

4420

2009-2010 Regular Sessions

I N   S E N A T E

April 23, 2009

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Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and  
when printed to be committed to the Committee on Investigations and  
Government Operations

AN ACT to amend the tax law, in relation to pollution tax credits for  
the purchase of certain equipment made by dry cleaning businesses

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

1     Section 1. Subdivision (a) of section 1115 of the tax law is amended  
2     by adding a new paragraph 44 to read as follows:  
3     (44) EQUIPMENT OR MACHINERY CERTIFIED BY THE DEPARTMENT OF ENVIRON-  
4     MENTAL CONSERVATION, PURSUANT TO REGULATIONS PROMULGATED BY SUCH DEPART-  
5     MENT, FOR POLLUTION PREVENTION OR CONTROL WHICH, FOR PURPOSES OF THIS  
6     PARAGRAPH, SHALL MEAN ANY PROCESS, FACILITY, DEVICE, FIXTURE, EQUIPMENT  
7     OR MACHINERY USED PRIMARILY FOR THE CONTROL, PREVENTION OR ABATEMENT OF  
8     POLLUTION OR CONTAMINANTS FROM THE OPERATION OF A DRY CLEANING PLANT,  
9     INCLUDING ANY STRUCTURE, MACHINERY OR EQUIPMENT INSTALLED IN THE RECON-  
10    STRUCTION OR REPLACEMENT OF SUCH PROCESS, FACILITY, DEVICE, FIXTURE,  
11    EQUIPMENT OR MACHINERY.  
12    S 2. Subparagraph (A) of paragraph 2 of subsection (a) of section  
13    606 of the tax law, as amended by chapter 637 of the laws of 2008, is  
14    amended to read as follows:  
15    (A) A credit shall be allowed under this subsection with respect to  
16    tangible personal property and other tangible property, including build-  
17    ings and structural components of buildings, which are: depreciable  
18    pursuant to section one hundred sixty-seven of the internal revenue  
19    code, have a useful life of four years or more, are acquired by purchase  
20    as defined in section one hundred seventy-nine (d) of the internal  
21    revenue code, have a situs in this state and are (i) principally used by  
22    the taxpayer in the production of goods by manufacturing, processing,  
23    assembling, refining, mining, extracting, farming, agriculture, horti-  
24    culture, floriculture, viticulture or commercial fishing, (ii) indus-

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

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1 trial waste treatment facilities or air pollution control facilities,  
2 used in the taxpayer's trade or business OR BUSINESS INVESTMENTS MADE BY  
3 DRY CLEANING BUSINESSES TO ACHIEVE POLLUTION PREVENTION INCLUDING  
4 INVESTMENTS INTO CHANGES IN FACILITY PROCESSES OR OPERATIONS METHODS,  
5 (iii) research and development property, (iv) principally used in the  
6 ordinary course of the taxpayer's trade or business as a broker or deal-  
7 er in connection with the purchase or sale (which shall include but not  
8 be limited to the issuance, entering into, assumption, offset, assign-  
9 ment, termination, or transfer) of stocks, bonds or other securities as  
10 defined in section four hundred seventy-five (c)(2) of the Internal  
11 Revenue Code, or of commodities as defined in section 475(e) of the  
12 Internal Revenue Code, (v) principally used in the ordinary course of  
13 the taxpayer's trade or business of providing investment advisory  
14 services for a regulated investment company as defined in section eight  
15 hundred fifty-one of the Internal Revenue Code, or lending, loan  
16 arrangement or loan origination services to customers in connection with  
17 the purchase or sale (which shall include but not be limited to the  
18 issuance, entering into, assumption, offset, assignment, termination, or  
19 transfer) of securities as defined in section four hundred seventy-five  
20 (c)(2) of the Internal Revenue Code, or (vi) principally used as a qual-  
21 ified film production facility including qualified film production  
22 facilities having a situs in an empire zone designated as such pursuant  
23 to article eighteen-B of the general municipal law, where the taxpayer  
24 is providing three or more services to any qualified film production  
25 company using the facility, including such services as a studio lighting  
26 grid, lighting and grip equipment, multi-line phone service, broadband  
27 information technology access, industrial scale electrical capacity,  
28 food services, security services, and heating, ventilation and air  
29 conditioning. For purposes of clauses (iv) and (v) of this subparagraph,  
30 property purchased by a taxpayer affiliated with a regulated broker,  
31 dealer, or registered investment adviser is allowed a credit under this  
32 subsection if the property is used by its affiliated regulated broker,  
33 dealer or registered investment adviser in accordance with this  
34 subsection. For purposes of determining if the property is principally  
35 used in qualifying uses, the uses by the taxpayer described in clauses  
36 (iv) and (v) of this subparagraph may be aggregated. In addition, the  
37 uses by the taxpayer, its affiliated regulated broker, dealer and regis-  
38 tered investment adviser under either or both of those clauses may be  
39 aggregated. Provided, however, a taxpayer shall not be allowed the cred-  
40 it provided by clauses (iv) and (v) of this subparagraph unless (I)  
41 eighty percent or more of the employees performing the administrative  
42 and support functions resulting from or related to the qualifying uses  
43 of such equipment are located in this state, or (II) the average number  
44 of employees that perform the administrative and support functions  
45 resulting from or related to the qualifying uses of such equipment and  
46 are located in this state during the taxable year for which the credit  
47 is claimed is equal to or greater than ninety-five percent of the aver-  
48 age number of employees that perform these functions and are located in  
49 this state during the thirty-six months immediately preceding the year  
50 for which the credit is claimed, or (III) the number of employees  
51 located in this state during the taxable year for which the credit is  
52 claimed is equal to or greater than ninety percent of the number of  
53 employees located in this state on December thirty-first, nineteen  
54 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-  
55 er in nineteen hundred ninety-eight, the last day of its first taxable  
56 year ending after December thirty-first, nineteen hundred ninety-eight.

1 If the taxpayer becomes subject to tax in this state after the taxable  
2 year beginning in nineteen hundred ninety-eight, then the taxpayer is  
3 not required to satisfy the employment test provided in the preceding  
4 sentence of this subparagraph for its first taxable year. For the  
5 purposes of clause (III) of this subparagraph the employment test will  
6 be based on the number of employees located in this state on the last  
7 day of the first taxable year the taxpayer is subject to tax in this  
8 state. If the uses of the property must be aggregated to determine  
9 whether the property is principally used in qualifying uses, then either  
10 each affiliate using the property must satisfy this employment test or  
11 this employment test must be satisfied through the aggregation of the  
12 employees of the taxpayer, its affiliated regulated broker, dealer, and  
13 registered investment adviser using the property. For purposes of this  
14 subsection, the term "goods" shall not include electricity.

15 S 3. Subparagraph (B) of paragraph 2 of subsection (a) of section 606  
16 of the tax law is amended by adding three new clauses (vi), (vii) and  
17 (viii) to read as follows:

18 (VI) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR  
19 RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR  
20 HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS  
21 PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS,  
22 CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS,  
23 CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE  
24 REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES,  
25 EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTI-  
26 TUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE,  
27 TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS  
28 THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS  
29 IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERATION,  
30 TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA,  
31 OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR  
32 POLLUTION CONTROL.

33 (VII) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMISSION  
34 WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE  
35 ENVIRONMENTAL CONSERVATION LAW.

36 (VIII) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS  
37 A SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN  
38 REGULATIONS PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRONMENTAL  
39 CONSERVATION LAW.

40 S 4. Subparagraph (i) of paragraph (b) of subdivision 12 of section  
41 210 of the tax law, as amended by chapter 637 of the laws of 2008, is  
42 amended to read as follows:

43 (i) A credit shall be allowed under this subdivision with respect to  
44 tangible personal property and other tangible property, including buildings  
45 and structural components of buildings, which are: depreciable  
46 pursuant to section one hundred sixty-seven of the internal revenue  
47 code, have a useful life of four years or more, are acquired by purchase  
48 as defined in section one hundred seventy-nine (d) of the internal  
49 revenue code, have a situs in this state and are (A) principally used by  
50 the taxpayer in the production of goods by manufacturing, processing,  
51 assembling, refining, mining, extracting, farming, agriculture, horticulture,  
52 floriculture, viticulture or commercial fishing, (B) industrial waste  
53 treatment facilities or air pollution control facilities, used in  
54 the taxpayer's trade or business, (C) research and development property  
55 OR BUSINESS INVESTMENTS MADE BY DRY CLEANING BUSINESSES TO ACHIEVE  
56 POLLUTION PREVENTION INCLUDING INVESTMENTS INTO CHANGES IN FACILITY

1 PROCESSES OR OPERATIONS OR PRODUCTION METHODS, (D) principally used in  
2 the ordinary course of the taxpayer's trade or business as a broker or  
3 dealer in connection with the purchase or sale (which shall include but  
4 not be limited to the issuance, entering into, assumption, offset,  
5 assignment, termination, or transfer) of stocks, bonds or other securi-  
6 ties as defined in section four hundred seventy-five (c)(2) of the  
7 Internal Revenue Code, or of commodities as defined in section four  
8 hundred seventy-five (e) of the Internal Revenue Code, (E) principally  
9 used in the ordinary course of the taxpayer's trade or business of  
10 providing investment advisory services for a regulated investment compa-  
11 ny as defined in section eight hundred fifty-one of the Internal Revenue  
12 Code, or lending, loan arrangement or loan origination services to  
13 customers in connection with the purchase or sale (which shall include  
14 but not be limited to the issuance, entering into, assumption, offset,  
15 assignment, termination, or transfer) of securities as defined in  
16 section four hundred seventy-five (c)(2) of the Internal Revenue Code,  
17 (F) principally used in the ordinary course of the taxpayer's business  
18 as an exchange registered as a national securities exchange within the  
19 meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of  
20 1934 or a board of trade as defined in section 1410(a)(1) of the New  
21 York Not-for-Profit Corporation Law or as an entity that is wholly owned  
22 by one or more such national securities exchanges or boards of trade and  
23 that provides automation or technical services thereto, or (G) princi-  
24 pally used as a qualified film production facility including qualified  
25 film production facilities having a situs in an empire zone designated  
26 as such pursuant to article eighteen-B of the general municipal law,  
27 where the taxpayer is providing three or more services to any qualified  
28 film production company using the facility, including such services as a  
29 studio lighting grid, lighting and grip equipment, multi-line phone  
30 service, broadband information technology access, industrial scale elec-  
31 trical capacity, food services, security services, and heating, venti-  
32 lation and air conditioning. For purposes of clauses (D), (E) and (F) of  
33 this subparagraph, property purchased by a taxpayer affiliated with a  
34 regulated broker, dealer, registered investment adviser, national secu-  
35 rities exchange or board of trade, is allowed a credit under this subdivi-  
36 sion if the property is used by its affiliated regulated broker, deal-  
37 er, registered investment adviser, national securities exchange or board  
38 of trade in accordance with this subdivision. For purposes of determin-  
39 ing if the property is principally used in qualifying uses, the uses by  
40 the taxpayer described in clauses (D) and (E) of this subparagraph may  
41 be aggregated. In addition, the uses by the taxpayer, its affiliated  
42 regulated broker, dealer, and registered investment adviser under either  
43 or both of those clauses may be aggregated. Provided, however, a  
44 taxpayer shall not be allowed the credit provided by clauses (D), (E)  
45 and (F) of this subparagraph unless (I) eighty percent or more of the  
46 employees performing the administrative and support functions resulting  
47 from or related to the qualifying uses of such equipment are located in  
48 this state or (II) the average number of employees that perform the  
49 administrative and support functions resulting from or related to the  
50 qualifying uses of such equipment and are located in this state during  
51 the taxable year for which the credit is claimed is equal to or greater  
52 than ninety-five percent of the average number of employees that perform  
53 these functions and are located in this state during the thirty-six  
54 months immediately preceding the year for which the credit is claimed,  
55 or (III) the number of employees located in this state during the taxa-  
56 ble year for which the credit is claimed is equal to or greater than

1 ninety percent of the number of employees located in this state on  
2 December thirty-first, nineteen hundred ninety-eight or, if the taxpayer  
3 was not a calendar year taxpayer in nineteen hundred ninety-eight, the  
4 last day of its first taxable year ending after December thirty-first,  
5 nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in  
6 this state after the taxable year beginning in nineteen hundred ninety-  
7 eight, then the taxpayer is not required to satisfy the employment test  
8 provided in the preceding sentence of this subparagraph for its first  
9 taxable year. For purposes of clause (III) of this subparagraph the  
10 employment test will be based on the number of employees located in this  
11 state on the last day of the first taxable year the taxpayer is subject  
12 to tax in this state. If the uses of the property must be aggregated to  
13 determine whether the property is principally used in qualifying uses,  
14 then either each affiliate using the property must satisfy this employ-  
15 ment test or this employment test must be satisfied through the aggre-  
16 gation of the employees of the taxpayer, its affiliated regulated  
17 broker, dealer, and registered investment adviser using the property.  
18 For purposes of this subdivision, the term "goods" shall not include  
19 electricity.

20 S 5. Subparagraph (ii) of paragraph (b) of subdivision 12 of section  
21 210 of the tax law is amended by adding three new clauses (F), (G) and  
22 (H) to read as follows:

23 (F) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR  
24 RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR  
25 HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS  
26 PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS,  
27 CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS,  
28 CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE  
29 REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES,  
30 EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTI-  
31 TUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE,  
32 TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS  
33 THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS  
34 IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERATION,  
35 TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA,  
36 OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR  
37 POLLUTION CONTROL.

38 (G) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMISSION  
39 WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE ENVIRONMENTAL  
40 CONSERVATION LAW.

41 (H) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS A  
42 SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN REGULATIONS  
43 PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRONMENTAL  
44 CONSERVATION LAW.

45 S 6. This act shall take effect three years after it shall have become  
46 a law and shall apply to taxable years ending on or after such effective  
47 date, except that section one of this act shall take effect on the first  
48 day of the sales tax quarterly period, as designated in subdivision (b)  
49 of section 1136 of the tax law, next commencing on or after the effective  
50 date of this act and shall apply to sales made on or after the effective  
51 date of section one of this act and shall apply to all equipment or  
52 machinery purchased on or after such date although purchased  
53 under a prior contract.