S T A T E O F N E W Y O R K

5481--A

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sens. MAZIARZ, DeFRANCISCO, MARCHIONE, O'MARA, PARKER, RANZENHOFER, RITCHIE, SAMPSON, TKACZYK, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state technology law and the tax law, in relation to a refundable tax credit provided to broadband deployment to residences and small businesses located in rural, unserved areas

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

Section 1. This act shall be known and may be cited as the "credit for rural broadband act of 2014".

S 2. Section 104 of the state technology law is amended by adding a new subdivision 3 to read as follows:

3. THE OFFICE OF INFORMATION TECHNOLOGY SERVICES, IN CONJUNCTION WITH INPUT FROM THE ADVISORY COUNCIL, IS HEREBY AUTHORIZED AND DIRECTED TO PROMULGATE RULES AND REGULATIONS NECESSARY FOR VERIFYING AN "UNSERVED" AREA UNDER THE CREDIT FOR RURAL BROADBAND ACT OF TWO THOUSAND FOURTEEN, USING BROADBAND MAPPING DATA AT THE TIME A PROJECT IS PROPOSED.

S 3. Section 210 of the tax law is amended by adding a new subdivision 48 to read as follows:

48. CREDIT FOR RURAL BROADBAND DEPLOYMENT. (A) ALLOWANCE OF CREDIT. A QUALIFIED TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO ANY QUALIFIED CUSTOMER CONTRIBUTION IN AID OF CONSTRUCTION RESULTING FROM NEW NETWORK CONSTRUCTION TO DELIVER BROADBAND SERVICE TO THE INDIVIDUAL'S RESIDENCE OR PLACE OF BUSINESS LOCATED IN AN UNSERVED AREA. THE CREDIT ALLOWED BY THIS SUBDIVISION SHALL BE CLAIMED ANNUALLY OVER A FIVE-YEAR PERIOD EQUAL TO ONE-FIFTH OF THE CREDIT AMOUNT. IF THE CREDIT ALLOWED UNDER THIS SUBDIVISION IS GREATER THAN

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

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THE TAX DUE IN ANY TAXABLE YEAR, THE AMOUNT BY WHICH SUCH CREDIT EXCEEDS SUCH TAX DUE IS TREATED AS AN OVERPAYMENT OF TAX TO BE REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER.

(B) FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) "QUALIFIED CONSTRUCTION EXPENSES" EQUAL THE TOTAL COST OF CONSTRUCTION OF NEW NETWORKS IN THE PROPOSED UNSERVED SERVICE AREA, AS CERTIFIED BY THE BROADBAND SERVICE PROVIDER, BUT NOT TO EXCEED A REASONABLE COST BASED UPON THE AVERAGE COST PER MILE OF BROADBAND NETWORK CONSTRUCTION AS DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE PUBLIC SERVICE COMMISSION AND BROADBAND SERVICE PROVIDERS.

(2) "QUALIFIED CUSTOMER CONTRIBUTION IN AID OF CONSTRUCTION" IS DETERMINED IN ACCORDANCE WITH THE FOLLOWING FORMULA: (QCE/TC) - (ACM/35) = QC, WHERE QCE EQUALS THE QUALIFIED CONSTRUCTION EXPENSES; ACM EQUALS THE AVERAGE COST OF CONSTRUCTION PER MILE IN THE PROPOSED UNSERVED SERVICE AREA, AS CERTIFIED BY THE BROADBAND SERVICE PROVIDER, BUT NOT TO EXCEED A REASONABLE COST BASED UPON THE AVERAGE COST PER MILE OF BROADBAND NETWORK CONSTRUCTION AS DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE PUBLIC SERVICE COMMISSION AND BROADBAND SERVICE PROVIDERS; TC EQUALS THE NUMBER OF RESIDENTS AND SMALL BUSINESS CUSTOMERS IN THE PROPOSED UNSERVED SERVICE AREA MAKING A QUALIFIED CUSTOMER CONTRIBUTION IN AID TO CONSTRUCTION AND CONTRACTING FOR SERVICES OVER THE NETWORK; AND QC EQUALS THE QUALIFIED CUSTOMER CONTRIBUTION IN AID OF CONSTRUCTION.

(3) "REQUIRED PROVIDER CONTRIBUTION IN AID TO CONSTRUCTION" SHALL EQUAL THE QUALIFIED CONSTRUCTION EXPENSES, LESS THE SUM OF ALL THE QUALIFIED CUSTOMER CONTRIBUTIONS IN AID TO CONSTRUCTION IN THE PROPOSED UNSERVED SERVICE AREA.

(4) "BROADBAND SERVICE" MEANS INTERNET ACCESS SERVICE WITH TRANSMISSION SPEEDS THAT ARE EQUAL TO OR GREATER THAN COMBINED ADVERTISED DOWNLOAD SPEEDS OF AT LEAST 4 MEGABITS PER SECOND (MBPS) AND UPLOAD SPEEDS OF AT LEAST 1 MBPS PER SECOND OVER THE PROVIDER'S NETWORK.

(5) "UNSERVED AREA" MEANS AN AREA COMPOSED OF ONE OR MORE CONTIGUOUS CENSUS BLOCKS WHERE AT LEAST NINETY PERCENT OF HOUSEHOLDS LACK ACCESS TO FACILITIES-BASED TERRESTRIAL BROADBAND SERVICE. A HOUSEHOLD HAS ACCESS TO A BROADBAND SERVICE IF THE HOUSEHOLD CAN READILY SUBSCRIBE TO THAT SERVICE UPON REQUEST.

(6) "QUALIFIED TAXPAYER" MEANS A TAXPAYER WHICH IS A SMALL BUSINESS CORPORATION AS DEFINED IN PARAGRAPH THREE OF SUBSECTION (C) OF SECTION TWELVE HUNDRED FORTY-FOUR OF THE INTERNAL REVENUE CODE (WITHOUT REGARD TO THE SECOND SENTENCE OF SUBPARAGRAPH (A) THEREOF) AS OF THE LAST DAY OF THE TAXABLE YEAR.

S 4. Subsections (yy) and (zz) of section 606 of the tax law, as relettered by section 5 of part H of chapter 1 of the laws of 2003, are relettered subsections (yyy) and (zzz) and a new subsection (bbb) is added to read as follows:

(BBB) CREDIT FOR RURAL BROADBAND DEPLOYMENT. (A) ALLOWANCE OF CREDIT. A QUALIFIED TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO ANY QUALIFIED CUSTOMER CONTRIBUTION IN AID OF CONSTRUCTION RESULTING FROM NEW NETWORK CONSTRUCTION TO DELIVER BROADBAND SERVICE TO THE INDIVIDUAL'S RESIDENCE OR PLACE OF BUSINESS LOCATED IN AN UNSERVED AREA. THE CREDIT ALLOWED BY THIS SUBSECTION SHALL BE CLAIMED ANNUALLY OVER A FIVE-YEAR PERIOD EQUAL TO ONE-FIFTH OF THE CREDIT AMOUNT. IF THE CREDIT ALLOWED UNDER THIS SUBSECTION IS GREATER THAN THE TAX DUE IN ANY TAXABLE YEAR, THE AMOUNT BY WHICH SUCH CREDIT EXCEEDS

SUCH TAX DUE IS TREATED AS AN OVERPAYMENT OF TAX TO BE REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER.

(B) FOR PURPOSES OF THIS SUBSECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) "QUALIFIED CONSTRUCTION EXPENSES" EQUAL THE TOTAL COST OF CONSTRUCTION OF NEW NETWORKS IN THE PROPOSED UNSERVED SERVICE AREA, AS CERTIFIED BY THE BROADBAND SERVICE PROVIDER, BUT NOT TO EXCEED A REASONABLE COST BASED UPON THE AVERAGE COST PER MILE OF BROADBAND NETWORK CONSTRUCTION AS DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE PUBLIC SERVICE COMMISSION AND BROADBAND SERVICE PROVIDERS.

(2) "QUALIFIED CUSTOMER CONTRIBUTION IN AID OF CONSTRUCTION" IS DETERMINED IN ACCORDANCE WITH THE FOLLOWING FORMULA: (QCE/TC) - (ACM/35) = QC, WHERE QCE EQUALS THE QUALIFIED CONSTRUCTION EXPENSES; ACM EQUALS THE AVERAGE COST OF CONSTRUCTION PER MILE IN THE PROPOSED UNSERVED SERVICE AREA, AS CERTIFIED BY THE BROADBAND SERVICE PROVIDER, BUT NOT TO EXCEED A REASONABLE COST BASED UPON THE AVERAGE COST PER MILE OF BROADBAND NETWORK CONSTRUCTION AS DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE PUBLIC SERVICE COMMISSION AND BROADBAND SERVICE PROVIDERS; TC EQUALS THE NUMBER OF RESIDENTS AND SMALL BUSINESS CUSTOMERS IN THE PROPOSED UNSERVED SERVICE AREA MAKING A QUALIFIED CUSTOMER CONTRIBUTION IN AID TO CONSTRUCTION AND CONTRACTING FOR SERVICES OVER THE NETWORK; AND QC EQUALS THE QUALIFIED CUSTOMER CONTRIBUTION IN AID OF CONSTRUCTION.

(3) "REQUIRED PROVIDER CONTRIBUTION IN AID TO CONSTRUCTION" SHALL EQUAL THE QUALIFIED CONSTRUCTION EXPENSES, LESS THE SUM OF ALL THE QUALIFIED CUSTOMER CONTRIBUTIONS IN AID TO CONSTRUCTION IN THE PROPOSED UNSERVED SERVICE AREA.

(4) "BROADBAND SERVICE" MEANS INTERNET ACCESS SERVICE WITH TRANSMISSION SPEEDS THAT ARE EQUAL TO OR GREATER THAN COMBINED ADVERTISED DOWNLOAD SPEEDS OF AT LEAST 4 MEGABITS PER SECOND (MBPS) AND UPLOAD SPEEDS OF AT LEAST 1 MBPS PER SECOND OVER THE PROVIDER'S NETWORK.

(5)"UNSERVED AREA" MEANS AN AREA COMPOSED OF ONE OR MORE CONTIGUOUS CENSUS BLOCKS WHERE AT LEAST NINETY PERCENT OF HOUSEHOLDS LACK ACCESS TO FACILITIES-BASED TERRESTRIAL BROADBAND SERVICE. A HOUSEHOLD HAS ACCESS TO A BROADBAND SERVICE IF THE HOUSEHOLD CAN READILY SUBSCRIBE TO THAT SERVICE UPON REQUEST.

(6)"QUALIFIED TAXPAYER" MEANS ANY INDIVIDUAL WITH NEW YORK ADJUSTED GROSS INCOME OF TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS.

S 5. This act shall take effect immediately and shall apply to tax years beginning on or after January 1, 2015.