

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

Introduced by Sen. ROBACH -- 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 establishing the economic resurgence initiative 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 12-H to read as follows:
3 12-H. ECONOMIC RESURGENCE INITIATIVE CREDIT. (A) WHERE A TAXPAYER IS
4 ALLOWED A CREDIT UNDER THE INVESTMENT TAX CREDIT (ITC) PURSUANT TO
5 SUBDIVISION TWELVE OF THIS SECTION WITH RESPECT TO PROPERTY, THE ACQUI-
6 SITION, CONSTRUCTION, RECONSTRUCTION, OR ERECTION OF WHICH COMMENCED ON
7 OR AFTER THE FIRST DAY OF JANUARY, TWO THOUSAND NINE, THE TAXPAYER MAY
8 WAIVE THE RIGHT TO USE ALL OR A PORTION OF THE EXPENDITURE FOR SUCH
9 PROPERTY ELIGIBLE FOR THE INVESTMENT TAX CREDIT AND ELECT, TO THE EXTENT
10 OF THE AMOUNT OF SUCH PROPERTY EXPENDITURE FOR WHICH THE TAXPAYER HAS
11 WAIVED ELIGIBILITY UNDER THE INVESTMENT TAX CREDIT, IN LIEU THEREOF, A
12 CREDIT DETERMINED UNDER THIS SUBDIVISION.
13 (B) A TAXPAYER SHALL BE ALLOWED AN ECONOMIC RESURGENCE INITIATIVE
14 CREDIT TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED
15 BY THIS ARTICLE. THE TAXPAYER MAY CONVERT, ON AN ELECTIVE SLIDING SCALE
16 BASIS AS DELINEATED IN PARAGRAPH (C) OF THIS SUBDIVISION EARNED, BUT NOT
17 USED, INVESTMENT TAX CREDIT THAT HAS BEEN CARRIED-FORWARD FOR TEN OR
18 MORE YEARS INTO A NEW CREDIT, KNOWN AS THE ECONOMIC RESURGENCE INITI-
19 ATIVE CREDIT, UP TO THE AMOUNT EXPENDED IN THE SAME TAXABLE YEAR ON NEW
20 INVESTMENT IN THIS STATE WHICH OTHERWISE IS ELIGIBLE FOR THE CREDIT
21 UNDER SUBDIVISION TWELVE OF THIS SECTION.
22 (C) THE AMOUNT OF EARNED, BUT NOT USED, INVESTMENT TAX CREDIT ELIGIBLE
23 FOR CONVERSION SHALL BE CALCULATED AS FOLLOWS:

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

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1	NUMBER OF YEARS CARRIED FORWARD	PERCENTAGE
2	10	20%
3	11	40%
4	12	60%
5	13	80%
6	14 OR MORE	100%

7 (D) THE NEW CURRENT YEAR INVESTMENT EXPENDITURE SHALL NOT QUALIFY FOR
8 OR GENERATE ITS OWN INVESTMENT TAX CREDIT IF THE TAXPAYER ELECTED
9 CONVERSION.

10 (E) IN THE EVENT THAT THE CREDITS ALLOWED UNDER THIS ARTICLE FOR ANY
11 TAXABLE YEAR REDUCES THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER
12 OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE
13 OF THIS SECTION, THE TAXPAYER MAY ELECT TO TREAT THE AMOUNT OF THE
14 ECONOMIC RESURGENCE INITIATIVE CREDIT NOT USED IN REDUCING THE TAX DUE
15 TO THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF
16 SUBDIVISION ONE OF THIS SECTION AS AN OVERPAYMENT OF TAX TO BE CREDITED
17 OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
18 EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THE PROVISIONS OF
19 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
20 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

21 S 2. Paragraph (e) of subdivision 12 of section 210 of the tax law, as
22 amended by section 9 of part M of chapter 407 of the laws of 1999, is
23 amended to read as follows:

24 (e) Except as otherwise provided in this paragraph, the credit allowed
25 under this subdivision for any taxable year shall not reduce the tax due
26 for such year to less than the higher of the amounts prescribed in para-
27 graphs (c) and (d) of subdivision one of this section. However, if the
28 amount of credit allowable under this subdivision for any taxable year
29 reduces the tax to such amount, any amount of credit allowed for a taxa-
30 ble year commencing prior to January first, nineteen hundred eighty-sev-
31 en and not deductible in such taxable year may be carried over to the
32 following year or years and may be deducted from the taxpayer's tax for
33 such year or years but in no event shall such credit be carried over to
34 taxable years commencing on or after January first, two thousand two[,
35 and any]. ANY amount of credit allowed for a taxable year commencing on
36 or after January first, nineteen hundred eighty-seven and not deductible
37 in such year may be carried over to the [fifteen] TWENTY taxable years
38 next following such taxable year and may be deducted from the taxpayer's
39 tax for such year or years. In lieu of such carryover, any such taxpayer
40 which qualifies as a new business under paragraph (j) of this subdivi-
41 sion may elect to treat the amount of such carryover as an overpayment
42 of tax to be credited or refunded in accordance with the provisions of
43 section [ten hundred] ONE THOUSAND eighty-six of this chapter, provided,
44 however, the provisions of subsection (c) of section [ten hundred] ONE
45 THOUSAND eighty-eight of this chapter notwithstanding, no interest shall
46 be paid thereon.

47 S 3. This act shall take effect immediately and shall apply to taxable
48 years beginning on or after January 1, 2009.