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

10122

I N A S S E M B L Y

May 7, 2012

Introduced by M. of A. N. RIVERA -- 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:

Section 1. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (A) A TAXPAYER THAT IS ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT OF TWO CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT THE TAXPAYER'S PRIMARY BUSINESS LOCATION.

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

(C) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF

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

LBD04316-03-2

THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

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

(E) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

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

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

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

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

(5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, 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.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxiv) to read as follows:

(XXXIV) SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT UNDER SUBSECTION (UU)	QUALIFYING ELECTRICITY USAGE UNDER SUBDIVISION FORTY-FIVE OF SECTION TWO HUNDRED TEN

S 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2013.