

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

4420

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- 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 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 ENVIRONMENTAL CONSERVATION, PURSUANT TO REGULATIONS PROMULGATED BY SUCH DEPARTMENT, FOR POLLUTION PREVENTION OR CONTROL WHICH, FOR PURPOSES OF THIS PARAGRAPH, SHALL MEAN ANY PROCESS, FACILITY, DEVICE, FIXTURE, EQUIPMENT OR MACHINERY USED PRIMARILY FOR THE CONTROL, PREVENTION OR ABATEMENT OF POLLUTION OR CONTAMINANTS FROM THE OPERATION OF A DRY CLEANING PLANT, INCLUDING ANY STRUCTURE, MACHINERY OR EQUIPMENT INSTALLED IN THE RECONSTRUCTION OR REPLACEMENT OF SUCH PROCESS, FACILITY, DEVICE, FIXTURE, 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 buildings and structural components of buildings, which are: depreciable 17 pursuant to section one hundred sixty-seven of the internal revenue 18 code, have a useful life of four years or more, are acquired by purchase 19 as defined in section one hundred seventy-nine (d) of the internal 20 revenue code, have a situs in this state and are (i) principally used by 21 the taxpayer in the production of goods by manufacturing, processing, 22 assembling, refining, mining, extracting, farming, agriculture, horticulture, 23 floriculture, viticulture or commercial fishing, (ii) indus-

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

LBD06208-01-9

trial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business OR BUSINESS INVESTMENTS MADE BY DRY CLEANING BUSINESSES TO ACHIEVE POLLUTION PREVENTION INCLUDING INVESTMENTS INTO CHANGES IN FACILITY PROCESSES OR OPERATIONS METHODS, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section 475(e) of the Internal Revenue Code, (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or (vi) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. For purposes of clauses (iv) and (v) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, or registered investment adviser is allowed a credit under this subsection if the property is used by its affiliated regulated broker, dealer or registered investment adviser in accordance with this subsection. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (iv) and (v) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (iv) and (v) of this subparagraph unless (I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight.

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

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

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

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

36 (VIII) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS
37 A SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN
38 REGULATIONS PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRON-
39 MENTAL CONSERVATION LAW.

40 S 4. Subparagraph (i) of paragraph (b) of subdivision 12 of section
41 210 of the tax law, as amended by chapter 637 of the laws of 2008, is
42 amended to read as follows:

43 (i) A credit shall be allowed under this subdivision with respect to
44 tangible personal property and other tangible property, including build-
45 ings and structural components of buildings, which are: depreciable
46 pursuant to section one hundred sixty-seven of the internal revenue
47 code, have a useful life of four years or more, are acquired by purchase
48 as defined in section one hundred seventy-nine (d) of the internal
49 revenue code, have a situs in this state and are (A) principally used by
50 the taxpayer in the production of goods by manufacturing, processing,
51 assembling, refining, mining, extracting, farming, agriculture, horti-
52 culture, floriculture, viticulture or commercial fishing, (B) industrial
53 waste treatment facilities or air pollution control facilities, used in
54 the taxpayer's trade or business, (C) research and development property
55 OR BUSINESS INVESTMENTS MADE BY DRY CLEANING BUSINESSES TO ACHIEVE
56 POLLUTION PREVENTION INCLUDING INVESTMENTS INTO CHANGES IN FACILITY

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

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

20 S 5. Subparagraph (ii) of paragraph (b) of subdivision 12 of section
21 210 of the tax law is amended by adding three new clauses (F), (G) and
22 (H) to read as follows:

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

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

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

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