

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DelMONTE, BRADLEY, GREENE, SCHIMMINGER, FIELDS, MILLMAN, SCHROEDER, LUPARDO, COLTON, CUSICK, EDDINGTON, ZEBROWSKI, GUNTHER, ESPAILLAT, PEOPLES, KOON, JAFFEE, GORDON, HOOPER -- Multi-Sponsored by -- M. of A. BROOK-KRASNY, CHRISTENSEN, COOK, HEASTIE, HYER-SPENCER, JOHN, LATIMER, MAGEE, MARKEY, PHEFFER, REILLY, J. RIVERA, ROBINSON, SWEENEY, WEISENBERG -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to a small business electric energy tax 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 41 to read as follows:
3 41. SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (A) A TAXPAYER THAT IS
4 ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDI-
5 VISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
6 CLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT OF TWO
7 CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT
8 THE TAXPAYER'S PRIMARY BUSINESS LOCATION.
9 (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL
10 TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED
11 MEMBERS OR AFFILIATES, (II) NOT BE A SOLE-PROPRIETORSHIP IF SUCH
12 SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH
13 SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO
14 ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIV-
15 ING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER
16 ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.
17 (C) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO
18 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE
19 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM
20 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS
21 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE
22 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS

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

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GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(D) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAYER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE PROVIDER.

(E) 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 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT 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 SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 2. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (1) A TAXPAYER THAT IS ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH TWO OF THIS SUBSECTION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT IN THE CASE OF A PARTNERSHIP) OF TWO CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT THE TAXPAYER'S PRIMARY BUSINESS LOCATION.

(2) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED MEMBERS OR AFFILIATES, (II) SHALL NOT BE A SOLE-PROPRIETORSHIP IF SUCH SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIVING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.

(3) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

(4) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAYER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE PROVIDER.

(5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, 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
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Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B of section two hundred ten
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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
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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
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Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
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1	Credit for employment	Qualified first-year wages or
2	of persons with dis-	qualified second-year wages
3	abilities under	under subdivision
4	subsection (o)	twenty-three of section
5		two hundred ten
6		or subsection (f)
7		of section fourteen
8		hundred fifty-six
9	Employment incentive	Applicable investment credit
10	credit under subsec-	base under subdivision
11	tion (a-1)	twelve-D of section two
12		hundred ten
13	Empire zone	Applicable investment
14	employment	credit under sub-
15	incentive credit under	division twelve-C
16	subsection (j-1)	of section two hundred ten
17	Alternative fuels credit	Cost under subdivision
18	under subsection (p)	twenty-four of section two
19		hundred ten
20	Qualified emerging	Applicable credit base
21	technology company	under subdivision twelve-E
22	employment credit	of section two hundred ten
23	under subsection (q)	
24	Qualified emerging	Qualified investments under
25	technology company	subdivision twelve-F of
26	capital tax credit	section two hundred ten
27	under subsection (r)	
28	Credit for purchase of an	Cost of an automated
29	automated external defibrillator	external defibrillator under
30	under subsection (s)	subdivision twenty-five of
31		section two hundred ten
32		or subsection (j) of section
33		fourteen hundred fifty-six
34	Low-income housing	Credit amount under
35	credit under subsection (x)	subdivision thirty
36		of section two hundred ten or
37		subsection (l) of section
38		fourteen hundred fifty-six
39	Credit for transportation	Amount of credit under sub-
40	improvement contributions	division thirty-two of section
41	under subsection (z)	two hundred ten or subsection
42		(n) of section fourteen
43		hundred fifty-six
44	QEZE credit for real property	Amount of credit under
45	taxes under subsection (bb)	subdivision twenty-seven of
46		section two hundred ten or
47		subsection (o) of section

1		fourteen hundred fifty-six
2	QEZE tax reduction credit	Amount of benefit period
3	under subsection (cc)	factor, employment increase factor
4		and zone allocation
5		factor (without regard
6		to pro ration) under
7		subdivision twenty-eight of
8		section two hundred ten or
9		subsection (p) of section
10		fourteen hundred fifty-six
11		and amount of tax factor
12		as determined under
13		subdivision (f) of section sixteen
14	Green building credit	Amount of green building credit
15	under subsection (y)	under subdivision thirty-one
16		of section two hundred ten
17		or subsection (m) of section
18		fourteen hundred fifty-six
19	Credit for long-term	Qualified costs under
20	care insurance premiums	subdivision twenty-five-a of
21	under subsection (aa)	section two hundred ten
22		or subsection (k) of section
23		fourteen hundred fifty-six
24	Brownfield redevelopment	Amount of credit
25	credit under subsection	under subdivision
26	(dd)	thirty-three of section
27		two hundred ten
28		or subsection (q) of
29		section fourteen hundred
30		fifty-six
31	Remediated brownfield	Amount of credit under
32	credit for real property	subdivision thirty-four
33	taxes for qualified	of section two hundred
34	sites under subsection	ten or subsection (r) of
35	(ee)	section fourteen hundred
36		fifty-six
37	Environmental	Amount of credit under
38	remediation	subdivision thirty-five of
39	insurance credit under	section two hundred
40	subsection (ff)	ten or subsection
41		(s) of section
42		fourteen hundred
43		fifty-six
44	Empire state film production	Amount of credit for qualified
45	credit under subsection (gg)	production costs in production
46		of a qualified film under
47		subdivision thirty-six of
48		section two hundred ten

1	Qualified emerging	Qualifying expenditures and
2	technology company facilities,	development activities under
3	operations and training credit	subdivision twelve-G of section
4	under subsection (nn)	two hundred ten
5	Security training tax	Amount of credit
6	credit under	under subdivision thirty-seven
7	subsection (ii)	of section two hundred ten or
8		under subsection (t) of
9		section fourteen hundred fifty-six
10	Credit for qualified fuel	Amount of credit under
11	cell electric generating equipment	subdivision thirty-seven
12	expenditures under subsection (g-2)	of section two hundred ten
13		or subsection (t) of
14		section fourteen hundred
15		fifty-six
16	Empire state commercial production	Amount of credit for qualified
17	credit under subsection (jj)	production costs in production
18		of a qualified commercial under
19		subdivision thirty-eight of sec-
20		tion two hundred ten
21	Biofuel production	Amount of credit
22	tax credit under	under subdivision
23	subsection (jj)	thirty-eight of
24		section two hundred ten
25	Clean heating fuel credit	Amount of credit under
26	under subsection (mm)	subdivision thirty-nine of
27		section two hundred ten
28	Credit for rehabilitation	Amount of credit under
29	of historic properties	subdivision forty of
30	under subsection (oo)	subsection two hundred ten
31	Credit for companies who	Amount of credit under
32	provide transportation	subdivision forty of
33	to individuals	section two hundred ten
34	with disabilities	
35	under subsection (oo)	
36	SMALL BUSINESS ELECTRIC	QUALIFYING ELECTRICITY USAGE
37	ENERGY TAX CREDIT	UNDER SUBDIVISION FORTY-ONE
38	UNDER SUBSECTION (QQ)	OF SECTION TWO HUNDRED TEN
39	S 4. This act shall take effect immediately and shall apply to taxable	
40	years beginning on or after January 1, 2009; provided, however that the	
41	empire state film production credit under subsection (gg), the empire	
42	state commercial production credit under subsection (jj) and the credit	
43	for companies who provide transportation to individuals with disabili-	
44	ties under subsection (oo) of section 606 of the tax law contained in	
45	section three of this act shall expire on the same date as provided in	
46	section 9 of part P of chapter 60 of the laws of 2004, as amended,	
47	section 10 of part V of chapter 62 of the laws of 2006, as amended and	
48	section 5 of chapter 522 of the laws of 2006, as amended, respectively.	