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

7556

I N  S E N A T E

April 21, 2010

Introduced by Sen. VALESKY -- (at request of the Governor) -- 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 clarifying the application of the credit for the rehabilitation of historic properties and historic homes; and to amend chapter 239 of the laws of 2009 amending the tax law and other laws relating to providing a tax credit for the rehabilitation of historic properties, in relation to making permanent the provisions 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 to read as follows:

(1) (A) For taxable years beginning on or after January first, two thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any person, firm, partnership, limited liability company, corporation or other business entity] A TAXPAYER 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 taxpayer [for the same taxable year] with respect to a certified historic structure under subsection [(c)] (A) (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. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(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 ONE HUNDRED THOUSAND DOLLARS.

(B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE CREDIT CAP IMPOSED IN SUBPARAGRAPH

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

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(A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS APPLICABLE IN THAT TAXABLE YEAR.

S 2. Subparagraphs (A) and (B) of paragraph 2 of subsection (pp) of section 606 of the tax law, as amended by chapter 239 of the laws of 2009, are amended to read as follows:

(A) With respect to any particular residence of a taxpayer, the credit allowed under paragraph one of this subsection shall not exceed fifty thousand dollars FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN AND TWENTY-FIVE THOUSAND DOLLARS FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN. In the case of a husband and wife, the amount of the credit shall be divided between them equally or in such other manner as they may both elect. If a taxpayer incurs qualified rehabilitation expenditures in relation to more than one residence in the same year, the total amount of credit allowed under paragraph one of this subsection for all such expenditures shall not exceed [twenty-five] FIFTY thousand dollars FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN AND TWENTY-FIVE THOUSAND DOLLARS FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN.

(B) [If] FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, IF the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, and the taxpayer's New York adjusted gross income for such year does not exceed sixty thousand dollars, 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. If the taxpayer's New York adjusted gross income for such year exceeds sixty thousand dollars, the excess credit that may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 3. Paragraphs 1, 3 and 4 of subdivision 40 of section 210 of the tax law, as amended by chapter 239 of the laws of 2009, are amended to read as follows:

(1) (A) For taxable years beginning on or after January first, two thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any person, firm, partnership, limited liability company, corporation or other business entity] A TAXPAYER 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 taxpayer [for the same taxable year] with respect to a certified historic structure under subsection [(c)] (A) (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. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION

(A)(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 ONE HUNDRED THOUSAND DOLLARS.

(B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK S CORPORATION, THEN THE CREDIT CAPS IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS APPLICABLE IN THAT TAXABLE YEAR.

(3) If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the 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 [such credit] THE FEDERAL RECAPTURE.

(4) [If] 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 the credit allowable under this subdivision 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] DEDUCTED from the taxpayer's tax for such year or years.

S 4. Subdivision 40 of section 210 of the tax law, as amended by chapter 239 of the laws of 2009, is amended by adding a new paragraph 5 to read as follows:

(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 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.

S 5. 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)(A) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER 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 TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(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. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(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 ONE HUNDRED THOUSAND DOLLARS.

(B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE CREDIT CAPS IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH

SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS APPLICABLE IN THAT TAXABLE YEAR.

(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 INTERNAL REVENUE CODE WITH RESPECT TO A QUALIFIED REHABILITATION IS RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE 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) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINIMUM TAX BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBSECTION THE REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE 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.

S 6. 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)(A) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER 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 TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(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. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(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 ONE HUNDRED THOUSAND DOLLARS.

(B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, THEN THE CAP IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OF SUCH PARTNERSHIP IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS APPLICABLE IN THAT TAXABLE YEAR.

(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 INTERNAL REVENUE CODE WITH RESPECT TO A QUALIFIED REHABILITATION IS RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE INTERNAL REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION IN

THE TAXABLE YEAR THE CREDIT WAS CLAIMED MUST BE ADDED BACK IN THE SAME TAXABLE YEAR AND IN THE SAME PROPORTION AS THE FEDERAL RECAPTURE.

(4) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OR SECTION FIFTEEN HUNDRED TWO-A OF THIS ARTICLE, WHICHEVER IS APPLICABLE. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(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 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.

S 7. Section 5 of chapter 239 of the laws of 2009 amending the tax law and other laws relating to providing a tax credit for the rehabilitation of historic properties, is amended to read as follows:

S 5. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2010 [and 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 the date on which that act shall be deemed repealed].

S 8. This act shall take effect immediately.