

54 S 4. This act shall take effect immediately.