

1694

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I N S E N A T E

(PREFILED)

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-- 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 a small business electric
energy tax credit

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

1 Section 1. Section 210 of the tax law is amended by adding a new
2 subdivision 46 to read as follows:
3 46. SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (A) A TAXPAYER THAT IS
4 ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDI-
5 VISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
6 CLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT OF TWO
7 CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT
8 THE TAXPAYER'S PRIMARY BUSINESS LOCATION UP TO A ONE THOUSAND DOLLAR
9 LIMIT DURING THE TAXABLE YEAR.
10 (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL
11 TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED
12 MEMBERS OR AFFILIATES, (II) NOT BE A SOLE-PROPRIETORSHIP IF SUCH
13 SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH
14 SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO
15 ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIV-
16 ING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER
17 ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.
18 (C) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO
19 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE
20 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM
21 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS
22 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE
23 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS

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

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GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(D) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAYER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE PROVIDER.

(E) 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 CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 2. Section 606 of the tax law is amended by adding a new subsection (vv) to read as follows:

(VV) SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (1) A TAXPAYER THAT IS ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH TWO OF THIS SUBSECTION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT IN THE CASE OF A PARTNERSHIP) OF TWO CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT THE TAXPAYER'S PRIMARY BUSINESS LOCATION UP TO A ONE THOUSAND DOLLAR LIMIT DURING THE TAXABLE YEAR.

(2) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED MEMBERS OR AFFILIATES, (II) SHALL NOT BE A SOLE-PROPRIETORSHIP IF SUCH SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIVING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.

(3) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

1 (4) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF
2 THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAY-
3 ER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART
4 PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE
5 PROVIDER.

6 (5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY
7 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
8 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN
9 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
10 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

11 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
12 of the tax law is amended by adding a new clause (xxxv) to read as
13 follows:

14 (XXXV) SMALL BUSINESS ELECTRIC	QUALIFYING ELECTRICITY USAGE
15 ENERGY TAX CREDIT	UNDER SUBDIVISION FORTY-SIX
16 UNDER SUBSECTION (VV)	OF SECTION TWO HUNDRED TEN

17 S 4. This act shall take effect on the first of January next succeed-
18 ing the date on which it shall have become a law.