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

7042

I N S E N A T E

March 9, 2010

Introduced by Sens. VALESKY, STACHOWSKI, AUBERTINE, THOMPSON -- 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 providing a tax credit for rehabilitation of historic properties; 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. Paragraph 1 of subsection (oo) of section 606 of the tax law, as amended by chapter 239 of the laws of 2009, is amended and a new paragraph 6 is added to read as follows:

(1) For taxable years beginning on or after January first, two thousand ten, any person, firm, partnership, limited liability company, corporation or other business entity shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed [the] SUCH taxpayer for the same taxable year with respect to a certified historic structure under subsection (c) (2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars.

(6) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED TO A PARTNERSHIP, LIMITED LIABILITY COMPANY, "SUBCHAPTER S" CORPORATION OR OTHER BUSINESS ENTITY AND SHALL BE PASSED THROUGH TO THE PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY. CREDITS ALLOWED TO THESE ENTITIES SHALL BE ALLOCATED AMONG ALL PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY, EITHER IN PROPORTION TO THEIR OWNERSHIP INTEREST IN THE ENTITY, OR AS THE PARTNERS, MEMBERS, OR SHAREHOLDERS MUTUALLY AGREE AS PROVIDED IN AN EXECUTED DOCUMENT WITHOUT REGARD TO THEIR SHARING OF OTHER TAX OR ECONOMIC ATTRIBUTES OF THE ENTITY.

S 2. Paragraph 1 of subdivision 40 of section 210 of the tax law, as amended by chapter 239 of the laws of 2009, is amended and two new paragraphs 5 and 6 are added to read as follows:

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

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(1) For taxable years beginning on or after January first, two thousand ten, any person, firm, partnership, limited liability company, corporation or other business entity shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed [the] SUCH taxpayer for the same taxable year with respect to a certified historic structure under subsection (c) (2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars.

(5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION THE REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE FEDERAL INTERNAL REVENUE CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST RECENT FEDERAL CENSUS.

(6) TAX CREDITS ALLOWED PURSUANT TO THIS SUBDIVISION SHALL BE ALLOWED TO A PARTNERSHIP, LIMITED LIABILITY COMPANY, "SUBCHAPTER S" CORPORATION OR OTHER BUSINESS ENTITY AND SHALL BE PASSED THROUGH TO THE PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY. CREDITS ALLOWED TO THESE ENTITIES SHALL BE ALLOCATED AMONG ALL PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY, EITHER IN PROPORTION TO THEIR OWNERSHIP INTEREST IN THE ENTITY, OR AS THE PARTNERS, MEMBERS, OR SHAREHOLDERS MUTUALLY AGREE AS PROVIDED IN AN EXECUTED DOCUMENT WITHOUT REGARD TO THEIR SHARING OF OTHER TAX OR ECONOMIC ATTRIBUTES OF THE ENTITY.

S 3. Section 1456 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES. (1) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, ANY PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR ANY OTHER BUSINESS ENTITY SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE AMOUNT OF THE CREDIT ALLOWED SUCH TAXPAYER FOR THE SAME TAXABLE YEAR WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION C (2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED FIVE MILLION DOLLARS.

(2) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED IN THE TAXABLE YEAR THAT THE QUALIFIED REHABILITATION IS PLACED IN SERVICE UNDER SECTION 167 OF THE FEDERAL INTERNAL REVENUE CODE.

(3) IF THE CREDIT ALLOWED THE TAXPAYER PURSUANT TO SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO THE QUALIFIED REHABILITATION IS RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE FEDERAL INTERNAL REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION MUST BE ADDED BACK IN THE SAME TAXABLE YEAR AND IN THE SAME PROPORTION AS THE FEDERAL RECAPTURE.

(4) IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE APPLIED AGAINST THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(5) TO BE ELIGIBLE FOR THE CREDIT UNDER THIS SUBSECTION THE REHABILITATION PROJECT MUST BE IN WHOLE OR IN PART A TARGETED AREA RESIDENCE WITHIN THE MEANING OF SECTION 143 (J) OF THE FEDERAL INTERNAL REVENUE CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST RECENT FEDERAL CENSUS.

(6) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED TO A PARTNERSHIP, LIMITED LIABILITY COMPANY, "SUBCHAPTER S" CORPORATION OR OTHER BUSINESS ENTITY SHALL BE PASSED THROUGH TO THE PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY. CREDITS ALLOWED TO THESE ENTITIES SHALL BE ALLOCATED AMONG ALL PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY, EITHER IN PROPORTION TO THEIR OWNERSHIP INTEREST IN THE ENTITY, OR AS THE PARTNERS, MEMBERS, OR SHAREHOLDERS MUTUALLY AGREE AS PROVIDED IN AN EXECUTED DOCUMENT WITHOUT REGARD TO THEIR SHARING OF OTHER TAX OR ECONOMIC ATTRIBUTES OF THE ENTITY.

S 4. Section 1511 of the tax law is amended by adding a new subsection (y) to read as follows:

(Y) CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES. (1) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, ANY PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR ANY OTHER BUSINESS ENTITY SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE AMOUNT OF THE CREDIT ALLOWED SUCH TAXPAYER FOR THE SAME TAXABLE YEAR WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION C(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED FIVE MILLION DOLLARS.

(2) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED IN THE TAXABLE YEAR THAT THE QUALIFIED REHABILITATION IS PLACED IN SERVICE UNDER SECTION 167 OF THE FEDERAL INTERNAL REVENUE CODE.

(3) IF THE CREDIT ALLOWED THE TAXPAYER PURSUANT TO SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO THE QUALIFIED REHABILITATION IS RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE FEDERAL INTERNAL REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION MUST BE ADDED BACK IN THE SAME TAXABLE YEAR AND IN THE SAME PROPORTION AS THE FEDERAL RECAPTURE.

(4) IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE APPLIED AGAINST THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(5) TO BE ELIGIBLE FOR THE CREDIT UNDER THIS SUBSECTION THE REHABILITATION PROJECT MUST BE IN WHOLE OR IN PART A TARGETED AREA RESIDENCE WITHIN THE MEANING OF SECTION 143 (J) OF THE FEDERAL INTERNAL REVENUE CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST RECENT FEDERAL CENSUS.

(6) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED TO A PARTNERSHIP, LIMITED LIABILITY COMPANY, "SUBCHAPTER S" CORPORATION OR OTHER BUSINESS ENTITY AND SHALL BE PASSED THROUGH TO THE PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY. CREDITS ALLOWED TO THESE ENTITIES SHALL BE ALLOCATED AMONG ALL PARTNERS, MEMBERS, OR SHAREHOLDERS RESPECTIVELY, EITHER IN PROPORTION TO THEIR OWNERSHIP INTEREST IN THE ENTITY, OR AS THE PARTNERS, MEMBERS, OR SHAREHOLDERS MUTUALLY AGREE AS PROVIDED IN AN EXECUTED DOCUMENT WITHOUT REGARD TO THEIR SHARING OF OTHER TAX OR ECONOMIC ATTRIBUTES OF THE ENTITY.

S 5. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2010; provided, that the amendments to subsection (oo) of section 606 of the tax law made by section one of this act shall not affect the expiration of such subsection and shall be deemed to expire therewith; provided, further that the amendments to subdivision 40 of section 210 of the tax law made by section two of this act shall not affect the expiration of such subdivision and

shall be deemed to expire therewith; and provided, further, however that sections three and four of this act shall expire and be deemed repealed December 31, 2014; provided, however, that the credit shall be applied to any rehabilitation project commenced on or before December 31, 2014.