

2987

2009-2010 Regular Sessions

I N S E N A T E

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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:

1 Section 1. Section 210 of the tax law is amended by adding a new
2 subdivision 41 to read as follows:
3 41. SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (A) A TAXPAYER THAT IS
4 ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDI-
5 VISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
6 CLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT OF TWO
7 CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT
8 THE TAXPAYER'S PRIMARY BUSINESS LOCATION.
9 (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL
10 TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED
11 MEMBERS OR AFFILIATES, (II) NOT BE A SOLE-PROPRIETORSHIP IF SUCH
12 SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH
13 SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO
14 ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIV-
15 ING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER
16 ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.
17 (C) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO
18 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE
19 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM
20 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS
21 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE
22 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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GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(D) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAYER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE PROVIDER.

(E) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 2. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (1) A TAXPAYER THAT IS ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH TWO OF THIS SUBSECTION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT IN THE CASE OF A PARTNERSHIP) OF TWO CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT THE TAXPAYER'S PRIMARY BUSINESS LOCATION.

(2) 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) SHALL 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.

(3) (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 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(4) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAYER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE PROVIDER.

(5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

18		The corporation's credit base under
19		section two hundred ten or section
20	With respect to the following	fourteen hundred fifty-six of this
21	credit under this section:	chapter is:

22	(I) Investment tax credit under	Investment credit base or qualified
23	subsection (a)	rehabilitation expenditures under
24		subdivision twelve of section two
25		hundred ten

26	(II) Empire zone investment	Cost or other basis under
27	tax credit under subsection (j)	subdivision twelve-B of section
28		two hundred ten

29	(III) Empire zone wage tax credit	Eligible wages under subdivision
30	under subsection (k)	nineteen of section two hundred
31		ten or subsection (e) of section
32		fourteen hundred fifty-six

33	(IV) Empire zone capital tax	Qualified investments and
34	credit under subsection (l)	contributions under subdivision
35		twenty of section two hundred ten
36		or subsection (d) of section
37		fourteen hundred fifty-six

38	(V) Agricultural property tax	Allowable school district property
39	credit under subsection (n)	taxes under subdivision twenty-two
40		of section two hundred ten

41	(VI) Credit for employment of	Qualified first-year wages or
42	persons with disabilities	qualified second-year wages under
43	under subsection (o)	subdivision twenty-three of
44		section two hundred ten or
45		subsection (f) of section
46		fourteen hundred fifty-six

47	(VII) Employment incentive credit	Applicable investment credit base
48	under subsection (a-1)	under subdivision twelve-D of

1		section two hundred ten
2	(VIII) Empire zone employment	Applicable investment credit
3	incentive credit under subsection	under subdivision twelve-C of
4	(j-1)	section two hundred ten
5	(IX) Alternative fuels credit	Cost under subdivision twenty-four
6	under subsection (p)	of section two hundred ten
7	(X) Qualified emerging technology	Applicable credit base under
8	company employment credit under	subdivision twelve-E of section
9	subsection (q)	two hundred ten
10	(XI) Qualified emerging technology	Qualified investments under
11	company capital tax credit under	subdivision twelve-F of section
12	subsection (r)	two hundred ten
13	(XII) Credit for purchase of an	Cost of an automated external
14	automated external defibrillator	defibrillator under subdivision
15	under subsection (s)	twenty-five of section two hundred
16		ten or subsection (j) of section
17		fourteen hundred fifty-six
18	(XIII) Low-income housing credit	Credit amount under subdivision
19	under subsection (x)	thirty of section two hundred ten
20		or subsection (l) of section
21		fourteen hundred fifty-six
22	(XIV) Credit for transportation	Amount of credit under subdivision
23	improvement contributions under	thirty-two of section two hundred
24	subsection (z)	ten or subsection (n) of section
25		fourteen hundred fifty-six
26	(XV) QEZE credit for real property	Amount of credit under subdivision
27	taxes under subsection (bb)	twenty-seven of section two hundred
28		ten or subsection (o) of section
29		fourteen hundred fifty-six
30	(XVI) QEZE tax reduction credit	Amount of benefit period factor,
31	under subsection (cc)	employment increase factor and zone
32		allocation factor (without regard
33		to pro ration) under subdivision
34		twenty-eight of section two hundred
35		ten or subsection (p) of section
36		fourteen hundred fifty-six and
37		amount of tax factor as determined
38		under subdivision (f) of section
39		sixteen
40	(XVII) Green building credit under	Amount of green building credit
41	subsection (y)	under subdivision thirty-one of
42		section two hundred ten or
43		subsection (m) of section fourteen
44		hundred fifty-six

1 (XVIII) Credit for long-term care	Qualified costs under subdivision
2 insurance premiums under subsection	twenty-five-a of section two
3 (aa)	hundred ten or subsection (k) of
4	section fourteen hundred fifty-six
5 (XIX) Brownfield redevelopment	Amount of credit under subdivision
6 credit under subsection (dd)	thirty-three of section two hundred
7	ten or subsection (q) of section
8	fourteen hundred fifty-six
9 (XX) Remediated brownfield credit	Amount of credit under subdivision
10 for real property taxes for	thirty-four of section two hundred
11 qualified sites under subsection	ten or subsection (r) of section
12 (ee)	fourteen hundred fifty-six
13 (XXI) Environmental remediation	Amount of credit under subdivision
14 insurance credit under subsection	thirty-five of section two hundred
15 (ff)	ten or subsection (s) of section
16	fourteen hundred fifty-six
17 (XXII) Empire state film production	Amount of credit for qualified
18 credit under subsection (gg)	production costs in production of a
19	qualified film under subdivision
20	thirty-six of section two hundred
21	ten
22 (XXIII) Qualified emerging	Qualifying expenditures and
23 technology company facilities,	development activities under
24 operations and training credit	subdivision twelve-G of section two
25 under subsection (nn)	hundred ten
26 (XXIV) Security training tax credit	Amount of credit under subdivision
27 under subsection (ii)	thirty-seven of section two hundred
28	ten or under subsection (t) of
29	section fourteen hundred fifty-six
30 (XXV) Credit for qualified fuel	Amount of credit under subdivision
31 cell electric generating equipment	thirty-seven of section two hundred
32 expenditures under subsection (g-2)	ten or subsection (t) of section
33	fourteen hundred fifty-six
34 (XXVI) Empire state commercial	Amount of credit for qualified
35 production credit under subsection	production costs in production of
36 (jj)	a qualified commercial under
37	subdivision thirty-eight of
38	section two hundred ten
39 (XXVII) Biofuel production tax	Amount of credit under subdivision
40 credit under subsection (jj)	thirty-eight of section two hundred
41	ten
42 (XXVIII) Clean heating fuel credit	Amount of credit under subdivision
43 under subsection (mm)	thirty-nine of section two hundred
44	ten

1 (XXIX) Credit for rehabilitation Amount of credit under subdivision
2 of historic properties under forty of [subsection] SECTION
3 subsection (oo) two hundred ten

4 (XXX) Credit for companies who Amount of credit under subdivision
5 provide transportation to forty of section two hundred ten
6 individuals with disabilities under
7 subsection (oo)

8 (XXXI) SMALL BUSINESS ELECTRIC QUALIFYING ELECTRICITY USAGE
9 ENERGY TAX CREDIT UNDER SUBDIVISION FORTY-ONE
10 UNDER SUBSECTION (QQ) OF SECTION TWO HUNDRED TEN

11 S 4. This act shall take effect immediately and shall apply to taxable
12 years beginning on or after January 1, 2010; provided, however that the
13 empire state film production credit under subsection (gg), the empire
14 state commercial production credit under subsection (jj) and the credit
15 for companies who provide transportation to individuals with disabili-
16 ties under subsection (oo) of section 606 of the tax law contained in
17 section three of this act shall expire on the same date as provided in
18 section 9 of part P of chapter 60 of the laws of 2004, as amended,
19 section 10 of part V of chapter 62 of the laws of 2006, as amended and
20 section 5 of chapter 522 of the laws of 2006, as amended, respectively.