

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.

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

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

14 (E) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
15 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF
16 THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF
17 THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDI-
18 VISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT
19 OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN
20 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE
21 PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED,
22 HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHT-
23 Y-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THER-
24 EON.

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

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

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

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

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

6 (5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY
 7 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
 8 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN
 9 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
 10 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

11 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 12 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of
 13 the laws of 2008, is amended to read as follows:

14 (B) shall be treated as the owner of a new business with respect to
 15 such share if the corporation qualifies as a new business pursuant to
 16 paragraph (j) of subdivision twelve of section two hundred ten of this
 17 chapter.

18 The corporation's credit base under
 19 section two hundred ten or section
 20 With respect to the following fourteen hundred fifty-six of this
 21 credit under this section: chapter is:

22 Investment tax credit Investment credit base
 23 under subsection (a) or qualified
 24 rehabilitation
 25 expenditures under
 26 subdivision twelve of
 27 section two hundred ten

28 Empire zone Cost or other basis
 29 investment tax credit under subdivision
 30 under subsection (j) twelve-B
 31 of section two hundred
 32 ten

33 Empire zone Eligible wages under
 34 wage tax credit subdivision nineteen of
 35 under subsection (k) section two hundred ten
 36 or subsection (e) of
 37 section fourteen hundred
 38 fifty-six

39 Empire zone Qualified investments
 40 capital tax credit and contributions under
 41 under subsection (l) subdivision twenty of
 42 section two hundred ten
 43 or subsection (d) of
 44 section fourteen hundred
 45 fifty-six

46 Agricultural property tax Allowable school
 47 credit under subsection (n) district property taxes under
 48 subdivision twenty-two of
 49 section two hundred ten

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

<p>1 Qualified emerging 2 technology company facilities, 3 operations and training credit 4 under subsection (nn)</p> <p>5 Security training tax 6 credit under 7 subsection (ii) 8 9</p> <p>10 Credit for qualified fuel 11 cell electric generating equipment 12 expenditures under subsection (g-2) 13 14 15</p> <p>16 Empire state commercial production 17 credit under subsection (jj) 18 19 20</p> <p>21 Biofuel production 22 tax credit under 23 subsection (jj) 24</p> <p>25 Clean heating fuel credit 26 under subsection (mm) 27</p> <p>28 Credit for rehabilitation 29 of historic properties 30 under subsection (oo)</p> <p>31 Credit for companies who 32 provide transportation 33 to individuals 34 with disabilities 35 under subsection (oo)</p> <p>36 SMALL BUSINESS ELECTRIC 37 ENERGY TAX CREDIT 38 UNDER SUBSECTION (QQ)</p>	<p>Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten</p> <p>Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six</p> <p>Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six</p> <p>Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of sec- tion two hundred ten</p> <p>Amount of credit under subdivision thirty-eight of section two hundred ten</p> <p>Amount of credit under subdivision thirty-nine of section two hundred ten</p> <p>Amount of credit under subdivision forty of subsection two hundred ten</p> <p>Amount of credit under subdivision forty of section two hundred ten</p> <p>QUALIFYING ELECTRICITY USAGE UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN</p>
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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.