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

4726--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. MORELLE, SCHIMMINGER, DESTITO, HOYT, DelMONTE, LUPARDO, SCHROEDER, JAFFEE, STIRPE -- Multi-Sponsored by -- M. of A. GORDON, GUNTHER, MAGEE -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Section 210 of the tax law is amended by adding a new subdivision 12-H to read as follows:

12-H. ECONOMIC RESURGENCE INITIATIVE CREDIT. (A) WHERE A TAXPAYER IS ALLOWED A CREDIT UNDER THE INVESTMENT TAX CREDIT (ITC) PURSUANT TO SUBDIVISION TWELVE OF THIS SECTION WITH RESPECT TO PROPERTY, THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, OR ERECTION OF WHICH COMMENCED ON OR AFTER THE FIRST DAY OF JANUARY, TWO THOUSAND NINE, THE TAXPAYER MAY WAIVE THE RIGHT TO USE ALL OR A PORTION OF THE EXPENDITURE FOR SUCH PROPERTY ELIGIBLE FOR THE INVESTMENT TAX CREDIT AND ELECT, TO THE EXTENT OF THE AMOUNT OF SUCH PROPERTY EXPENDITURE FOR WHICH THE TAXPAYER HAS WAIVED ELIGIBILITY UNDER THE INVESTMENT TAX CREDIT, IN LIEU THEREOF, A CREDIT DETERMINED UNDER THIS SUBDIVISION.

(B) A TAXPAYER SHALL BE ALLOWED AN ECONOMIC RESURGENCE INITIATIVE CREDIT TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE TAXPAYER MAY CONVERT, ON AN ELECTIVE SLIDING SCALE BASIS AS DELINEATED IN PARAGRAPH (C) OF THIS SUBDIVISION EARNED, BUT NOT USED, INVESTMENT TAX CREDIT THAT HAS BEEN CARRIED-FORWARD FOR TEN OR MORE YEARS INTO A NEW CREDIT, KNOWN AS THE ECONOMIC RESURGENCE INITIATIVE CREDIT, UP TO THE AMOUNT EXPENDED IN THE SAME TAXABLE YEAR ON NEW INVESTMENT IN THIS STATE BY THE TAXPAYER OR A THIRD PARTY ON PROPERTY OWNED BY THE TAXPAYER WHICH OTHERWISE IS ELIGIBLE FOR THE CREDIT UNDER SUBDIVISION TWELVE OF THIS SECTION. IN THE CASE OF SUCH AN INVESTMENT

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

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BY A THIRD PARTY, SUCH THIRD PARTY SHALL HAVE WAIVED ELIGIBILITY UNDER THE INVESTMENT TAX CREDIT WITH RESPECT TO SUCH INVESTMENT.

(C) THE AMOUNT OF EARNED, BUT NOT USED, INVESTMENT TAX CREDIT ELIGIBLE FOR CONVERSION SHALL BE CALCULATED AS FOLLOWS:

NUMBER OF YEARS CARRIED FORWARD	PERCENTAGE
10	20%
11	40%
12	60%
13	80%
14 OR MORE	100%

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

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

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

(e) Except as otherwise provided in this paragraph, 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 credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit allowed for a taxable year commencing prior to January first, nineteen hundred eighty-seven and not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years but in no event shall such credit be carried over to taxable years commencing on or after January first, two thousand two[, and any]. ANY amount of credit allowed for a taxable year commencing on or after January first, nineteen hundred eighty-seven and not deductible in such year may be carried over to the [fifteen] TWENTY taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph (j) of this subdivision may elect to treat the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section [ten hundred] ONE THOUSAND eighty-six of this chapter, provided, however, the provisions of subsection (c) of section [ten hundred] ONE THOUSAND eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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