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

866

2009-2010 Regular Sessions

I N  S E N A T E

January 21, 2009

Introduced by Sen. MARCELLINO -- 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 making technical corrections to the conservation easement tax credit

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

Section 1. Paragraph 1 of subsection (kk) of section 606 of the tax law, as added by section 1 of part F of chapter 62 of the laws of 2006, is amended to read as follows:

(1) Credit allowed. In the case of a taxpayer who owns land that is subject to a conservation easement held by a public or private conservation agency, there shall be allowed a credit for twenty-five percent of the [allowable school district, county and town] real property taxes PAID on [such] THE land, OR PORTION OF THE LAND, SUBJECT TO THE EASEMENT. In no event shall the credit allowed under this subsection in combination with any other credit for [such school district, county and town] real property taxes under this section exceed such taxes.

S 2. Subdivision 38 of section 210 of the tax law, as added by section 3 of part F of chapter 62 of the laws of 2006, is renumbered subdivision 41 and is amended to read as follows:

41. Conservation easement tax credit. (1) Credit allowed. In the case of a taxpayer who owns land that is subject to a conservation easement held by a public or private conservation agency, there shall be allowed a credit for twenty-five percent of the [allowable school district, county and town] real property taxes PAID on [such] THE land, OR PORTION OF THE LAND, SUBJECT TO THE EASEMENT. In no such case shall the credit allowed under this subdivision in combination with any other credit for [such school district, county and town] real property taxes under this section exceed such taxes.

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

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(2) Conservation easement. For purposes of this subdivision, the term "conservation easement" means a perpetual and permanent conservation easement as defined in article forty-nine of the environmental conservation law that serves to protect open space, scenic, natural resources, biodiversity, agricultural, watershed and/or historic preservation resources. Any conservation easement for which a tax credit is claimed under this subdivision shall be filed with the department of environmental conservation, as provided for in article forty-nine of the environmental conservation law and such conservation easement shall comply with the provisions of title three of such article, and the provisions of subdivision (h) of section 170 of the internal revenue code. Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conservation easement under this subdivision.

(3) Land. For purposes of this subdivision, the term "land" means a fee simple title to real property located in this state, with or without improvements thereon; rights of way; water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property, excluding buildings, structures, or improvements.

(4) Public or private conservation agency. For purposes of this subdivision, the term "public or private conservation agency" means any state, local, or federal governmental body; or any private not-for-profit charitable corporation or trust which is authorized to do business in the state of New York, is organized and operated to protect land for natural resources, conservation or historic preservation purposes, is exempt from federal income taxation under section 501(c)(3) of the internal revenue code, and has the power to acquire, hold and maintain land and/or interests in land for such purposes.

(5) Credit limitation. The amount of the credit that may be claimed by a taxpayer pursuant to this subsection shall not exceed five thousand dollars in any given year.

(6) Application of the credit. 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 allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of the credit thus 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 subsection (c) of section [ten hundred] ONE THOUSAND eighty-eight of this chapter, except 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.

| With respect to the following credit under this section: | The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is: |
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| Investment tax credit under subsection (a) | Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten |
| Empire zone investment tax credit under subsection (j) | Cost or other basis under subdivision twelve-B of section two hundred ten |
| Empire zone wage tax credit under subsection (k) | Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six |
| Empire zone capital tax credit under subsection (l) | Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six |
| Agricultural property tax credit under subsection (n) | Allowable school district property taxes under subdivision twenty-two of section two hundred ten |
| Credit for employment of persons with disabilities under subsection (o) | Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six |
| Employment incentive credit under subsection (a-1) | Applicable investment credit base under subdivision twelve-D of section two hundred ten |
| Empire zone employment incentive credit under subsection (j-1) | Applicable investment credit under subdivision twelve-C of section two hundred ten |
| Alternative fuels credit under subsection (p) | Cost under subdivision twenty-four of section two hundred ten |

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| Qualified emerging technology company employment credit under subsection (q) | Applicable credit base under subdivision twelve-E of section two hundred ten |
| Qualified emerging technology company capital tax credit under subsection (r) | Qualified investments under subdivision twelve-F of section two hundred ten |
| Credit for purchase of an automated external defibrillator under subsection (s) | Cost of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six |
| Low-income housing credit under subsection (x) | Credit amount under subdivision thirty of section two hundred ten or subsection (l) of section fourteen hundred fifty-six |
| Credit for transportation improvement contributions under subsection (z) | Amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six |
| QEZE credit for real property taxes under subsection (bb) | Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six |
| QEZE tax reduction credit under subsection (cc) | Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen |
| Green building credit under subsection (y) | Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six |

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| Credit for long-term care insurance premiums under subsection (aa) | Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of section fourteen hundred fifty-six |
| Brownfield redevelopment credit under subsection (dd) | Amount of credit under subdivision thirty-three of section two hundred ten or subsection (q) of section fourteen hundred fifty-six |
| Remediated brownfield credit for real property taxes for qualified sites under subsection (ee) | Amount of credit under subdivision thirty-four of section two hundred ten or subsection (r) of section fourteen hundred fifty-six |
| Environmental remediation insurance credit under subsection (ff) | Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six |
| Empire state film production credit under subsection (gg) | Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten |
| Qualified emerging technology company facilities, operations and training credit under subsection (nn) | Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten |
| Security training tax credit under subsection (ii) | Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six |
| Credit for qualified fuel cell electric generating equipment expenditures under subsection (g-2) | Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six |
| Empire state commercial production credit under subsection (jj) | Amount of credit for qualified production costs in production of a qualified commercial under |

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| | subdivision thirty-eight of section two hundred ten |
| Biofuel production tax credit under subsection (jj) | Amount of credit under subdivision thirty-eight of section two hundred ten |
| CONSERVATION EASEMENT TAX CREDIT UNDER SUBSECTION (KK) | AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN |
| Clean heating fuel credit under subsection (mm) | Amount of credit under subdivision thirty-nine of section two hundred ten |
| Credit for rehabilitation of historic properties under subsection (oo) | Amount of credit under subdivision forty of subsection two hundred ten |
| Credit for companies who provide transportation to individuals with disabilities under subsection (oo) | Amount of credit under subdivision forty of section two hundred ten |

S 4. This act shall take effect immediately and shall be made applicable to taxable years commencing on and after January 1, 2009 and thereafter; provided, however that the empire state film production credit under subsection (gg), the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to handicapped individuals under subsection (oo) of section 606 of the tax law contained in section three of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, and section 5 of chapter 522 of the laws of 2006, as amended, respectively.