

10839

I N   A S S E M B L Y

April 23, 2010

---

Introduced by M. of A. HOYT, CANESTRARI, FARRELL, DESTITO -- Multi-Sponsored by -- M. of A. BENJAMIN, BING, BRENNAN, CAHILL, CLARK, CUSICK, ENGLEBRIGHT, ESPAILLAT, GALEF, GANTT, GLICK, HIKIND, JOHN, KOON, LUPARDO, MAGNARELLI, McENENY, MILLMAN, ORTIZ, PEOPLES-STOKES, PHEFFER, P. RIVERA, SWEENEY, WEINSTEIN -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

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:

1     Section 1. Paragraph 1 of subsection (oo) of section 606 of the tax  
2     law, as amended by chapter 239 of the laws of 2009, is amended to read  
3     as follows:  
4     (1) (A) For taxable years beginning on or after January first, two  
5     thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any  
6     person, firm, partnership, limited liability company, corporation or  
7     other business entity] A TAXPAYER shall be allowed a credit as herein-  
8     after provided, against the tax imposed by this article, in an amount  
9     equal to one hundred percent of the amount of credit allowed the taxpayer  
10    [for the same taxable year] with respect to a certified historic  
11    structure under subsection [(c)] (A) (2) of section 47 of the federal  
12    internal revenue code with respect to a certified historic structure  
13    located within the state. Provided, however, the credit shall not  
14    exceed five million dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER  
15    JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT  
16    AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN  
17    AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE  
18    TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION  
19    (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT

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

LBD12198-01-0

1 TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE; PROVIDED,  
2 HOWEVER, THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

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

9 S 2. Subparagraphs (A) and (B) of paragraph 2 of subsection (pp) of  
10 section 606 of the tax law, as amended by chapter 239 of the laws of  
11 2009, are amended to read as follows:

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

27 (B) [If] FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO  
28 THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, IF the  
29 amount of credit allowable under this subsection shall exceed the  
30 taxpayer's tax for such year, and the taxpayer's New York adjusted gross  
31 income for such year does not exceed sixty thousand dollars, the excess  
32 shall be treated as an overpayment of tax to be credited or refunded in  
33 accordance with the provisions of section six hundred eighty-six of this  
34 article, provided, however, that no interest shall be paid thereon. If  
35 the taxpayer's New York adjusted gross income for such year exceeds  
36 sixty thousand dollars, the excess credit that may be carried over to  
37 the following year or years and may be deducted from the taxpayer's tax  
38 for such year or years. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY  
39 FIRST, TWO THOUSAND FIFTEEN, IF THE AMOUNT OF CREDIT ALLOWABLE UNDER  
40 THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE  
41 EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE  
42 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

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

46 (1) (A) For taxable years beginning on or after January first, two  
47 thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any  
48 person, firm, partnership, limited liability company, corporation or  
49 other business entity] A TAXPAYER shall be allowed a credit as herein-  
50 after provided, against the tax imposed by this article, in an amount  
51 equal to one hundred percent of the amount of credit allowed the taxpay-  
52 er [for the same taxable year] with respect to a certified historic  
53 structure under subsection [(c)] (A) (2) of section 47 of the federal  
54 internal revenue code with respect to a certified historic structure  
55 located within the state. Provided, however, the credit shall not  
56 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.

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

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

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

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

24 S 5. This act shall take effect immediately and shall apply to taxable  
25 years beginning on and after January 1, 2010 [and shall expire and be  
26 deemed repealed December 31, 2014; provided, however, that the credit  
27 shall be applied to any rehabilitation project commenced on or before  
28 the date on which that act shall be deemed repealed].

29 S 8. This act shall take effect immediately.