

3052

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sens. SEWARD, ALESi, BONACIC, DeFRANCISCO, HANNON,
O. JOHNSON, LANZA, MAZIARZ, MORAHAN, RANZENHOFER, VOLKER -- read twice
and ordered printed, and when printed to be committed to the Committee
on Investigations and Government Operations

AN ACT to amend the tax law, in relation to providing a tax credit for
the purchase of certain health insurance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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. (A) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED
4 A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE
5 PERCENTAGE OF PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE
6 BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (I) FIVE PERCENT
7 FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE
8 AND (II) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
9 FIRST, TWO THOUSAND TEN.
10 (B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY YEAR SHALL NOT
11 REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS
12 PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION.
13 IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR
14 ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT
15 NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
16 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
17 OR YEARS.
18 (C) FOR THE PURPOSES OF THIS SUBDIVISION "QUALIFIED SMALL EMPLOYER"
19 SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE
20 BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A
21 "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE
22 OF THIS SECTION.

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

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(D) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 2. 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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(I) 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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(II) 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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(III) 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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(IV) 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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(V) 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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(VI) Credit for employment of persons with disabilities under subsection (o)	Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six
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(VII) Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten
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1 (VIII) Empire zone employment 2 incentive credit under subsection 3 (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
4 (IX) Alternative fuels credit 5 under subsection (p)	Cost under subdivision twenty-four of section two hundred ten
6 (X) Qualified emerging technology 7 company employment credit under 8 subsection (q)	Applicable credit base under subdivision twelve-E of section two hundred ten
9 (XI) Qualified emerging technology 10 company capital tax credit under 11 subsection (r)	Qualified investments under subdivision twelve-F of section two hundred ten
12 (XII) Credit for purchase of an 13 automated external defibrillator 14 under subsection (s) 15 16	Cost of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six
17 (XIII) Low-income housing credit 18 under subsection (x) 19 20	Credit amount under subdivision thirty of section two hundred ten or subsection (l) of section fourteen hundred fifty-six
21 (XIV) Credit for transportation 22 improvement contributions under 23 subsection (z) 24	Amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six
25 (XV) QEZE credit for real property 26 taxes under subsection (bb) 27 28	Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six
29 (XVI) QEZE tax reduction credit 30 under subsection (cc) 31 32 33 34 35 36 37 38	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen
39 (XVII) Green building credit under 40 subsection (y) 41 42 43	Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six
44 (XVIII) Credit for long-term care 45 insurance premiums under subsection 46 (aa)	Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of

1		section fourteen hundred fifty-six
2	(XIX) Brownfield redevelopment	Amount of credit under subdivision
3	credit under subsection (dd)	thirty-three of section two hundred
4		ten or subsection (q) of section
5		fourteen hundred fifty-six
6	(XX) Remediated brownfield credit	Amount of credit under subdivision
7	for real property taxes for	thirty-four of section two hundred
8	qualified sites under subsection	ten or subsection (r) of section
9	(ee)	fourteen hundred fifty-six
10	(XXI) Environmental remediation	Amount of credit under subdivision
11	insurance credit under subsection	thirty-five of section two hundred
12	(ff)	ten or subsection (s) of section
13		fourteen hundred fifty-six
14	(XXII) Empire state film production	Amount of credit for qualified
15	credit under subsection (gg)	production costs in production of a
16		qualified film under subdivision
17		thirty-six of section two hundred
18		ten
19	(XXIII) Qualified emerging	Qualifying expenditures and
20	technology company facilities,	development activities under
21	operations and training credit	subdivision twelve-G of section two
22	under subsection (nn)	hundred ten
23	(XXIV) Security training tax credit	Amount of credit under subdivision
24	under subsection (ii)	thirty-seven of section two hundred
25		ten or under subsection (t) of
26		section fourteen hundred fifty-six
27	(XXV) Credit for qualified fuel	Amount of credit under subdivision
28	cell electric generating equipment	thirty-seven of section two hundred
29	expenditures under subsection (g-2)	ten or subsection (t) of section
30		fourteen hundred fifty-six
31	(XXVI) Empire state commercial	Amount of credit for qualified
32	production credit under subsection	production costs in production of
33	(jj)	a qualified commercial under
34		subdivision thirty-eight of
35		section two hundred ten
36	(XXVII) Biofuel production tax	Amount of credit under subdivision
37	credit under subsection (jj)	thirty-eight of section two hundred
38		ten
39	(XXVIII) Clean heating fuel credit	Amount of credit under subdivision
40	under subsection (mm)	thirty-nine of section two hundred
41		ten
42	(XXIX) Credit for rehabilitation	Amount of credit under subdivision
43	of historic properties under	forty of [subsection] SECTION
44	subsection (oo)	two hundred ten

1 (XXX) Credit for companies who Amount of credit under subdivision
2 provide transportation to forty of section two hundred ten
3 individuals with disabilities under
4 subsection (oo)

5 (XXXI) SMALL EMPLOYER HEALTH CREDIT UNDER SUBDIVISION
6 CARE INSURANCE CREDIT FORTY-ONE OF SECTION TWO
7 UNDER SUBSECTION (QQ) HUNDRED TEN

8 S 3. Section 606 of the tax law is amended by adding a new subsection
9 (qq) to read as follows:

10 (QQ) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER WHO
11 IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX
12 IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMI-
13 UMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER.
14 THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS
15 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (B) TEN
16 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
17 SAND TEN. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION
18 FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE
19 EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE
20 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

21 (2) FOR THE PURPOSES OF THIS SUBSECTION "QUALIFIED SMALL EMPLOYER"
22 SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE
23 BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A
24 "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE
25 OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

26 (3) FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "HEALTH INSURANCE"
27 MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS
28 OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO
29 HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND
30 EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE
31 PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE
32 IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL
33 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

34 S 4. Section 1456 of the tax law is amended by adding a new subsection
35 (f-1) to read as follows:

36 (F-1) SMALL EMPLOYER TAX CREDIT. (1) A TAXPAYER WHO IS A QUALIFIED
37 SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS
38 ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING
39 THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE
40 PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR
41 AFTER JANUARY FIRST, TWO THOUSAND NINE AND (B) TEN PERCENT FOR TAXABLE
42 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

43 (2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR, AND CARRYOVERS
44 OF SUCH CREDIT, BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYA-
45 BLE TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINIMUM TAX BY SUBSECTION
46 (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. IF, HOWEVER,
47 THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWABLE
48 UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH
49 AMOUNT, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT
50 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
51 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
52 OR YEARS.

53 (3) FOR THE PURPOSES OF THIS SECTION THE TERM "QUALIFIED SMALL EMPLOY-
54 ER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE
55 BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A

"SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(4) FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 5. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

(2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE MINIMUM FIXED BY SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT 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.

(3) FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "QUALIFIED SMALL EMPLOYER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(4) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 6. Section 606 of the tax law is amended by adding a new subsection (h-1) to read as follows:

(H-1) INDIVIDUAL ENROLLEE HEALTH INSURANCE CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMIUM PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE PURCHASED PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED TWENTY-ONE OR FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THE INSURANCE LAW, INCLUDING POLICIES INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003. THE APPLICABLE PERCENTAGE SHALL BE (1) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (2) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

S 7. This act shall take effect January 1, 2010; provided, however that the empire state film production credit under subsection (gg), the empire state commercial production credit under subsection (jj) and the

1 credit for companies who provide transportation to individuals with
2 disabilities under subsection (oo) of section 606 of the tax law
3 contained in section two of this act shall expire on the same date as
4 provided in section 9 of part P of chapter 60 of the laws of 2004, as
5 amended, section 10 of part V of chapter 62 of the laws of 2006, as
6 amended and section 5 of chapter 522 of the laws of 2006, as amended,
7 respectively.