

STATE OF NEW YORK

2711

2025-2026 Regular Sessions

IN ASSEMBLY

January 22, 2025

Introduced by M. of A. WOERNER, CLARK, ROSENTHAL -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

AN ACT to amend the parks, recreation and historic preservation law and the tax law, in relation to establishing the historic preservation tax credit transfer program

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

1 Section 1. The parks, recreation and historic preservation law is
2 amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

HISTORIC PRESERVATION TAX CREDIT TRANSFER PROGRAM

Section 14.15 Short title.

14.16 Statement of legislative findings and declaration.

14.17 Definitions.

14.18 Eligibility criteria.

14.19 Allowance of credit, amount and limitations.

14.20 Historic preservation tax credit transfer.

14.21 Powers and duties of the commissioner.

§ 14.15 Short title. This article shall be known and may be cited as the "historic preservation tax credit transfer program".

§ 14.16 Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to provide flexibility and incentives for businesses which rehabilitate historic properties to further promote the development of affordable housing.

§ 14.17 Definitions. For the purposes of this article:

1. "Certificate of historic preservation tax credit transfer" means the document issued by the department to an eligible transferee and eligible transferor, as appropriate. The certificate shall specify the exact amount of the tax credit under this article that an eligible

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

LBD05714-02-5

1 transferee may claim and the percentage of the total credit that an
2 eligible transferor has forfeited pursuant to this article.

3 2. "Commissioner" shall mean commissioner of parks, recreation and
4 historic preservation.

5 3. "Department" shall mean the department of parks, recreation and
6 historic preservation.

7 4. "Eligible project" shall mean a project allowed rehabilitation
8 credit and low-income housing tax credit, as determined by the depart-
9 ment and division of community housing and renewal, respectively, and
10 for which an eligible transferor may transfer a rehabilitation credit.

11 5. "Eligible transferee" shall mean a taxpayer which meets the eligi-
12 bility criteria set forth in section 14.18 of this article. A non-profit
13 intermediary may also be an eligible transferee for purposes of this
14 article.

15 6. "Eligible transferor" shall mean the taxpayer subject to tax under
16 article nine-A, twenty-two, or thirty-three of the tax law which is
17 allowed a rehabilitation credit in accordance with this chapter and
18 meets the eligibility criteria set forth in section 14.18 of this arti-
19 cle. A non-profit intermediary may also be an eligible transferor for
20 purposes of this article.

21 7. "Federal rehabilitation credit" means the federal tax credit that
22 may be allocated with respect to a certified historic structure under
23 section forty-seven of the internal revenue code.

24 8. "Historic preservation tax credit transfer" shall mean a transfer
25 of the rehabilitation credit allowed for a certified historic rehabili-
26 tation project.

27 9. "Non-profit intermediary" means a non-profit entity that receives a
28 transfer of a rehabilitation credit from an eligible transferor to
29 facilitate the transfer of such credit to an eligible transferee.

30 10. "Qualified rehabilitation expenditures" shall have the same mean-
31 ing as in section forty-seven of the internal revenue code.

32 11. "Rehabilitation credit" or "historic preservation tax credit"
33 shall mean the credit provided for under subdivision twenty-six of
34 section two hundred ten-B, subsection (oo) of section six hundred six or
35 subdivision (y) of section fifteen hundred eleven of the tax law.

36 12. "Taxpayer" means a person or entity subject to tax imposed under
37 article nine-A, twenty-two or thirty-three of the tax law, including as
38 a partner in a partnership, member of a limited liability company or
39 shareholder in a subchapter S corporation.

40 13. References in this article to section forty-seven of the internal
41 revenue code shall mean such section as amended from time to time.

42 § 14.18 Eligibility criteria. 1. To be eligible to make a transfer of
43 a rehabilitation credit under this section, a transferor shall:

44 (a) (i) be the taxpayer to which the rehabilitation credit is allowed;
45 (ii) have received certification of such award from the commissioner
46 for an eligible project;

47 (iii) identify the amount of the rehabilitation credit allowed that
48 may otherwise be claimed for the taxable year;

49 (iv) not file or have filed the certificated rehabilitation credit as
50 part of such business entity's own tax return or information return for
51 any tax year; and

52 (v) not transfer a certificated rehabilitation credit for an eligible
53 project if such credit was received through a transfer contract from a
54 transferor other than a non-profit intermediary; or

55 (b) be a non-profit intermediary which has received the rehabilitation
56 credit pursuant to a transfer in accordance with this article.

2. To be eligible to accept a transfer of a rehabilitation credit for an eligible project under this section, a transferee must be a taxpayer, provided that a non-profit entity acting as a non-profit intermediary may also accept such a transfer. Such taxpayer or non-profit intermediary need not own an interest in the eligible project or in an entity with an ownership interest in the eligible project to be eligible to accept such a transfer.

3. (a) An eligible transferor may transfer the rehabilitation credit, in whole or in part, to an eligible transferee with the same effect as if such eligible transferee had incurred the qualified rehabilitation expenditures, provided that no partial transfer may be for less than twenty-five percent of the full rehabilitation credit that may otherwise be claimed by the transferor.

(b) An eligible transferor may (i) transfer the rehabilitation credit allowed for an eligible project to an eligible transferee together with a federal rehabilitation credit allowed for the same eligible project, (ii) transfer such rehabilitation credit, in whole or in part, to one or more eligible transferees and the federal rehabilitation credit for the same eligible project to a different eligible transferee or transferees, (iii) retain the rehabilitation credit even while transferring the federal rehabilitation credit allowed for the same eligible project to an eligible transferee or (iv) retain or transfer a rehabilitation credit for an eligible project for which no federal rehabilitation credit has been allowed.

4. (a) An eligible transferee which has accepted a transfer of any rehabilitation credit, in whole or in part, shall use or report such credit in the taxable year for which it is allowed and may not transfer any credit, or portion thereof, acquired by a transfer pursuant to this article, provided that if such eligible transferee is a non-profit intermediary, such intermediary may transfer the credit to an eligible transferee pursuant to this article.

(b) An eligible transferee need not agree to accept a transfer of both the eligible transferor's rehabilitation credit and federal rehabilitation credit for the same eligible project.

§ 14.19 Allowance of credit, amount and limitations. 1. An eligible transferor, or an eligible transferee which has entered into a transfer contract with such eligible transferor as described in subdivision two of this section, shall be allowed a credit against tax for the amount of rehabilitation credit certified by the commissioner for an eligible project.

2.(a) An eligible transferee allowed a credit pursuant to this article must enter into a transfer contract with the eligible transferor. The transfer contract must specify:

(i) the building identification numbers for all buildings in the eligible project;

(ii) the date each building was placed into service;

(iii) the five-year ownership period for the project;

(iv) the schedule of years for which the transfer credit may be claimed and the amount of credit previously claimed;

(v) the amount of consideration received by the eligible transferor for the transfer credit; and

(vi) the amount of credit being transferred.

(b) The commissioner shall establish procedures and a timeframe for the submission of an historic preservation tax credit transfer statement. No transfer shall be effective unless the taxpayer allowed a credit pursuant to this article and seeking to transfer the credit files an

1 historic preservation tax credit transfer statement with the commission-
2 er prior to the transfer and the commissioner approves such transfer.
3 The historic preservation tax credit transfer statement shall provide
4 the name and federal identification numbers of the filing eligible
5 transferor and the eligible transferee to whom the filing transferor
6 transferred the credit, in whole or in part, and the amount of credit
7 transferred to such eligible transferee. A copy of the proposed transfer
8 contract shall be attached to the historic preservation tax credit
9 transfer statement. The statement shall also contain such other informa-
10 tion as the commissioner may require. After reviewing the proposed
11 transfer contract and the transfer statement, the commissioner shall
12 approve or deny the transfer as provided in this subdivision. If the
13 commissioner approves the transfer, the commissioner shall issue a
14 certificate of historic preservation tax credit transfer that provides
15 the name of the eligible transferor and eligible transferee, the amount
16 of credit being transferred and such other information as the commis-
17 sioner and the commissioner of taxation and finance deem necessary. A
18 copy of the commissioner's certificate of historic preservation tax
19 credit transfer must be attached to the transferee's tax return for the
20 taxable year for which the credit is being claimed. If the commissioner
21 denies the transfer, the commissioner shall provide the eligible
22 transferor a written determination for such denial. The commissioner, in
23 consultation with the commissioner of taxation and finance, may estab-
24 lish such additional procedures and standards as deemed necessary for
25 the transferability of the rehabilitation credit.

26 (c) The commissioner shall maintain an auditable record of valid
27 certificates of historic preservation tax credit transfer to be provided
28 to the department of tax and finance at least annually or upon request
29 more frequently if deemed necessary by the department of taxation and
30 finance.

31 § 14.20 Historic preservation tax credit transfer. 1. An eligible
32 transferee shall be entitled to apply transferred rehabilitation credit
33 to a tax imposed under article nine-A, twenty-two or thirty-three of the
34 tax law, provided all requirements for claiming such credit are met.

35 2. The transfer of credit shall be allowed as provided in section
36 fifty of the tax law.

37 § 14.21 Powers and duties of the commissioner. 1. The commissioner, in
38 consultation with the department of taxation and finance, shall promul-
39 gate regulations establishing eligibility criteria and a process for
40 submitting an historic preservation tax credit transfer statement which,
41 notwithstanding any provisions to the contrary in the state administra-
42 tive procedure act, may be adopted on an emergency basis.

43 2. The commissioner shall, in consultation with the department of
44 taxation and finance, develop a certificate of historic preservation tax
45 credit transfer that shall be issued by the commissioner to eligible
46 business entities. Such certificate shall contain such information as
47 required by the department of taxation and finance.

48 § 2. Section 14.05 of the parks, recreation and historic preservation
49 law is amended by adding a new subdivision 5 to read as follows:

50 5. The commissioner shall report annually, on or before the first day
51 of November, on the tax credit projects applied for in accordance with
52 subdivision twenty-six of section two hundred ten-B, subsection (oo) of
53 section six hundred six, and subdivision (y) of section fifteen hundred
54 eleven of the tax law on returns filed during the preceding calendar
55 year. Such report shall be provided to the governor, temporary president
56 of the senate, speaker of the assembly, chairs of the senate committees

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

5 (a) the number and value of tax credit projects applied for during the
6 state fiscal year, organized by municipality and county, and project
7 size;

8 (b) the number and value of tax credit projects certified by the
9 national park service during the state fiscal year, organized by munici-
10 pality and county, and project size;

11 (c) the total value of credits certified annually for each of the
12 taxable years beginning on or after January first, two thousand seven to
13 the present, by municipality and county;

14 (d) the total value of tax credit transfer certificates issued annual-
15 ly for each of the taxable years beginning on or after January first,
16 two thousand seven to the present, by municipality and county;

17 (e) the number of housing units before and after rehabilitation;

18 (f) the number of low-moderate housing units before and after rehabil-
19 itation; and

20 (g) the number of projects certified for both federal and state cred-
21 its, and the number of projects certified for federal credits only.

22 § 3. The tax law is amended by adding a new section 50 to read as
23 follows:

24 § 50. Historic preservation tax credit transfer. (a) Allowance of
25 credit transfer. A taxpayer subject to tax under article nine-A, twen-
26 ty-two or thirty-three of this chapter shall be allowed a credit against
27 such tax, pursuant to the provisions referenced in subdivision (e) of
28 this section. The amount of the credit is equal to the amount determined
29 pursuant to article fourteen-A of the parks, recreation and historic
30 preservation law. A taxpayer that is a partner in a partnership, member
31 of a limited liability company or shareholder in a subchapter S corpo-
32 ration shall be allowed its pro-rata share of the credit allowed for the
33 partnership, limited liability company or subchapter S corporation. No
34 cost or expense paid or incurred that is included as part of the calcu-
35 lation of this credit shall be the basis of any other tax credit allowed
36 under this chapter.

37 (b) Eligibility. To be eligible to claim the historic preservation tax
38 credit through a transfer contract the taxpayer shall have been issued a
39 certificate of historic preservation tax credit transfer by the depart-
40 ment of parks, recreation and historic preservation pursuant to article
41 fourteen-A of the parks, recreation and historic preservation law, which
42 certificate shall set forth the amount of the credit that may be claimed
43 for the taxable year. The taxpayer shall be allowed to claim only the
44 amount listed on the certificate of tax credit transfer for that taxable
45 year.

46 (c) Tax return requirement. The taxpayer shall be required to attach
47 to its tax return, in the form prescribed by the commissioner, proof of
48 receipt of its certificate of historic preservation tax credit transfer
49 issued by the commissioner of the department of parks, recreation and
50 historic preservation.

51 (d) Credit recapture. (1) If a certificate of historic preservation
52 tax credit transfer issued by the department of parks, recreation and
53 historic preservation under article fourteen-A of the parks, recreation
54 and historic preservation law is revoked by such department, the amount
55 of credit described in this section and claimed by the taxpayer prior to

1 that revocation shall be added back to the tax in the taxable year in
2 which any such revocation becomes final.

3 (2) The taxpayer that originally received the credit shall remain
4 solely liable for all obligations and liabilities imposed on the taxpay-
5 er with respect to the credit, none of which shall apply to a party to
6 whom the credit has been subsequently transferred.

7 (e) Cross references. For application of the credit provided in this
8 section see the following provisions of this chapter:

9 (1) article 9-A: section 210-B, subdivision 26.

10 (2) article 22: section 606, subsection (oo).

11 (3) article 33: section 1511, subsection (y).

12 § 4. Paragraph (e) of subdivision 26 of section 210-B of the tax law,
13 as amended by section 1 of part U of chapter 59 of the laws of 2019, is
14 amended and two new paragraphs (g) and (h) are added to read as follows:

15 (e) Except in the case of a qualified rehabilitation project undertak-
16 en within a state park, state historic site, or other land owned by the
17 state, that is under the jurisdiction of the office of parks, recreation
18 and historic preservation, or in the case of a qualified low-income
19 housing project under article two-A of the public housing law that
20 otherwise qualifies for a rehabilitation credit pursuant to this subdi-
21 vision, to be eligible for the credit allowable under this subdivision,
22 the rehabilitation project shall be in whole or in part located within a
23 census tract which is identified as being at or below one hundred
24 percent of the state median family income as calculated as of April
25 first of each year using the most recent five year estimate from the
26 American community survey published by the United States Census bureau.
27 If there is a change in the most recent five year estimate, a census
28 tract that qualified for eligibility under this program before informa-
29 tion about the change was released will remain eligible for a credit
30 under this subdivision for an additional two calendar years.

31 (g) (i) The credit established by this subdivision may be transferred
32 as set forth in article fourteen-A of the parks, recreation and historic
33 preservation law without regard to and in a separate manner from any
34 federal rehabilitation credit that may be transferred with respect to a
35 certified historic structure under section forty-seven of the internal
36 revenue code.

37 (ii) With respect to an eligible project that is subject to a lease
38 arrangement whereby a landlord taxpayer and tenant taxpayer each own an
39 interest in the eligible project or in an entity with an ownership
40 interest in the eligible project and the landlord taxpayer elects to
41 pass the federal rehabilitation credit through to such tenant taxpayer,
42 the landlord taxpayer may opt to retain the rehabilitation credit or may
43 pass down the rehabilitation credit to the tenant taxpayer which may, in
44 turn, transfer such rehabilitation credit to an eligible transferee as
45 set forth in article fourteen-A of the parks, recreation and historic
46 preservation law.

47 (iii) The rehabilitation credit may be transferred as provided for in
48 article fourteen-A of the parks, recreation and historic preservation
49 law.

50 (h) The commissioner, in consultation with the commissioner of parks,
51 recreation and historic preservation, shall report annually, on or
52 before the first day of November, on the aggregate amount of credits
53 claimed pursuant to this subdivision on returns filed during the preced-
54 ing calendar year. Such report shall be provided to the governor,
55 temporary president of the senate, speaker of the assembly, chairs of
56 the senate committees on finance and on housing, construction and commu-

1 nity development, and chairs of the assembly committees on ways and
2 means and on housing and shall be made publicly available on the depart-
3 ment's website.

4 § 5. Paragraph 5 of subsection (oo) of section 606 of the tax law, as
5 amended by section 2 of part U of chapter 59 of the laws of 2019, is
6 amended and two new paragraphs 7 and 8 are added to read as follows:

7 (5) Except in the case of a qualified rehabilitation project undertak-
8 en within a state park, state historic site, or other land owned by the
9 state, that is under the jurisdiction of the office of parks, recreation
10 and historic preservation, or in the case of a qualified low-income
11 housing project under article two-A of the public housing law that
12 otherwise qualifies for a rehabilitation credit pursuant to this
13 subsection, to be eligible for the credit allowable under this
14 subsection the rehabilitation project shall be in whole or in part
15 located within a census tract which is identified as being at or below
16 one hundred percent of the state median family income as calculated as
17 of April first of each year using the most recent five year estimate
18 from the American community survey published by the United States Census
19 bureau. If there is a change in the most recent five year estimate, a
20 census tract that qualified for eligibility under this program before
21 information about the change was released will remain eligible for a
22 credit under this subsection for an additional two calendar years.

23 (7) (A) The credit established by this subsection may be transferred
24 as set forth in article fourteen-A of the parks, recreation and historic
25 preservation law without regard to and in a separate manner from any
26 federal rehabilitation credit that may be transferred with respect to a
27 certified historic structure under section forty-seven of the internal
28 revenue code.

29 (B) With respect to a eligible project that is subject to a lease
30 arrangement whereby a landlord taxpayer and tenant taxpayer each own an
31 interest in the eligible project or in an entity with an ownership
32 interest in the eligible project and the landlord taxpayer elects to
33 pass the federal rehabilitation credit through to such tenant taxpayer,
34 the landlord taxpayer may opt to retain the rehabilitation credit or may
35 pass down the rehabilitation credit to the tenant taxpayer which may, in
36 turn, transfer such rehabilitation credit to an eligible transferee as
37 set forth in article fourteen-A of the parks, recreation and historic
38 preservation law.

39 (C) The rehabilitation credit may be transferred as provided for in
40 article fourteen-A of the parks, recreation and historic preservation
41 law.

42 (8) The commissioner, in consultation with the commissioner of parks,
43 recreation and historic preservation, shall report annually, on or
44 before the first day of November, on the aggregate amount of credits
45 claimed pursuant to this subdivision on returns filed during the preced-
46 ing calendar year. Such report shall be provided to the governor,
47 temporary president of the senate, speaker of the assembly, chairs of
48 the senate committees on finance and on housing, construction and commu-
49 nity development, and chairs of the assembly committees on ways and
50 means and on housing and shall be made publicly available on the depart-
51 ment's website.

52 § 6. Paragraph 5 of subdivision (y) of section 1511 of the tax law, as
53 amended by section 3 of part U of chapter 59 of the laws of 2019, is
54 amended and two new paragraphs 7 and 8 are added to read as follows:

55 (5) Except in the case of a qualified rehabilitation project undertak-
56 en within a state park, state historic site, or other land owned by the

1 state, that is under the jurisdiction of the office of parks, recreation
2 and historic preservation, or in the case of a qualified low-income
3 housing project under article two-A of the public housing law that
4 otherwise qualifies for a rehabilitation credit pursuant to this subdivi-
5 vision, to be eligible for the credit allowable under this subdivision,
6 the rehabilitation project shall be in whole or in part located within a
7 census tract which is identified as being at or below one hundred
8 percent of the state median family income as calculated as of April
9 first of each year using the most recent five year estimate from the
10 American community survey published by the United States Census bureau.
11 If there is a change in the most recent five year estimate, a census
12 tract that qualified for eligibility under this program before informa-
13 tion about the change was released will remain eligible for a credit
14 under this subdivision for an additional two calendar years.

15 (7) (A) The credit established by this subdivision may be transferred
16 as set forth in article fourteen-A of the parks, recreation and historic
17 preservation law without regard to and in a separate manner from any
18 federal rehabilitation credit that may be transferred with respect to a
19 certified historic structure under section forty-seven of the internal
20 revenue code.

21 (B) With respect to a eligible project that is subject to a lease
22 arrangement whereby a landlord taxpayer and tenant taxpayer each own an
23 interest in the eligible project or in an entity with an ownership
24 interest in the eligible project and the landlord taxpayer elects to
25 pass the federal rehabilitation credit through to such tenant taxpayer,
26 the landlord taxpayer may opt to retain the rehabilitation credit or may
27 pass down the rehabilitation credit to the tenant taxpayer which may, in
28 turn, transfer such rehabilitation credit to an eligible transferee as
29 set forth in article fourteen-A of the parks, recreation and historic
30 preservation law.

31 (C) The rehabilitation credit may be transferred as provided for in
32 article fourteen-A of the parks, recreation and historic preservation
33 law.

34 (8) The commissioner, in consultation with the commissioner of parks,
35 recreation and historic preservation, shall report annually, on or
36 before the first day of November, on the aggregate amount of credits
37 claimed pursuant to this subdivision on returns filed during the preced-
38 ing calendar year. Such report shall be provided to the governor,
39 temporary president of the senate, speaker of the assembly, chairs of
40 the senate committees on finance and on housing, construction and commu-
41 nity development, and chairs of the assembly committees on ways and
42 means and on housing and shall be made publicly available on the depart-
43 ment's website.

44 § 7. This act shall take effect immediately and shall apply to taxable
45 years commencing on and after January 1, 2026.