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

2878

2011-2012 Regular Sessions

I N S E N A T E

February 2, 2011

Introduced by Sen. GRISANTI -- 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 enacting the "city of Buffalo historic preservation tax credit act"

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

Section 1. Short title. This act shall be known and may be cited as the "city of Buffalo historic preservation tax credit act".

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

(SS) CITY OF BUFFALO HISTORIC STRUCTURE REHABILITATION CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBSECTION, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THIRTY PERCENT OF THE QUALIFIED REHABILITATION EXPENDITURES MADE BY THE TAXPAYER WITH RESPECT TO A QUALIFIED HISTORIC STRUCTURE AND MAY ONLY BE TAKEN BY THE TAXPAYER UPON COMPLETION OF THE REHABILITATION WORK AND APPROVAL OF SUCH WORK BY THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION OR BY A LOCAL GOVERNMENT CERTIFIED PURSUANT TO SECTION 101 (C)(1) OF THE NATIONAL HISTORIC PRESERVATION ACT. APPROVAL IS NECESSARY OF EXTERIOR WORK AND INTERIOR WORK AFFECTING PRIMARY SIGNIFICANT HISTORIC SPACES. INTERIOR WORK MAY ALSO QUALIFY FOR THE CREDIT SO LONG AS NO MORE THAN NINETY-FIVE PERCENT OF THE TOTAL EXPENDITURES MADE IN THE REHABILITATION PROCESS ARE ALLOWABLE TO THE REHABILITATION OF THE INTERIOR. WORK WILL BE REVIEWED PURSUANT TO THE STANDARDS ESTABLISHED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION.

(2) TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE SHALL BE ALLOWED FOR THE TAXABLE YEAR IN WHICH SUCH QUALIFIED HISTORIC STRUCTURE OR AN IDENTIFIABLE PORTION OF THE STRUCTURE IS PLACED IN SERVICE PROVIDED THAT THE SUBSTANTIAL REHABILITATION TEST IS MET FOR SUCH YEAR.

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

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(3) IF THE AMOUNT OF THE TAX CREDIT EXCEEDS THE TAXPAYER'S TOTAL TAX LIABILITY FOR THE YEAR IN WHICH THE SUBSTANTIALLY REHABILITATED PROPERTY IS PLACED IN SERVICE, 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.

(4) FOR PURPOSES OF THIS SUBSECTION:

(A)(I) THE TERM "QUALIFIED REHABILITATION EXPENDITURE" MEANS ANY AMOUNT PROPERLY CHARGEABLE TO CAPITAL ACCOUNT IN CONNECTION WITH THE CERTIFIED REHABILITATION OF A CERTIFIED HISTORIC STRUCTURE FOR PROPERTY EITHER:

1. FOR WHICH DEPRECIATION WOULD BE ALLOWABLE UNDER SECTION 168 OF THE INTERNAL REVENUE CODE; OR

2. MADE WITH RESPECT TO PROPERTY HELD FOR SALE BY THE OWNER.

(II) SUCH TERM SHALL NOT INCLUDE:

1. THE COST OF ACQUIRING ANY BUILDING OR INTEREST THEREON;

2. ANY EXPENDITURE IN CONNECTION WITH THE REHABILITATION OF A BUILDING UNLESS AT LEAST FIVE PERCENT OF THE TOTAL EXPENDITURES MADE IN THE REHABILITATION PROCESS ARE ALLOCABLE TO THE REHABILITATION OF THE EXTERIOR OF SUCH BUILDING; OR

3. ANY EXPENDITURES EXCLUDED UNDER CLAUSES (II) AND (III) OF SECTION 47(C)(2)(B) OF THE INTERNAL REVENUE CODE.

(B)(I) THE TERM "CERTIFIED REHABILITATION" SHALL MEAN ANY REHABILITATION OF A CERTIFIED HISTORIC STRUCTURE WHICH HAS BEEN APPROVED AND CERTIFIED AS BEING CONSISTENT WITH THE STANDARDS ESTABLISHED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION, THE CITY OF BUFFALO, IF CERTIFIED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION, OR A LOCAL LANDMARK COMMISSION ESTABLISHED PURSUANT TO SECTION NINETY-SIX-A, AS ADDED BY CHAPTER FIVE HUNDRED THIRTEEN OF THE LAWS OF NINETEEN HUNDRED SIXTY-EIGHT, OR ONE HUNDRED NINETEEN-DD OF THE GENERAL MUNICIPAL LAW.

(II) A CERTIFIED REHABILITATION EXPENDITURE SHALL REQUIRE:

1. AN INITIAL CERTIFICATION THAT THE STRUCTURE MEETS THE DEFINITION OF "CERTIFIED HISTORIC STRUCTURE";

2. A SECOND CERTIFICATION, TO BE ISSUED PRIOR TO CONSTRUCTION, CERTIFYING THAT THE PROPOSED REHABILITATION WORK IS CONSISTENT WITH THE STANDARDS ESTABLISHED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION FOR REHABILITATION; AND

3. A FINAL CERTIFICATION, ISSUED WHEN CONSTRUCTION IS COMPLETED, CERTIFYING THAT THE WORK WAS COMPLETED AS PROPOSED AND THAT THE COSTS ARE CONSISTENT WITH THE WORK COMPLETED. SUCH FINAL CERTIFICATION SHALL BE ACCEPTABLE AS PROOF THAT THE EXPENDITURES RELATED TO SUCH CONSTRUCTION QUALIFY AS QUALIFIED REHABILITATION EXPENDITURES FOR PURPOSES OF THE CREDIT ALLOWED UNDER PARAGRAPH ONE OF THIS SUBSECTION.

(C) THE TERM "CERTIFIED HISTORIC STRUCTURE" SHALL MEAN ANY BUILDING, AND ITS STRUCTURAL COMPONENTS LOCATED IN THE CITY OF BUFFALO WHICH:

(I) IS LISTED ON THE STATE OR NATIONAL REGISTER OF HISTORIC PLACES; OR

(II) IS LOCATED IN A REGISTERED HISTORIC DISTRICT AND IS CERTIFIED AS BEING OF HISTORICAL SIGNIFICANCE TO SUCH DISTRICT BY SUCH DISTRICT OR THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION; OR

(III) IS LOCATED IN A LOCAL HISTORIC DISTRICT AND IS CERTIFIED AS BEING OF HISTORICAL SIGNIFICANCE TO SUCH DISTRICT OR BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION; AND

(IV) WHICH HAS BEEN SUBSTANTIALLY REHABILITATED; AND

(V) WHICH OR ANY PORTION OF WHICH IS OWNED, IN WHOLE OR IN PART BY THE TAXPAYER.

(D) A BUILDING SHALL BE TREATED AS HAVING BEEN "SUBSTANTIALLY REHABILITATED" IF THE QUALIFIED REHABILITATION EXPENDITURES IN RELATION TO SUCH BUILDING DURING THE TWENTY-FOUR MONTH PERIOD SELECTED BY THE TAXPAYER ENDING WITH OR WITHIN THE TAXABLE YEAR EXCEED FIFTY PERCENT OF THE ADJUSTED BASIS IN SUCH BUILDING AND ITS STRUCTURAL COMPONENTS AS OF THE BEGINNING OF SUCH PERIOD. IN THE CASE OF ANY REHABILITATION, WHICH MAY REASONABLY BE EXPECTED TO BE COMPLETED IN PHASES SET FORTH IN ARCHITECTURAL PLANS AND SPECIFICATIONS COMPLETED BEFORE THE REHABILITATION BEGINS, THIS DEFINITION SHALL BE APPLIED BY SUBSTITUTING "SIXTY MONTH PERIOD" FOR "TWENTY-FOUR MONTH PERIOD".

(E) A REHABILITATION SHALL NOT BE TREATED AS COMPLETE BEFORE THE DATE OF THE CERTIFICATION REFERRED TO IN THIS SUBSECTION.

(F) QUALIFIED REHABILITATION EXPENDITURES SHALL BE TREATED FOR PURPOSES OF THIS SUBSECTION AS MADE:

(I) ON THE DATE THE REHABILITATION IS COMPLETED; OR

(II) TO THE EXTENT PROVIDED BY THE COMMISSIONER BY REGULATION, WHEN SUCH EXPENDITURES ARE PROPERLY CHARGEABLE TO CAPITAL ACCOUNT. REGULATIONS UNDER THIS SUBPARAGRAPH SHALL INCLUDE A RULE SIMILAR TO THE RULE UNDER SECTION 50 (A) (2) OF THE INTERNAL REVENUE CODE RELATING TO RECAPTURE IF PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.

(5) THE COMMISSIONER IN CONJUNCTION WITH THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION SHALL PRESCRIBE SUCH REGULATIONS AS MAY BE APPROPRIATE TO CARRY OUT THE PURPOSES OF THIS SUBSECTION. SUCH REGULATIONS MAY ALSO INCLUDE THE IMPOSITION OF A FEE FOR THE PROCESSING OF APPLICATIONS FOR CERTIFICATION OF ANY REHABILITATION UNDER THIS SUBSECTION PROVIDED THAT THE AMOUNT OF SUCH FEE IS USED ONLY TO DEFRAY EXPENSES ASSOCIATED WITH THE PROCESSING OF SUCH APPLICATIONS.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to taxable years commencing on and after such effective date; provided, however, that prior to the effective date of this act, the commissioners of taxation and finance and parks, recreation and historic preservation may promulgate any regulations necessary to implement and facilitate the implementation of this act.