

8211

2011-2012 Regular Sessions

I N A S S E M B L Y

June 6, 2011

Introduced by M. of A. THIELE -- read once and referred to the Committee
on Ways and Means

AN ACT to amend the tax law, in relation to providing an expiration
therefor and in relation to investment tax credits for alternative
energy production facilities and small hydro facilities

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

1 Section 1. Paragraph 2 of subsection (g-2) of section 606 of the tax
2 law, as amended by chapter 446 of the laws of 2005, is amended to read
3 as follows:
4 (2) Qualified fuel cell electric generating equipment expenditures.
5 (A) Qualified fuel cell electric generating equipment expenditures are
6 the costs, incurred on or after [July] JANUARY first, two thousand
7 [five] THREE, associated with the purchase of on-site electricity gener-
8 ation systems utilizing proton exchange membrane fuel cells, providing a
9 rated baseload capacity of no less than one kilowatt and no more than
10 one hundred kilowatts of electricity, which are located in this state at
11 the time the qualified fuel cell electric generating equipment is placed
12 in service.
13 (B) Qualified fuel cell electric generating equipment expenditures
14 shall also include costs, incurred on or after [July] JANUARY first, two
15 thousand [five] THREE, for materials, labor for on-site preparation,
16 assembly and original installation, engineering services, designs and
17 plans directly related to construction or installation and utility
18 compliance costs.
19 (C) Such qualified expenditures shall not include interest or other
20 finance charges.
21 S 2. Subparagraph (i) of paragraph (b) of subdivision 12 of section
22 210 of the tax law, as amended by chapter 637 of the laws of 2008, is
23 amended to read as follows:

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

LBD11681-01-1

1 (i) A credit shall be allowed under this subdivision with respect to
2 tangible personal property and other tangible property, including build-
3 ings and structural components of buildings, which are: depreciable
4 pursuant to section one hundred sixty-seven of the internal revenue
5 code, have a useful life of four years or more, are acquired by purchase
6 as defined in section one hundred seventy-nine (d) of the internal
7 revenue code, have a situs in this state and are (A) principally used by
8 the taxpayer in the production of goods by manufacturing, processing,
9 assembling, refining, mining, extracting, farming, agriculture, horti-
10 culture, floriculture, viticulture or commercial fishing, (B) industrial
11 waste treatment facilities or air pollution control facilities, used in
12 the taxpayer's trade or business, (C) research and development property,
13 (D) principally used in the ordinary course of the taxpayer's trade or
14 business as a broker or dealer in connection with the purchase or sale
15 (which shall include but not be limited to the issuance, entering into,
16 assumption, offset, assignment, termination, or transfer) of stocks,
17 bonds or other securities as defined in section four hundred seventy-
18 five (c)(2) of the Internal Revenue Code, or of commodities as defined
19 in section four hundred seventy-five (e) of the Internal Revenue Code,
20 (E) principally used in the ordinary course of the taxpayer's trade or
21 business of providing investment advisory services for a regulated
22 investment company as defined in section eight hundred fifty-one of the
23 Internal Revenue Code, or lending, loan arrangement or loan origination
24 services to customers in connection with the purchase or sale (which
25 shall include but not be limited to the issuance, entering into, assump-
26 tion, offset, assignment, termination, or transfer) of securities as
27 defined in section four hundred seventy-five (c)(2) of the Internal
28 Revenue Code, (F) principally used in the ordinary course of the taxpay-
29 er's business as an exchange registered as a national securities
30 exchange within the meaning of sections 3(a)(1) and 6(a) of the Securi-
31 ties Exchange Act of 1934 or a board of trade as defined in SUBPARAGRAPH
32 (A) OF PARAGRAPH ONE OF section [1410(a)(1)] FOURTEEN HUNDRED TEN of the
33 New York Not-for-Profit Corporation Law or as an entity that is wholly
34 owned by one or more such national securities exchanges or boards of
35 trade and that provides automation or technical services thereto, [or]
36 (G) principally used as a qualified film production facility including
37 qualified film production facilities having a situs in an empire zone
38 designated as such pursuant to article eighteen-B of the general municip-
39 al law, where the taxpayer is providing three or more services to any
40 qualified film production company using the facility, including such
41 services as a studio lighting grid, lighting and grip equipment, multi-
42 line phone service, broadband information technology access, industrial
43 scale electrical capacity, food services, security services, and heat-
44 ing, ventilation and air conditioning, OR (H) AN ALTERNATIVE ENERGY
45 PRODUCTION FACILITY AND SMALL HYDRO FACILITY, AS DEFINED IN SUBDIVISIONS
46 TWO-B AND TWO-C OF SECTION TWO OF THE PUBLIC SERVICE LAW, PROVIDED,
47 HOWEVER, FOR THE PURPOSES OF THIS ARTICLE, AN ALTERNATIVE ENERGY
48 PRODUCTION FACILITY SHALL NOT BE SUBJECT TO THE MAXIMUM CAPACITY OF
49 EIGHTY MEGAWATTS AS PROVIDED IN SUBDIVISION TWO-B OF SECTION TWO OF THE
50 PUBLIC SERVICE LAW. For purposes of clauses (D), (E) and (F) of this
51 subparagraph, property purchased by a taxpayer affiliated with a regu-
52 lated broker, dealer, registered investment adviser, national securities
53 exchange or board of trade, is allowed a credit under this subdivision
54 if the property is used by its affiliated regulated broker, dealer,
55 registered investment adviser, national securities exchange or board of
56 trade in accordance with this subdivision. For purposes of determining

1 if the property is principally used in qualifying uses, the uses by the
2 taxpayer described in clauses (D) and (E) of this subparagraph may be
3 aggregated. In addition, the uses by the taxpayer, its affiliated regu-
4 lated broker, dealer, and registered investment adviser under either or
5 both of those clauses may be aggregated. Provided, however, a taxpayer
6 shall not be allowed the credit provided by clauses (D), (E) and (F) of
7 this subparagraph unless (I) eighty percent or more of the employees
8 performing the administrative and support functions resulting from or
9 related to the qualifying uses of such equipment are located in this
10 state or (II) the average number of employees that perform the adminis-
11 trative and support functions resulting from or related to the qualify-
12 ing uses of such equipment and are located in this state during the
13 taxable year for which the credit is claimed is equal to or greater than
14 ninety-five percent of the average number of employees that perform
15 these functions and are located in this state during the thirty-six
16 months immediately preceding the year for which the credit is claimed,
17 or (III) the number of employees located in this state during the taxa-
18 ble year for which the credit is claimed is equal to or greater than
19 ninety percent of the number of employees located in this state on
20 December thirty-first, nineteen hundred ninety-eight or, if the taxpayer
21 was not a calendar year taxpayer in nineteen hundred ninety-eight, the
22 last day of its first taxable year ending after December thirty-first,
23 nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in
24 this state after the taxable year beginning in nineteen hundred ninety-
25 eight, then the taxpayer is not required to satisfy the employment test
26 provided in the preceding sentence of this subparagraph for its first
27 taxable year. For purposes of clause (III) of this subparagraph the
28 employment test will be based on the number of employees located in this
29 state on the last day of the first taxable year the taxpayer is subject
30 to tax in this state. If the uses of the property must be aggregated to
31 determine whether the property is principally used in qualifying uses,
32 then either each affiliate using the property must satisfy this employ-
33 ment test or this employment test must be satisfied through the aggre-
34 gation of the employees of the taxpayer, its affiliated regulated
35 broker, dealer, and registered investment adviser using the property.
36 For purposes of this subdivision, the term "goods" shall not include
37 electricity PROVIDED, HOWEVER, THAT THIS EXCLUSION IN NO WAY AFFECTS THE
38 CREDIT ALLOWABLE UNDER CLAUSE (H) OF THIS SUBPARAGRAPH.

39 S 3. This act shall take effect immediately, and shall apply to taxa-
40 ble years beginning on or after January 1, 2012.