

6102

2009-2010 Regular Sessions

I N A S S E M B L Y

February 25, 2009

Introduced by M. of A. ENGLEBRIGHT, KOON, COLTON, V. LOPEZ, CYMBROWITZ, MILLMAN, SCHIMMINGER, ORTIZ, SWEENEY, ESPAILLAT, SCHROEDER, HOYT, SCHIMEL -- Multi-Sponsored by -- M. of A. AUBRY, CANESTRARI, CHRISTENSEN, CLARK, COOK, DINOWITZ, GALEF, GREENE, HEASTIE, JACOBS, LENTOL, MAYERSOHN, McDONOUGH, McENENY, PERRY, PHEFFER, J. RIVERA, P. RIVERA, ROBINSON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to pollution tax credits for the purchase of certain equipment made by dry cleaning businesses

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

1 Section 1. Subdivision (a) of section 1115 of the tax law is amended
2 by adding a new paragraph 44 to read as follows:
3 (44) EQUIPMENT OR MACHINERY CERTIFIED BY THE DEPARTMENT OF ENVIRON-
4 MENTAL CONSERVATION, PURSUANT TO REGULATIONS PROMULGATED BY SUCH DEPART-
5 MENT, FOR POLLUTION PREVENTION OR CONTROL WHICH, FOR PURPOSES OF THIS
6 PARAGRAPH, SHALL MEAN ANY PROCESS, FACILITY, DEVICE, FIXTURE, EQUIPMENT
7 OR MACHINERY USED PRIMARILY FOR THE CONTROL, PREVENTION OR ABATEMENT OF
8 POLLUTION OR CONTAMINANTS FROM THE OPERATION OF A DRY CLEANING PLANT,
9 INCLUDING ANY STRUCTURE, MACHINERY OR EQUIPMENT INSTALLED IN THE RECON-
10 STRUCTION OR REPLACEMENT OF SUCH PROCESS, FACILITY, DEVICE, FIXTURE,
11 EQUIPMENT OR MACHINERY.
12 S 2. Subparagraph (A) of paragraph 2 of subsection (a) of section
13 606 of the tax law, as amended by chapter 637 of the laws of 2008, is
14 amended to read as follows:
15 (A) A credit shall be allowed under this subsection with respect to
16 tangible personal property and other tangible property, including build-
17 ings and structural components of buildings, which are: depreciable
18 pursuant to section one hundred sixty-seven of the internal revenue
19 code, have a useful life of four years or more, are acquired by purchase
20 as defined in section one hundred seventy-nine (d) of the internal
21 revenue code, have a situs in this state and are (i) principally used by

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

LBD06208-01-9

1 the taxpayer in the production of goods by manufacturing, processing,
2 assembling, refining, mining, extracting, farming, agriculture, horti-
3 culture, floriculture, viticulture or commercial fishing, (ii) indus-
4 trial waste treatment facilities or air pollution control facilities,
5 used in the taxpayer's trade or business OR BUSINESS INVESTMENTS MADE BY
6 DRY CLEANING BUSINESSES TO ACHIEVE POLLUTION PREVENTION INCLUDING
7 INVESTMENTS INTO CHANGES IN FACILITY PROCESSES OR OPERATIONS METHODS,
8 (iii) research and development property, (iv) principally used in the
9 ordinary course of the taxpayer's trade or business as a broker or deal-
10 er in connection with the purchase or sale (which shall include but not
11 be limited to the issuance, entering into, assumption, offset, assign-
12 ment, termination, or transfer) of stocks, bonds or other securities as
13 defined in section four hundred seventy-five (c)(2) of the Internal
14 Revenue Code, or of commodities as defined in section 475(e) of the
15 Internal Revenue Code, (v) principally used in the ordinary course of
16 the taxpayer's trade or business of providing investment advisory
17 services for a regulated investment company as defined in section eight
18 hundred fifty-one of the Internal Revenue Code, or lending, loan
19 arrangement or loan origination services to customers in connection with
20 the purchase or sale (which shall include but not be limited to the
21 issuance, entering into, assumption, offset, assignment, termination, or
22 transfer) of securities as defined in section four hundred seventy-five
23 (c)(2) of the Internal Revenue Code, or (vi) principally used as a qual-
24 ified film production facility including qualified film production
25 facilities having a situs in an empire zone designated as such pursuant
26 to article eighteen-B of the general municipal law, where the taxpayer
27 is providing three or more services to any qualified film production
28 company using the facility, including such services as a studio lighting
29 grid, lighting and grip equipment, multi-line phone service, broadband
30 information technology access, industrial scale electrical capacity,
31 food services, security services, and heating, ventilation and air
32 conditioning. For purposes of clauses (iv) and (v) of this subparagraph,
33 property purchased by a taxpayer affiliated with a regulated broker,
34 dealer, or registered investment adviser is allowed a credit under this
35 subsection if the property is used by its affiliated regulated broker,
36 dealer or registered investment adviser in accordance with this
37 subsection. For purposes of determining if the property is principally
38 used in qualifying uses, the uses by the taxpayer described in clauses
39 (iv) and (v) of this subparagraph may be aggregated. In addition, the
40 uses by the taxpayer, its affiliated regulated broker, dealer and regis-
41 tered investment adviser under either or both of those clauses may be
42 aggregated. Provided, however, a taxpayer shall not be allowed the cred-
43 it provided by clauses (iv) and (v) of this subparagraph unless (I)
44 eighty percent or more of the employees performing the administrative
45 and support functions resulting from or related to the qualifying uses
46 of such equipment are located in this state, or (II) the average number
47 of employees that perform the administrative and support functions
48 resulting from or related to the qualifying uses of such equipment and
49 are located in this state during the taxable year for which the credit
50 is claimed is equal to or greater than ninety-five percent of the aver-
51 age number of employees that perform these functions and are located in
52 this state during the thirty-six months immediately preceding the year
53 for which the credit is claimed, or (III) the number of employees
54 located in this state during the taxable year for which the credit is
55 claimed is equal to or greater than ninety percent of the number of
56 employees located in this state on December thirty-first, nineteen

1 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
2 er in nineteen hundred ninety-eight, the last day of its first taxable
3 year ending after December thirty-first, nineteen hundred ninety-eight.
4 If the taxpayer becomes subject to tax in this state after the taxable
5 year beginning in nineteen hundred ninety-eight, then the taxpayer is
6 not required to satisfy the employment test provided in the preceding
7 sentence of this subparagraph for its first taxable year. For the
8 purposes of clause (III) of this subparagraph the employment test will
9 be based on the number of employees located in this state on the last
10 day of the first taxable year the taxpayer is subject to tax in this
11 state. If the uses of the property must be aggregated to determine
12 whether the property is principally used in qualifying uses, then either
13 each affiliate using the property must satisfy this employment test or
14 this employment test must be satisfied through the aggregation of the
15 employees of the taxpayer, its affiliated regulated broker, dealer, and
16 registered investment adviser using the property. For purposes of this
17 subsection, the term "goods" shall not include electricity.

18 S 3. Subparagraph (B) of paragraph 2 of subsection (a) of section 606
19 of the tax law is amended by adding three new clauses (vi), (vii) and
20 (viii) to read as follows:

21 (VI) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR
22 RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR
23 HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS
24 PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS,
25 CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS,
26 CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE
27 REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES,
28 EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTI-
29 TUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE,
30 TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS
31 THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS
32 IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERATION,
33 TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA,
34 OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR
35 POLLUTION CONTROL.

36 (VII) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMIS-
37 SION WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE
38 ENVIRONMENTAL CONSERVATION LAW.

39 (VIII) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS
40 A SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN
41 REGULATIONS PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRONMENTAL
42 CONSERVATION LAW.

43 S 4. Subparagraph (i) of paragraph (b) of subdivision 12 of section
44 210 of the tax law, as amended by chapter 637 of the laws of 2008, is
45 amended to read as follows:

46 (i) A credit shall be allowed under this subdivision with respect to
47 tangible personal property and other tangible property, including build-
48 ings and structural components of buildings, which are: depreciable
49 pursuant to section one hundred sixty-seven of the internal revenue
50 code, have a useful life of four years or more, are acquired by purchase
51 as defined in section one hundred seventy-nine (d) of the internal
52 revenue code, have a situs in this state and are (A) principally used by
53 the taxpayer in the production of goods by manufacturing, processing,
54 assembling, refining, mining, extracting, farming, agriculture, horti-
55 culture, floriculture, viticulture or commercial fishing, (B) industrial
56 waste treatment facilities or air pollution control facilities, used in

1 the taxpayer's trade or business, (C) research and development property
2 OR BUSINESS INVESTMENTS MADE BY DRY CLEANING BUSINESSES TO ACHIEVE
3 POLLUTION PREVENTION INCLUDING INVESTMENTS INTO CHANGES IN FACILITY
4 PROCESSES OR OPERATIONS OR PRODUCTION METHODS, (D) principally used in
5 the ordinary course of the taxpayer's trade or business as a broker or
6 dealer in connection with the purchase or sale (which shall include but
7 not be limited to the issuance, entering into, assumption, offset,
8 assignment, termination, or transfer) of stocks, bonds or other securi-
9 ties as defined in section four hundred seventy-five (c)(2) of the
10 Internal Revenue Code, or of commodities as defined in section four
11 hundred seventy-five (e) of the Internal Revenue Code, (E) principally
12 used in the ordinary course of the taxpayer's trade or business of
13 providing investment advisory services for a regulated investment compa-
14 ny as defined in section eight hundred fifty-one of the Internal Revenue
15 Code, or lending, loan arrangement or loan origination services to
16 customers in connection with the purchase or sale (which shall include
17 but not be limited to the issuance, entering into, assumption, offset,
18 assignment, termination, or transfer) of securities as defined in
19 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
20 (F) principally used in the ordinary course of the taxpayer's business
21 as an exchange registered as a national securities exchange within the
22 meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of
23 1934 or a board of trade as defined in section 1410(a)(1) of the New
24 York Not-for-Profit Corporation Law or as an entity that is wholly owned
25 by one or more such national securities exchanges or boards of trade and
26 that provides automation or technical services thereto, or (G) princi-
27 pally used as a qualified film production facility including qualified
28 film production facilities having a situs in an empire zone designated
29 as such pursuant to article eighteen-B of the general municipal law,
30 where the taxpayer is providing three or more services to any qualified
31 film production company using the facility, including such services as a
32 studio lighting grid, lighting and grip equipment, multi-line phone
33 service, broadband information technology access, industrial scale elec-
34 trical capacity, food services, security services, and heating, venti-
35 lation and air conditioning. For purposes of clauses (D), (E) and (F) of
36 this subparagraph, property purchased by a taxpayer affiliated with a
37 regulated broker, dealer, registered investment adviser, national secu-
38 rities exchange or board of trade, is allowed a credit under this subdivi-
39 sion if the property is used by its affiliated regulated broker, deal-
40 er, registered investment adviser, national securities exchange or board
41 of trade in accordance with this subdivision. For purposes of determin-
42 ing if the property is principally used in qualifying uses, the uses by
43 the taxpayer described in clauses (D) and (E) of this subparagraph may
44 be aggregated. In addition, the uses by the taxpayer, its affiliated
45 regulated broker, dealer, and registered investment adviser under either
46 or both of those clauses may be aggregated. Provided, however, a
47 taxpayer shall not be allowed the credit provided by clauses (D), (E)
48 and (F) of this subparagraph unless (I) eighty percent or more of the
49 employees performing the administrative and support functions resulting
50 from or related to the qualifying uses of such equipment are located in
51 this state or (II) the average number of employees that perform the
52 administrative and support functions resulting from or related to the
53 qualifying uses of such equipment and are located in this state during
54 the taxable year for which the credit is claimed is equal to or greater
55 than ninety-five percent of the average number of employees that perform
56 these functions and are located in this state during the thirty-six

1 months immediately preceding the year for which the credit is claimed,
2 or (III) the number of employees located in this state during the taxa-
3 ble year for which the credit is claimed is equal to or greater than
4 ninety percent of the number of employees located in this state on
5 December thirty-first, nineteen hundred ninety-eight or, if the taxpayer
6 was not a calendar year taxpayer in nineteen hundred ninety-eight, the
7 last day of its first taxable year ending after December thirty-first,
8 nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in
9 this state after the taxable year beginning in nineteen hundred ninety-
10 eight, then the taxpayer is not required to satisfy the employment test
11 provided in the preceding sentence of this subparagraph for its first
12 taxable year. For purposes of clause (III) of this subparagraph the
13 employment test will be based on the number of employees located in this
14 state on the last day of the first taxable year the taxpayer is subject
15 to tax in this state. If the uses of the property must be aggregated to
16 determine whether the property is principally used in qualifying uses,
17 then either each affiliate using the property must satisfy this employ-
18 ment test or this employment test must be satisfied through the aggre-
19 gation of the employees of the taxpayer, its affiliated regulated
20 broker, dealer, and registered investment adviser using the property.
21 For purposes of this subdivision, the term "goods" shall not include
22 electricity.

23 S 5. Subparagraph (ii) of paragraph (b) of subdivision 12 of section
24 210 of the tax law is amended by adding three new clauses (F), (G) and
25 (H) to read as follows:

26 (F) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR
27 RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR
28 HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS
29 PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS,
30 CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS,
31 CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE
32 REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES,
33 EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTI-
34 TUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTE-
35 NANCE, TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATE-
36 RIALS THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS
37 IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERA-
38 TION, TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA,
39 OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR
40 POLLUTION CONTROL.

41 (G) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMISSION
42 WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE ENVIRON-
43 MENTAL CONSERVATION LAW.

44 (H) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS A
45 SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN REGU-
46 LATIONS PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRON-
47 MENTAL CONSERVATION LAW.

48 S 6. This act shall take effect three years after it shall have become
49 a law and shall apply to taxable years ending on or after such effective
50 date, except that section one of this act shall take effect on the first
51 day of the sales tax quarterly period, as designated in subdivision (b)
52 of section 1136 of the tax law, next commencing on or after the effec-
53 tive date of this act and shall apply to sales made on or after the
54 effective date of section one of this act and shall apply to all equip-
55 ment or machinery purchased on or after such date although purchased
56 under a prior contract.