

STATE OF NEW YORK

9071

IN SENATE

April 16, 2024

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law and the parks, recreation and historic preservation law, in relation to authorizing the pass-through or transfer of the credits for rehabilitation of historic properties

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

1 Section 1. Subdivision 26 of section 210-B of the tax law is amended
2 by adding two new paragraphs (g) and (h) to read as follows:

3 (g) (i) The allocation of the credit established by this subdivision
4 may be made without regard to and in a separate manner from any federal
5 rehabilitation credit that may be allocated with respect to a certified
6 historic structure under section forty-seven of the internal revenue
7 code by written agreement of the taxpayer otherwise entitled to claim
8 such credit or by written agreement of a pass-through entity that may
9 report such credit or otherwise elect to pass the federal rehabilitation
10 tax credit through to a tenant taxpayer in accordance with applicable
11 federal law.

12 (ii) With respect to certified historic structures that are subject to
13 a lease arrangement whereby the landlord elects to pass the federal
14 rehabilitation credit through to the tenant taxpayer, not only may the
15 New York state rehabilitation credit be passed down to the tenant
16 taxpayer and then allocated without regard to and in a separate manner
17 from any federal rehabilitation credit that may be allocated, but the
18 landlord may also opt to retain the New York state rehabilitation cred-
19 it. For purposes of this section, a "landlord" means the owner of the
20 certified historic structure for federal tax purposes.

21 (iii) The New York state rehabilitation credit may be transferred as
22 provided for in article fourteen-A of the parks, recreation and historic
23 preservation law.

24 (h) The commissioner shall report annually, on or before the first day
25 of November, on the aggregate amount of credits claimed pursuant to this
26 subdivision on returns filed during the preceding calendar year. Such
27 report shall be provided to the governor, temporary president of the

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

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1 senate, speaker of the assembly, chairs of the senate committees on
2 finance and on housing, construction and community development, and
3 chairs of the assembly committees on ways and means and on housing and
4 shall be made publicly available on the department's website.

5 § 2. Subsection (oo) of section 606 of the tax law is amended by
6 adding two new paragraphs 7 and 8 to read as follows:

7 (7) (A) The allocation of the credit established by this subsection
8 may be made without regard to and in a separate manner from any federal
9 rehabilitation credit that may be allocated with respect to a certified
10 historic structure under section forty-seven of the internal revenue
11 code by written agreement of the taxpayer otherwise entitled to claim
12 such credit or by written agreement of a pass-through entity that may
13 report such credit or otherwise elect to pass the federal rehabilitation
14 tax credit through to a tenant taxpayer in accordance with applicable
15 federal law.

16 (B) With respect to certified historic structures that are subject to
17 a lease arrangement whereby the landlord elects to pass the federal
18 rehabilitation credit through to the tenant taxpayer, not only may the
19 New York state rehabilitation credit be passed down to the tenant
20 taxpayer and then allocated without regard to and in a separate manner
21 from any federal rehabilitation credit that may be allocated, but the
22 landlord may also opt to retain the New York state rehabilitation cred-
23 it. For purposes of this section, a "landlord" means the owner of the
24 certified historic structure for federal tax purposes.

25 (C) The New York state rehabilitation credit may be transferred as
26 provided for in article fourteen-A of the parks, recreation and historic
27 preservation law.

28 (8) The commissioner shall report annually, on or before the first day
29 of November, on the aggregate amount of credits claimed pursuant to this
30 subsection on returns filed during the preceding calendar year. Such
31 report shall be provided to the governor, temporary president of the
32 senate, speaker of the assembly, chairs of the senate committees on
33 finance and on housing, construction and community development, and
34 chairs of the assembly committees on ways and means and on housing and
35 shall be made publicly available on the department's website.

36 § 3. Subdivision (y) of section 1511 of the tax law, as added by chap-
37 ter 472 of the laws of 2010, is amended by adding two new paragraphs 7
38 and 8 to read as follows:

39 (7) (A) The allocation of the credit established by this subdivision
40 may be made without regard to and in a separate manner from any federal
41 rehabilitation credit that may be allocated with respect to a certified
42 historic structure under section forty-seven of the internal revenue
43 code by written agreement of the taxpayer otherwise entitled to claim
44 such credit or by written agreement of a pass-through entity that may
45 report such credit or otherwise elect to pass the federal rehabilitation
46 tax credit through to a tenant taxpayer in accordance with applicable
47 federal law.

48 (B) With respect to certified historic structures that are subject to
49 a lease arrangement whereby the landlord elects to pass the federal
50 rehabilitation credit through to the tenant taxpayer, not only may the
51 New York state rehabilitation credit be passed down to the tenant
52 taxpayer and then allocated without regard to and in a separate manner
53 from any federal rehabilitation credit that may be allocated, but the
54 landlord may also opt to retain the New York state rehabilitation cred-
55 it. For purposes of this section, a "landlord" means the owner of the
56 certified historic structure for federal tax purposes.

1 (C) The New York state rehabilitation credit may be transferred as
2 provided for in article fourteen-A of the parks, recreation and historic
3 preservation law.

4 (8) The commissioner shall report annually, on or before the first day
5 of November, on the aggregate amount of credits claimed pursuant to
6 this subdivision on returns filed during the preceding calendar year.
7 Such report shall be provided to the governor, temporary president of
8 the senate, speaker of the assembly, chairs of the senate committees on
9 finance and on housing, construction and community development, and
10 chairs of the assembly committees on ways and means and on housing and
11 shall be made publicly available on the department's website.

12 § 4. The parks, recreation and historic preservation law is amended by
13 adding a new article 14-A to read as follows:

14 ARTICLE 14-A

15 HISTORIC REHABILITATION TAX CREDIT TRANSFER PROGRAM

16 Section 14.15 Definitions.

17 14.16 Transfer of rehabilitation credit.

18 14.17 Reporting.

19 14.18 Regulations, coordination with federal rehabilitation
20 credit provisions.

21 § 14.15 Definitions. As used in this article, the following terms
22 shall have the following meanings:

23 1. "Federal rehabilitation credit" means the federal credit that may
24 be allocated with respect to a certified historic structure under
25 section forty-seven of the internal revenue code. References in this
26 article to section forty-seven of the internal revenue code shall mean
27 such section as amended from time to time.

28 2. "Pass-through entity" means an entity that is not a taxpayer under
29 federal or state tax law, such as a limited liability company, a part-
30 nership, an S Corporation, or any other entity as determined by the
31 commissioner of taxation and finance which is deemed to be a reporting
32 entity for income tax purposes and files annual information returns
33 passing through items of income, loss, credits and certain other tax
34 attributes to each partner, member or shareholder as applicable.

35 3. "Qualified rehabilitation expenditures" shall have the same meaning
36 as in section forty-seven of the internal revenue code.

37 4. "Regulations" means regulations adopted by the commissioner, in
38 consultation with the commissioner of the department of taxation and
39 finance, pursuant to section 14.18 of this article.

40 5. "Rehabilitation credit" means the credit provided for under subdi-
41 vision twenty-six of section two hundred ten-B, subsection (oo) of
42 section six hundred six or subdivision (y) of section fifteen hundred
43 eleven of the tax law.

44 6. "Transferee" means a taxpayer or a pass-through entity that
45 receives a transfer of the rehabilitation credit. A transferee need not
46 own an interest in the certified historic structure or in an entity with
47 an ownership interest in the certified historic structure to receive a
48 transfer of a rehabilitation credit.

49 7. "Non-profit transferee" means a non-profit entity that receives a
50 transfer of the rehabilitation credit.

51 § 14.16 Transfer of rehabilitation credit. Either a 1. taxpayer or
52 pass-through entity that may report the rehabilitation credit or other-
53 wise elect to pass the federal rehabilitation credit through to a tenant
54 taxpayer in accordance with applicable federal law or 2. non-profit
55 transferee may, with prior notice in accordance with the regulations,
56 transfer the rehabilitation credit, in whole or in part, to any trans-

1 feree or non-profit transferee with the same effect as if the transferee
2 or non-profit transferee had incurred the qualified rehabilitation
3 expenditures itself; provided that no partial transfer of the rehabili-
4 tation credit may be for less than twenty-five percent of the full reha-
5 bilitation credit claimed by the taxpayer. A transferee shall use or
6 report the rehabilitation credit in the year it is allowed and may not
7 transfer the rehabilitation credit on to yet another transferee. A
8 transfer of rehabilitation credit to a non-profit transferee, where the
9 non-profit transferee is solely acting as a go-between to further trans-
10 fer the rehabilitation credit to a transferee, shall not constitute a
11 transfer for purposes of determining the single transfer limitation of
12 this section.

13 § 14.17 Reporting. If a taxpayer or a pass-through entity that may
14 report the credit or otherwise elect to pass the federal rehabilitation
15 credit through to a tenant taxpayer in accordance with applicable feder-
16 al law elects to transfer the credit as provided for in section 14.16 of
17 this article, prior to filing any tax returns claiming the rehabili-
18 tation credit, a taxpayer or a pass-through entity that may report the
19 rehabilitation credit or otherwise elect to pass the federal rehabili-
20 tation credit through to a tenant taxpayer in accordance with applicable
21 federal law shall provide an information statement to the commissioner
22 in accordance with the department's regulations. Such information state-
23 ment shall include, but may not be limited to, the identity and tax
24 identification information of any non-profit transferee and the identity
25 and tax identification information of any transferee that will claim the
26 credit.

27 § 14.18 Regulations, coordination with federal rehabilitation credit
28 provisions. The commissioner, in consultation with the commissioner of
29 the department of taxation and finance, shall promulgate rules and regu-
30 lations necessary to administer the provisions of this article.

31 § 5. This act shall take effect immediately and shall apply to taxable
32 years beginning on and after January 1, 2025.