

4620

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 4, 2011

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

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 ASSEM-  
BLY, 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 ENVIRON-  
4     MENTAL CONSERVATION, PURSUANT TO REGULATIONS PROMULGATED BY SUCH DEPART-  
5     MENT, FOR POLLUTION PREVENTION OR CONTROL WHICH, FOR PURPOSES OF THIS  
6     PARAGRAPH, SHALL MEAN ANY PROCESS, FACILITY, DEVICE, FIXTURE, EQUIPMENT  
7     OR MACHINERY USED PRIMARILY FOR THE CONTROL, PREVENTION OR ABATEMENT OF  
8     POLLUTION OR CONTAMINANTS FROM THE OPERATION OF A DRY CLEANING PLANT,  
9     INCLUDING ANY STRUCTURE, MACHINERY OR EQUIPMENT INSTALLED IN THE RECON-  
10    STRUCTION OR REPLACEMENT OF SUCH PROCESS, FACILITY, DEVICE, FIXTURE,  
11    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 build-  
17    ings and structural components of buildings, which are: depreciable  
18    pursuant to section one hundred sixty-seven of the internal revenue  
19    code, have a useful life of four years or more, are acquired by purchase  
20    as defined in section one hundred seventy-nine (d) of the internal  
21    revenue code, have a situs in this state and are (i) principally used by  
22    the taxpayer in the production of goods by manufacturing, processing,  
23    assembling, refining, mining, extracting, farming, agriculture, horti-  
24    culture, floriculture, viticulture or commercial fishing, (ii) indus-  
25    trial waste treatment facilities or air pollution control facilities,

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

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1 used in the taxpayer's trade or business OR BUSINESS INVESTMENTS MADE BY  
2 DRY CLEANING BUSINESSES TO ACHIEVE POLLUTION PREVENTION INCLUDING  
3 INVESTMENTS INTO CHANGES IN FACILITY PROCESSES OR OPERATIONS METHODS,  
4 (iii) research and development property, (iv) principally used in the  
5 ordinary course of the taxpayer's trade or business as a broker or deal-  
6 er in connection with the purchase or sale (which shall include but not  
7 be limited to the issuance, entering into, assumption, offset, assign-  
8 ment, termination, or transfer) of stocks, bonds or other securities as  
9 defined in section four hundred seventy-five (c)(2) of the Internal  
10 Revenue Code, or of commodities as defined in section 475(e) of the  
11 Internal Revenue Code, (v) principally used in the ordinary course of  
12 the taxpayer's trade or business of providing investment advisory  
13 services for a regulated investment company as defined in section eight  
14 hundred fifty-one of the Internal Revenue Code, or lending, loan  
15 arrangement or loan origination services to customers in connection with  
16 the purchase or sale (which shall include but not be limited to the  
17 issuance, entering into, assumption, offset, assignment, termination, or  
18 transfer) of securities as defined in section four hundred seventy-five  
19 (c)(2) of the Internal Revenue Code, or (vi) principally used as a qual-  
20 ified film production facility including qualified film production  
21 facilities having a situs in an empire zone designated as such pursuant  
22 to article eighteen-B of the general municipal law, where the taxpayer  
23 is providing three or more services to any qualified film production  
24 company using the facility, including such services as a studio lighting  
25 grid, lighting and grip equipment, multi-line phone service, broadband  
26 information technology access, industrial scale electrical capacity,  
27 food services, security services, and heating, ventilation and air  
28 conditioning. For purposes of clauses (iv) and (v) of this subparagraph,  
29 property purchased by a taxpayer affiliated with a regulated broker,  
30 dealer, or registered investment adviser is allowed a credit under this  
31 subsection if the property is used by its affiliated regulated broker,  
32 dealer or registered investment adviser in accordance with this  
33 subsection. For purposes of determining if the property is principally  
34 used in qualifying uses, the uses by the taxpayer described in clauses  
35 (iv) and (v) of this subparagraph may be aggregated. In addition, the  
36 uses by the taxpayer, its affiliated regulated broker, dealer and regis-  
37 tered investment adviser under either or both of those clauses may be  
38 aggregated. Provided, however, a taxpayer shall not be allowed the cred-  
39 it provided by clauses (iv) and (v) of this subparagraph unless (I)  
40 eighty percent or more of the employees performing the administrative  
41 and support functions resulting from or related to the qualifying uses  
42 of such equipment are located in this state, or (II) the average number  
43 of employees that perform the administrative and support functions  
44 resulting from or related to the qualifying uses of such equipment and  
45 are located in this state during the taxable year for which the credit  
46 is claimed is equal to or greater than ninety-five percent of the aver-  
47 age number of employees that perform these functions and are located in  
48 this state during the thirty-six months immediately preceding the year  
49 for which the credit is claimed, or (III) the number of employees  
50 located in this state during the taxable year for which the credit is  
51 claimed is equal to or greater than ninety percent of the number of  
52 employees located in this state on December thirty-first, nineteen  
53 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-  
54 er in nineteen hundred ninety-eight, the last day of its first taxable  
55 year ending after December thirty-first, nineteen hundred ninety-eight.  
56 If the taxpayer becomes subject to tax in this state after the taxable

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

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

17 (VI) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS, CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS, CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES, EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTITUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE, TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERATION, TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA, OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR POLLUTION CONTROL.

32 (VII) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMISSION WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE ENVIRONMENTAL CONSERVATION LAW.

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

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

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

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

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

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

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

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

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

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