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

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I N A S S E M B L Y

March 26, 2010

Introduced by M. of A. BRENNAN, CASTRO, BARRON -- Multi-Sponsored by -- M. of A. CLARK, DenDEKKER, DINOWITZ, GOTTFRIED, LIFTON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a cap on certain tax credits, to impose a surcharge against certain taxes and to increase the alternative minimum tax on corporations; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. The tax law is amended by adding a new section 210-a to read as follows:

S 210-A. CAP ON CERTAIN CREDITS. 1. FOR PURPOSES OF THIS SECTION, THE TERM "COVERED CREDITS" SHALL MEAN AND INCLUDE THE FOLLOWING: THE ALTERNATIVE FUELS CREDIT SET FORTH IN SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE AUTOMATED EXTERNAL DEFIBRILLATOR CREDIT SET FORTH IN SUBDIVISION TWENTY-FIVE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE BIOFUEL PRODUCTION CREDIT SET FORTH IN SECTION TWENTY-EIGHT OF THIS CHAPTER AND SUBDIVISION THIRTY-EIGHT OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE BROWNFIELD REDEVELOPMENT TAX CREDIT SET FORTH IN SECTION TWENTY-ONE OF THIS CHAPTER AND SUBDIVISION THIRTY-THREE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE TAX CREDIT FOR REMEDIATED BROWNFIELDS SET FORTH IN SECTION TWENTY-TWO OF THIS CHAPTER AND SUBDIVISION THIRTY-FOUR OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE ENVIRONMENTAL REMEDIATION INSURANCE CREDIT SET FORTH IN SECTION TWENTY-THREE OF THIS CHAPTER AND SUBDIVISION THIRTY-FIVE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CLEAN HEATING FUEL CREDIT SET FORTH IN SUBDIVISION THIRTY-NINE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CONSERVATION EASEMENT CREDIT SET FORTH IN SUBDIVISION THIRTY-EIGHT OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR EMPLOYMENT OF PERSONS WITH DISABILITIES SET FORTH IN SUBDIVISION TWENTY-THREE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE STATE COMMERCIAL PRODUCTION CREDIT, SET FORTH IN SECTION TWENTY-EIGHT OF THIS CHAPTER AND SUBDIVISION THIRTY-EIGHT OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE STATE FILM PRODUCTION CREDIT SET FORTH IN SECTION TWENTY-FOUR OF THIS

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

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CHAPTER AND SUBDIVISION THIRTY-SIX OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE CAPITAL TAX CREDIT SET FORTH IN SUBDIVISION TWENTY OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE INVESTMENT TAX CREDIT SET FORTH IN SUBDIVISION TWELVE-B OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE EMPLOYMENT INCENTIVE CREDIT SET FORTH IN SUBDIVISION TWELVE-C OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE INVESTMENT TAX CREDIT SET FORTH IN SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE WAGE TAX CREDIT SET FORTH IN SUBDIVISION NINETEEN OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE GREEN BUILDING CREDIT SET FORTH IN SECTION NINETEEN OF THIS CHAPTER AND SUBDIVISION THIRTY-ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR COMPANIES WHO PROVIDE TRANSPORTATION TO INDIVIDUALS WITH DISABILITIES SET FORTH IN SUBDIVISION FORTY OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE LOW INCOME HOUSING CREDIT SET FORTH IN SECTION EIGHTEEN OF THIS CHAPTER AND SUBDIVISION THIRTY OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR THE SPECIAL ADDITIONAL MORTGAGE RECORDING TAX SET FORTH IN SUBDIVISION SEVENTEEN OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR SERVICING CERTAIN MORTGAGES SET FORTH IN SUBDIVISION TWENTY-ONE-A OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE QUALIFIED EMERGING TECHNOLOGY COMPANY CAPITAL TAX CREDIT SET FORTH IN SUBDIVISION TWELVE-F OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE QUALIFIED EMERGING TECHNOLOGY COMPANY EMPLOYMENT CREDIT SET FORTH IN SUBDIVISION TWELVE-E OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE QUALIFIED EMERGING TECHNOLOGY COMPANY FACILITIES, OPERATIONS AND TRAINING CREDIT SET FORTH IN SUBDIVISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE QEZE CREDIT FOR REAL PROPERTY TAXES SET FORTH IN SECTION FIFTEEN OF THIS CHAPTER AND SUBDIVISION TWENTY-SEVEN OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE QEZE TAX REDUCTION CREDIT SET FORTH IN SECTION SIXTEEN OF THIS CHAPTER AND SUBDIVISION TWENTY-EIGHT OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES SET FORTH IN SUBDIVISION FORTY OF SECTION TWO HUNDRED TEN OF THIS ARTICLE AND THE SECURITY TRAINING TAX CREDIT SET FORTH IN SECTION TWENTY-SIX OF THIS CHAPTER AND SUBDIVISION THIRTY-SEVEN OF SECTION TWO HUNDRED TEN OF THIS ARTICLE.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE TOTAL ALLOWABLE COVERED CREDITS THAT MAY BE CREDITED OR REFUNDED TO A TAXPAYER IN ANY TAX YEAR SHALL BE LIMITED TO A TOTAL OF FIFTEEN MILLION DOLLARS. ANY AMOUNT OF CREDIT EXCEEDING FIFTEEN MILLION DOLLARS NOT CREDITED PURSUANT TO THIS SECTION IN ANY TAX YEAR MAY BE CARRIED OVER TO THE FOLLOWING TAX YEAR OR YEARS AND MAY BE CREDITED AGAINST SUCH TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 2. The tax law is amended by adding a new section 210-b to read as follows:

S 210-B. SURCHARGE. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "TAXES SUBJECT TO SURCHARGE" SHALL MEAN AND INCLUDE THE FOLLOWING: THE CORPORATION TAX IMPOSED PURSUANT TO ARTICLE NINE OF THIS CHAPTER, THE FRANCHISE TAX ON BUSINESS CORPORATIONS IMPOSED PURSUANT TO ARTICLE NINE-A OF THIS CHAPTER, THE FRANCHISE TAX ON BANKING CORPORATIONS IMPOSED PURSUANT TO ARTICLE THIRTY-TWO OF THIS CHAPTER AND THE FRANCHISE TAX ON INSURANCE CORPORATIONS IMPOSED PURSUANT TO ARTICLE THIRTY-THREE OF THIS CHAPTER; AND

B. "FINAL TAX LIABILITY" SHALL MEAN THE TAX LIABILITY OF A TAXPAYER AFTER ALL DEDUCTIONS AND CREDITS FOR WHICH SUCH TAXPAYER IS ELIGIBLE HAVE BEEN TAKEN.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THERE IS HEREBY IMPOSED A SURCHARGE AGAINST TAXES SUBJECT TO SURCHARGE FOR ANY TAXPAYER WHO IS SUBJECT TO ONE OR MORE OF SUCH TAXES SUBJECT TO SURCHARGE. SUCH SURCHARGE SHALL BE FIFTEEN PERCENT OF SUCH TAXPAYER'S FINAL TAX LIABILITY FOR THE TAX YEAR.

S 3. Subparagraph (ii) of paragraph (c) of subdivision 1 of section 210 of the tax law, as amended by section 5 of part N of chapter 60 of the laws of 2007, is amended to read as follows:

(ii) For taxable years beginning in nineteen hundred ninety, nineteen hundred ninety-one, nineteen hundred ninety-two, nineteen hundred ninety-three and nineteen hundred ninety-four the amount prescribed by this paragraph shall be computed at the rate of five percent of the taxpayer's minimum taxable income base. For taxable years beginning after nineteen hundred ninety-four and before July first, nineteen hundred ninety-eight, the amount prescribed by this paragraph shall be computed at the rate of three and one-half percent of the taxpayer's minimum taxable income base. For taxable years beginning after June thirtieth, nineteen hundred ninety-eight and before July first, nineteen hundred ninety-nine, the amount prescribed by this paragraph shall be computed at the rate of three and one-quarter percent of the taxpayer's minimum taxable income base. For taxable years beginning after June thirtieth, nineteen hundred ninety-nine and before July first, two thousand, the amount prescribed by this paragraph shall be computed at the rate of three percent of the taxpayer's minimum taxable income base. For taxable years beginning after June thirtieth, two thousand, the amount prescribed by this paragraph shall be computed at the rate of two and one-half percent of the taxpayer's minimum taxable income base. For taxable years beginning on or after January first, two thousand seven, amount prescribed by this paragraph shall be computed at the rate of one and one-half percent of the taxpayer's minimum taxable income base. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL BE COMPUTED AT THE RATE OF THREE AND ONE-HALF PERCENT OF THE TAXPAYER'S MINIMUM TAXABLE INCOME BASE. The "taxpayer's minimum taxable income base" shall mean the portion of the taxpayer's minimum taxable income allocated within the state as hereinafter provided, subject to any modifications required by paragraphs (d) and (e) of subdivision three of this section.

S 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2010, provided that section two of this act shall expire and be deemed repealed January 1, 2014.