

# STATE OF NEW YORK

181

2017-2018 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2017

Introduced by M. of A. SANTABARBARA, BRINDISI, FAHY, JENNE, PALMESANO --  
Multi-Sponsored by -- M. of A. LOPEZ -- read once and referred to the  
Committee on Ways and Means

AN ACT to amend the economic development law and the tax law, in  
relation to tax credits for upstate reinvestment zones

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The economic development law is amended by adding a new  
2 article 23 to read as follows:

### ARTICLE 23

#### UPSTATE REINVESTMENT ZONES

5 Section 460. Power to administer the upstate reinvestment zones tax  
6 credit.

7 § 460. Power to administer the upstate reinvestment zones tax credit.

8 (a) The commissioner is authorized to administer the upstate reinvest-  
9 ment zones tax credit program to provide tax incentives to businesses  
10 for the qualified purchase of a building or buildings or qualified reha-  
11 bilitation expenditures in such zone. The commissioner is authorized to  
12 allocate up to ten million dollars of tax credits under this program per  
13 year. The amount of credit shall be twenty percent of the qualified  
14 purchase and qualified rehabilitation expenditures of buildings and  
15 rehabilitations, as such amount is computed pursuant to section forty-  
16 three of the tax law.

17 (b) Definitions. (1) The term "upstate reinvestment zone" shall mean  
18 an area: (i) that, according to the most recent American community  
19 survey by the United States census bureau, lies within a census tract  
20 with a poverty rate equal to or greater than twenty percent or an unem-  
21 ployment rate that is equal to or greater than one and one-half percent  
22 times the national average unemployment rate and (ii) is within the

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

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1 incorporated boundaries of a village, town or city having a population  
2 of less than one million.

3 (2) The term "qualified purchase" shall mean the cost or other basis  
4 for federal income tax purposes of acquisition cost of building for  
5 which depreciation is allowed under section one hundred sixty-eight of  
6 the internal revenue code and which is (i) nonresidential property, (ii)  
7 residential property, or (iii) an addition or improvement to property  
8 described in subparagraph (i) or (ii) of this paragraph.

9 (3) The term "qualified rehabilitation expenditures" shall mean quali-  
10 fied expenditures as defined in paragraph (2) of subsection (c) of  
11 section forty-seven of the internal revenue code other than the quali-  
12 fied purchase made in paragraph two of this subdivision.

13 (c) Allocation of credits. (1) The aggregate amount of tax credits  
14 allowed under this subdivision in any taxable year shall be ten million  
15 dollars. Such aggregate amount of credits shall be allocated by the  
16 commissioner among taxpayers in the order in which applications are  
17 received. If the total amount of allocated credits applied for in any  
18 particular year exceeds the aggregate amount of tax credits allowed for  
19 such year under this section, such excess shall be treated as having  
20 been applied for on the first day of the subsequent year.

21 (2) The commissioner shall promulgate regulations by December thirty-  
22 first, two thousand eighteen to establish procedures for the allocation  
23 of tax credits as required. Such rules and regulations shall include  
24 provisions describing the application process, the due dates for such  
25 applications, the standards which shall be used to evaluate the applica-  
26 tions, the documentation that will be provided to taxpayers to substan-  
27 tiate to the commissioner the amount of tax credits allocated to such  
28 taxpayers, and such other provisions as deemed necessary and appropri-  
29 ate. Notwithstanding any other provisions to the contrary in the state  
30 administrative procedure act, such rules and regulations may be adopted  
31 on an emergency basis if necessary to meet such December thirty-first,  
32 two thousand eighteen deadline.

33 (d) In order to be eligible for the tax credits, a taxpayer must  
34 submit an application (in a form prescribed by the commissioner) to the  
35 commissioner. The commissioner shall establish guidelines and criteria  
36 for a designation of upstate reinvestment zones.

37 (e) If, after reviewing the application submitted by the taxpayer, the  
38 commissioner determines that such qualified purchase of the building or  
39 qualified rehabilitation expenditures were made in an upstate reinvest-  
40 ment zone, then the commissioner shall issue the taxpayer a certificate  
41 of eligibility that establishes the taxpayer as a qualified taxpayer.

42 § 2. The tax law is amended by adding a new section 43 to read as  
43 follows:

44 § 43. Upstate reinvestment zones tax credit. (a) A taxpayer shall be  
45 allowed a credit, to be computed as hereinafter provided, against the  
46 tax imposed by articles nine-A and twenty-two of this chapter for the  
47 development to upstate reinvestment zones including, but not limited to,  
48 the qualified purchase of buildings and qualified rehabilitation expend-  
49 itures of buildings in such zones where at least fifty percent of the  
50 square footage of such buildings, at the time of purchase or rehabili-  
51 tation, is vacant or otherwise unused. The amount of the credit shall be  
52 twenty percent of the qualified purchase and qualified rehabilitation  
53 expenditures of buildings and rehabilitations in such zones with such  
54 credit subject to restrictions set forth in subdivision (d) of this  
55 section. This credit will not be allowed if the qualified purchase of  
56 buildings and qualified rehabilitation expenditures of buildings that

1 are the basis for this credit are included in the calculation of another  
2 credit claimed by the taxpayer under this chapter.

3 (b) For the purpose of this section, the term "qualified purchase"  
4 shall mean the cost or other basis for federal income tax purposes of  
5 acquisition cost of building for which depreciation is allowed under  
6 section one hundred sixty-eight of the internal revenue code and which  
7 is (1) nonresidential property, (2) residential property, or (3) an  
8 addition or improvement to property described in paragraph (1) or (2) of  
9 this subdivision. The term "qualified rehabilitation expenditures"  
10 shall mean qualified expenditures as defined in paragraph (2) of  
11 subsection (c) of section forty-seven of the internal revenue code.

12 (c) For the purpose of this section, the term "upstate reinvestment  
13 zones" shall mean an area: (i) that, according to the most recent Amer-  
14 ican community survey by the United States census bureau, lies within a  
15 census tract with a poverty rate equal to or greater than twenty percent  
16 or an unemployment rate that is equal to or greater than one and one-  
17 half percent times the national average unemployment rate and (ii) is  
18 within the incorporated boundaries of a village, town or city having a  
19 population of less than one million.

20 (d) The sum of all tax credits granted pursuant to the provisions of  
21 this section shall not exceed five hundred thousand dollars for any one  
22 taxpayer including such party's affiliates and related entities for a  
23 taxable year. If the taxpayer is a partner in a partnership, member of  
24 a limited liability company or shareholder of a New York S corporation,  
25 then the annual limit by the preceding sentence shall be applied at the  
26 entity level, so that the aggregate credit allowed to all the partners,  
27 members or shareholders of each such entity in the taxable year does not  
28 exceed the five hundred thousand dollar annual limit.

29 (e) (1) The aggregate amount of tax credits allowed under this  
30 section, in any taxable year shall be ten million dollars. Such aggre-  
31 gate amount of credits shall be allocated by the commissioner of econom-  
32 ic development among taxpayers in the order in which applications are  
33 received. If the total amount of allocated credits applied for in any  
34 particular year exceeds the aggregate amount of tax credits allowed for  
35 such year under this section, such excess shall be treated as having  
36 been applied for on the first day of the subsequent year.

37 (2) The commissioner of the department of economic development shall  
38 promulgate regulations by December thirty-first, two thousand eighteen  
39 to establish procedures for the allocation of tax credits as required  
40 pursuant to section four hundred sixty of the economic development law.  
41 Such rules and regulations shall include provisions describing the  
42 application process, the due dates for such applications, the standards  
43 which shall be used to evaluate the applications, the documentation that  
44 will be provided to taxpayers to substantiate to the department the  
45 amount of tax credits allocated to such taxpayers, and such other  
46 provisions as deemed necessary and appropriate.

47 (f) The credit allowed under this section for any taxable year shall  
48 not reduce the tax due for such year to less than the amount prescribed  
49 in paragraph (d) of subdivision one of section two hundred ten of this  
50 chapter. Provided, however, that if the amount of the credit allowable  
51 under this section for any taxable year reduces the tax to such amount,  
52 the excess shall be treated as an overpayment of tax to be credited or  
53 refunded in accordance with the provisions of section one thousand  
54 eighty-six of this chapter. Provided further, the provisions of  
55 subsection (c) of section one thousand eighty-eight of this chapter  
56 notwithstanding, no interest shall be paid thereon.

(g) The taxpayer may be required to attach to its tax return its certificate of eligibility issued by the commissioner of economic development pursuant to section four hundred sixty of the economic development law.

(h) Where the building which was the basis for the allowance of the credit provided for under this section is sold before the close of the recapture period, the taxpayer shall add back, in the taxable year in which such building was sold, the credit recapture amount. The credit recapture amount is the product of the credit amount claimed and the recapture percentage in accordance with the following table.

| <u>If the building is sold within</u> | <u>The recapture percentage</u> |
|---------------------------------------|---------------------------------|
|---------------------------------------|---------------------------------|

|                                                  |            |
|--------------------------------------------------|------------|
| <u>(i) One full year after placed in service</u> | <u>100</u> |
|--------------------------------------------------|------------|

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| <u>(ii) One full year after the close of the period described in paragraph (i)</u> | <u>80</u> |
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| <u>(iii) One full year after the close of the period described in paragraph (ii)</u> | <u>60</u> |
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| <u>(iv) One full year after the close of the period described in paragraph (iii)</u> | <u>40</u> |
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| <u>(v) One full year after the close of the period described in paragraph (iv)</u> | <u>20</u> |
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| <u>(i) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:</u> |  |
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| <u>(1) Article 9A: section 210-B, subdivision 52.</u> |  |
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| <u>(2) Article 22: section 606, subsection (i), paragraph (1), subparagraph (B), clause (xliii).</u> |  |
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| <u>(3) Article 22: section 606, subsection (ccc).</u> |  |
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§ 3. Section 210-B of the tax law is amended by adding a new subdivision 52 to read as follows:

52. Upstate reinvestment zones tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-three of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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-six of this chapter notwithstanding, no interest will be paid thereon.

§ 4. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(ccc) Upstate reinvestment zones tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-three of this chapter, against the tax imposed by this article.

(b) Application of credit. If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the

§ 4. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(ccc) Upstate reinvestment zones tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-three of this chapter, against the tax imposed by this article.

(b) Application of credit. If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the

1 provisions of section six hundred eighty-six of this article. Provided,  
2 however, no interest will be paid thereon.

3 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
4 of the tax law is amended by adding a new clause (xliii) to read as  
5 follows:

6 (xliii) Upstate reinvestment  
7 zones credit under  
8 subsection (ccc)

Amount of the credit under  
subdivision fifty-two of section  
two hundred ten-B

9 § 6. This act shall take effect immediately and apply to taxable years  
10 beginning on or after January 1, 2019. The commissioner of taxation and  
11 finance is authorized to issue regulations and guidance necessary to  
12 implement this act on or before the effective date.