

5591

2011-2012 Regular Sessions

I N A S S E M B L Y

February 23, 2011

Introduced by M. of A. BRENNAN, CASTRO, BARRON, STEVENSON -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, DenDEKKER, DINOWITZ, GOTTFRIED, LIFTON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a cap on certain tax credits, to impose a surcharge against certain taxes and to increase the alternative minimum tax on corporations; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. The tax law is amended by adding a new section 210-a to
2 read as follows:
3 S 210-A. CAP ON CERTAIN CREDITS. 1. FOR PURPOSES OF THIS SECTION, THE
4 TERM "COVERED CREDITS" SHALL MEAN AND INCLUDE THE FOLLOWING: THE ALTER-
5 NATIVE FUELS CREDIT SET FORTH IN SUBDIVISION TWENTY-FOUR OF SECTION TWO
6 HUNDRED TEN OF THIS ARTICLE, THE AUTOMATED EXTERNAL DEFIBRILLATOR CREDIT
7 SET FORTH IN SUBDIVISION TWENTY-FIVE OF SECTION TWO HUNDRED TEN OF THIS
8 ARTICLE, THE BIOFUEL PRODUCTION CREDIT SET FORTH IN SECTION TWENTY-EIGHT
9 OF THIS CHAPTER AND SUBDIVISION THIRTY-EIGHT OF SECTION TWO HUNDRED TEN
10 OF THIS ARTICLE, THE BROWNFIELD REDEVELOPMENT TAX CREDIT SET FORTH IN
11 SECTION TWENTY-ONE OF THIS CHAPTER AND SUBDIVISION THIRTY-THREE OF
12 SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE TAX CREDIT FOR REMEDIATED
13 BROWNFIELDS SET FORTH IN SECTION TWENTY-TWO OF THIS CHAPTER AND SUBDIVI-
14 SION THIRTY-FOUR OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE ENVI-
15 RONMENTAL REMEDIATION INSURANCE CREDIT SET FORTH IN SECTION TWENTY-THREE
16 OF THIS CHAPTER AND SUBDIVISION THIRTY-FIVE OF SECTION TWO HUNDRED TEN
17 OF THIS ARTICLE, THE CLEAN HEATING FUEL CREDIT SET FORTH IN SUBDIVISION
18 THIRTY-NINE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CONSERVATION
19 EASEMENT CREDIT SET FORTH IN SUBDIVISION THIRTY-EIGHT OF SECTION TWO
20 HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR EMPLOYMENT OF PERSONS WITH
21 DISABILITIES SET FORTH IN SUBDIVISION TWENTY-THREE OF SECTION TWO
22 HUNDRED TEN OF THIS ARTICLE, THE EMPIRE STATE COMMERCIAL PRODUCTION

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

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1 CREDIT, SET FORTH IN SECTION TWENTY-EIGHT OF THIS CHAPTER AND SUBDIVI-
2 SION THIRTY-EIGHT OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE
3 STATE FILM PRODUCTION CREDIT SET FORTH IN SECTION TWENTY-FOUR OF THIS
4 CHAPTER AND SUBDIVISION THIRTY-SIX OF SECTION TWO HUNDRED TEN OF THIS
5 ARTICLE, THE EMPIRE ZONE CAPITAL TAX CREDIT SET FORTH IN SUBDIVISION
6 TWENTY OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE
7 INVESTMENT TAX CREDIT SET FORTH IN SUBDIVISION TWELVE-B OF SECTION TWO
8 HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE EMPLOYMENT INCENTIVE CREDIT
9 SET FORTH IN SUBDIVISION TWELVE-C OF SECTION TWO HUNDRED TEN OF THIS
10 ARTICLE, THE INVESTMENT TAX CREDIT SET FORTH IN SUBDIVISION TWELVE OF
11 SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE EMPIRE ZONE WAGE TAX CREDIT
12 SET FORTH IN SUBDIVISION NINETEEN OF SECTION TWO HUNDRED TEN OF THIS
13 ARTICLE, THE GREEN BUILDING CREDIT SET FORTH IN SECTION NINETEEN OF THIS
14 CHAPTER AND SUBDIVISION THIRTY-ONE OF SECTION TWO HUNDRED TEN OF THIS
15 ARTICLE, THE CREDIT FOR COMPANIES WHO PROVIDE TRANSPORTATION TO INDIVID-
16 UALS WITH DISABILITIES SET FORTH IN SUBDIVISION FORTY OF SECTION TWO
17 HUNDRED TEN OF THIS ARTICLE, THE LOW INCOME HOUSING CREDIT SET FORTH IN
18 SECTION EIGHTEEN OF THIS CHAPTER AND SUBDIVISION THIRTY OF SECTION TWO
19 HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR THE SPECIAL ADDITIONAL MORT-
20 GAGE RECORDING TAX SET FORTH IN SUBDIVISION SEVENTEEN OF SECTION TWO
21 HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR SERVICING CERTAIN MORTGAGES
22 SET FORTH IN SUBDIVISION TWENTY-ONE-A OF SECTION TWO HUNDRED TEN OF THIS
23 ARTICLE, THE QUALIFIED EMERGING TECHNOLOGY COMPANY CAPITAL TAX CREDIT
24 SET FORTH IN SUBDIVISION TWELVE-F OF SECTION TWO HUNDRED TEN OF THIS
25 ARTICLE, THE QUALIFIED EMERGING TECHNOLOGY COMPANY EMPLOYMENT CREDIT SET
26 FORTH IN SUBDIVISION TWELVE-E OF SECTION TWO HUNDRED TEN OF THIS ARTI-
27 CLE, THE QUALIFIED EMERGING TECHNOLOGY COMPANY FACILITIES, OPERATIONS
28 AND TRAINING CREDIT SET FORTH IN SUBDIVISION TWELVE-G OF SECTION TWO
29 HUNDRED TEN OF THIS ARTICLE, THE QEZE CREDIT FOR REAL PROPERTY TAXES SET
30 FORTH IN SECTION FIFTEEN OF THIS CHAPTER AND SUBDIVISION TWENTY-SEVEN OF
31 SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE QEZE TAX REDUCTION CREDIT
32 SET FORTH IN SECTION SIXTEEN OF THIS CHAPTER AND SUBDIVISION
33 TWENTY-EIGHT OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, THE CREDIT FOR
34 REHABILITATION OF HISTORIC PROPERTIES SET FORTH IN SUBDIVISION FORTY OF
35 SECTION TWO HUNDRED TEN OF THIS ARTICLE AND THE SECURITY TRAINING TAX
36 CREDIT SET FORTH IN SECTION TWENTY-SIX OF THIS CHAPTER AND SUBDIVISION
37 THIRTY-SEVEN OF SECTION TWO HUNDRED TEN OF THIS ARTICLE.

38 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE TOTAL ALLOWABLE
39 COVERED CREDITS THAT MAY BE CREDITED OR REFUNDED TO A TAXPAYER IN ANY
40 TAX YEAR SHALL BE LIMITED TO A TOTAL OF FIFTEEN MILLION DOLLARS. ANY
41 AMOUNT OF CREDIT EXCEEDING FIFTEEN MILLION DOLLARS NOT CREDITED PURSUANT
42 TO THIS SECTION IN ANY TAX YEAR MAY BE CARRIED OVER TO THE FOLLOWING TAX
43 YEAR OR YEARS AND MAY BE CREDITED AGAINST SUCH TAXPAYER'S TAX FOR SUCH
44 YEAR OR YEARS.

45 S 2. The tax law is amended by adding a new section 210-b to read as
46 follows:

47 S 210-B. SURCHARGE. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING
48 TERMS SHALL HAVE THE FOLLOWING MEANINGS:

49 A. "TAXES SUBJECT TO SURCHARGE" SHALL MEAN AND INCLUDE THE FOLLOWING:
50 THE CORPORATION TAX IMPOSED PURSUANT TO ARTICLE NINE OF THIS CHAPTER,
51 THE FRANCHISE TAX ON BUSINESS CORPORATIONS IMPOSED PURSUANT TO ARTICLE
52 NINE-A OF THIS CHAPTER, THE FRANCHISE TAX ON BANKING CORPORATIONS
53 IMPOSED PURSUANT TO ARTICLE THIRTY-TWO OF THIS CHAPTER AND THE FRANCHISE
54 TAX ON INSURANCE CORPORATIONS IMPOSED PURSUANT TO ARTICLE THIRTY-THREE
55 OF THIS CHAPTER; AND

1 B. "FINAL TAX LIABILITY" SHALL MEAN THE TAX LIABILITY OF A TAXPAYER
2 AFTER ALL DEDUCTIONS AND CREDITS FOR WHICH SUCH TAXPAYER IS ELIGIBLE
3 HAVE BEEN TAKEN.

4 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THERE IS HEREBY IMPOSED
5 A SURCHARGE AGAINST TAXES SUBJECT TO SURCHARGE FOR ANY TAXPAYER WHO IS
6 SUBJECT TO ONE OR MORE OF SUCH TAXES SUBJECT TO SURCHARGE. SUCH
7 SURCHARGE SHALL BE FIFTEEN PERCENT OF SUCH TAXPAYER'S FINAL TAX LIABIL-
8 ITY FOR THE TAX YEAR.

9 S 3. Subparagraph (ii) of paragraph (c) of subdivision 1 of section
10 210 of the tax law, as amended by section 5 of part N of chapter 60 of
11 the laws of 2007, is amended to read as follows:

12 (ii) For taxable years beginning in nineteen hundred ninety, nineteen
13 hundred ninety-one, nineteen hundred ninety-two, nineteen hundred nine-
14 ty-three and nineteen hundred ninety-four the amount prescribed by this
15 paragraph shall be computed at the rate of five percent of the taxpay-
16 er's minimum taxable income base. For taxable years beginning after
17 nineteen hundred ninety-four and before July first, nineteen hundred
18 ninety-eight, the amount prescribed by this paragraph shall be computed
19 at the rate of three and one-half percent of the taxpayer's minimum
20 taxable income base. For taxable years beginning after June thirtieth,
21 nineteen hundred ninety-eight and before July first, nineteen hundred
22 ninety-nine, the amount prescribed by this paragraph shall be computed
23 at the rate of three and one-quarter percent of the taxpayer's minimum
24 taxable income base. For taxable years beginning after June thirtieth,
25 nineteen hundred ninety-nine and before July first, two thousand, the
26 amount prescribed by this paragraph shall be computed at the rate of
27 three percent of the taxpayer's minimum taxable income base. For taxa-
28 ble years beginning after June thirtieth, two thousand, the amount
29 prescribed by this paragraph shall be computed at the rate of two and
30 one-half percent of the taxpayer's minimum taxable income base. For
31 taxable years beginning on or after January first, two thousand seven,
32 THE amount prescribed by this paragraph shall be computed at the rate of
33 one and one-half percent of the taxpayer's minimum taxable income base.
34 FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND
35 ELEVEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL BE COMPUTED AT THE
36 RATE OF THREE AND ONE-HALF PERCENT OF THE TAXPAYER'S MINIMUM TAXABLE
37 INCOME BASE. The "taxpayer's minimum taxable income base" shall mean the
38 portion of the taxpayer's minimum taxable income allocated within the
39 state as hereinafter provided, subject to any modifications required by
40 paragraphs (d) and (e) of subdivision three of this section.

41 S 4. This act shall take effect immediately and shall apply to taxable
42 years beginning on or after January 1, 2010, provided that section two
43 of this act shall expire and be deemed repealed January 1, 2015.