

STATE OF NEW YORK

400

2017-2018 Regular Sessions

IN ASSEMBLY

January 9, 2017

Introduced by M. of A. GUNTHER, SCHIMMINGER, LUPARDO, COLTON, CUSICK, ZEBROWSKI, PEOPLES-STOKES, JAFFEE, HOOPER, AUBRY, PERRY, McLAUGHLIN, RAIA, LOPEZ -- Multi-Sponsored by -- M. of A. COOK, DAVILA, GOODELL, MAGEE, MOSLEY, ORTIZ, RIVERA, TITONE -- read once and referred to the Committee on Ways and Means

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 Assembly, do enact as follows:

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 49 to read as follows:

49. Small business electric energy tax credit. (a) A taxpayer that is eligible under the limitations specified in paragraph (b) of this subdivision shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to the product of two cents per kilowatt hour for all business related electricity usage at the taxpayer's primary business location.

(b) 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) 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.

(c) (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

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

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1 generated or coordinated through. (iii) The term "related members"
2 shall have the same meaning as set forth in clauses (A) and (B) of
3 subparagraph one of paragraph (o) of subdivision nine of section two
4 hundred eight of this article, and the term "affiliates" shall mean
5 those corporations that are members of the same affiliated group (as
6 defined in section fifteen hundred four of the internal revenue code) as
7 the taxpayer.

8 (d) The eligible usage level shall be the total kilowatt hour usage of
9 the taxpayer for business related electricity usage during the taxpay-
10 er's taxable year as verified through bills or other form of usage chart
11 provided to the taxpayer by the taxpayer's electricity power service
12 provider.

13 (e) In no event shall the credit provided for in this subdivision be
14 allowed in an amount which will reduce the tax payable to less than the
15 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
16 one of section two hundred ten of this article. However, if the amount
17 of credit allowed under this subdivision for any taxable year reduces
18 the tax to such amount, any amount of credit not deductible in such
19 taxable year shall be treated as an overpayment of tax to be credited or
20 refunded in accordance with the provisions of section ten hundred eight-
21 y-six of this chapter. Provided, however, the provisions of subsection
22 (c) of section ten hundred eighty-eight of this chapter notwithstanding,
23 no interest shall be paid thereon.

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

26 (ccc) Small business electric energy tax credit. (1) A taxpayer that
27 is eligible under the limitations specified in paragraph two of this
28 subsection shall be allowed a credit against the tax imposed by this
29 article. The amount of the credit shall be equal to the product (or pro
30 rata share of the product in the case of a partnership) of two cents per
31 kilowatt hour for all business related electricity usage at the taxpay-
32 er's primary business location.

33 (2) An eligible taxpayer shall (i) have no more than nineteen full
34 time equivalent employees in New York state, including any related
35 members or affiliates, (ii) shall not be a sole-proprietorship if such
36 sole-proprietor's primary business location is sited in or part of such
37 sole-proprietor's place of residence, (iii) not be certified pursuant to
38 article eighteen-B of the general municipal law, and (iv) not be receiv-
39 ing any allocation or award pursuant to any program authorized under
40 article six of the economic development law.

41 (3) (i) The term "business related electricity usage" shall refer to
42 electrical power usage used to further the economic activity of the
43 taxpayer at the primary business location that is clearly delimited from
44 any shared electrical power usage cost. (ii) The term "primary business
45 location" shall mean the physical site of the taxpayer within the state
46 of New York where the majority of the taxpayer's economic activity is
47 generated or coordinated through. (iii) The term "related members" shall
48 have the same meaning as set forth in clauses (A) and (B) of subpara-
49 graph one of paragraph (o) of subdivision nine of section two hundred
50 eight of this chapter, and the term "affiliates" shall mean those corpo-
51 rations that are members of the same affiliated group (as defined in
52 section fifteen hundred four of the internal revenue code) as the
53 taxpayer.

54 (4) The eligible usage level shall be the total kilowatt hour usage of
55 the taxpayer for business related electricity usage during the taxpay-
56 er's taxable year as verified through bills or other form of usage chart

1 provided to the taxpayer by the taxpayer's electricity power service
2 provider.

3 (5) If the amount of credit allowed under this subsection for any
4 taxable year shall exceed the taxpayer's tax for such year, the excess
5 shall be treated as an overpayment of tax to be credited or refunded in
6 accordance with the provisions of section six hundred eighty-six of this
7 article, provided, however, that no interest shall be paid thereon.

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

11 <u>(xlili) Small business electric</u>	<u>Qualifying electricity usage</u>
12 <u>energy tax credit</u>	<u>under subdivision forty-nine</u>
13 <u>under subsection (ccc)</u>	<u>of section two hundred ten-B</u>

14 § 4. This act shall take effect immediately and shall apply to taxable
15 years beginning on or after January 1, 2017.