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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 28, 2011

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

AN ACT to amend the tax law, in relation to establishing an underground infrastructure security device credit

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

Section 1. The tax law is amended by adding a new section 35 to read as follows:

S 35. UNDERGROUND INFRASTRUCTURE SECURITY DEVICE CREDIT. (A) ALLOWANCE OF CREDIT. (1) A TAXPAYER WHICH OWNS OR MAINTAINS A QUALIFIED MANHOLE PROVIDING ACCESS TO HIGHLY CRITICAL UNDERGROUND INFRASTRUCTURE WHERE SUCH MANHOLE IS LOCATED IN A CITY WITH A POPULATION GREATER THAN ONE MILLION AND IN AN AREA WHICH IS OPEN TO OR READILY ACCESSIBLE BY THE PUBLIC, AND WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE, NINE-A OR THIRTY-TWO OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (C) OF THIS SECTION, TO BE COMPUTED AS PROVIDED IN THIS SECTION, EQUAL TO THE TAXPAYERS COST OF COMMONLY AVAILABLE SELF CONTAINED INDEPENDENT MANHOLE BARRIER LOCKING DEVICES TO SECURE SUCH MANHOLES FROM UNAUTHORIZED ACCESS.

(B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "QUALIFIED MANHOLE" MEANS SURFACE-LEVEL ACCESS TO HIGHLY CRITICAL UNDERGROUND INFRASTRUCTURE WHICH IS AT OR NEAR GRADE, AND UNSECURED BY MEANS OTHER THAN A COVER OR GRATE OVER SUCH OPENING.

(2) "HIGHLY CRITICAL UNDERGROUND INFRASTRUCTURE" MEANS INFRASTRUCTURE CERTIFIED AS SUCH BY THE OFFICE OF HOMELAND SECURITY, LOSS OR FAILURE OF WHICH WOULD LEAD TO A SUBSTANTIAL LOSS OF LIFE OR SERIOUS INJURY, SIGNIFICANT ECONOMIC LOSS, AND WOULD UNDERMINE THE MORALE AND CONFIDENCE OF SUBSTANTIAL PORTIONS OF THE COMMUNITY, AND MAY INCLUDE THOSE WHICH PROVIDE ACCESS TO POINTS OF MULTIPLE CRITICAL INFRASTRUCTURE COMPONENTS

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

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AND THOSE NEAR OR DIRECTLY SERVING SECURE GOVERNMENT FACILITIES, MAJOR FINANCIAL CENTERS, SIGNIFICANT PORTS OF ENTRY, OR MASS TRANSIT CENTERS OR LINES.

(3) "COSTS" MEANS THE AMOUNT ACTUALLY EXPENDED BY THE TAXPAYER FOR DEVICES TO SECURE QUALIFIED MANHOLES, LESS ANY REFUNDS, OFFSETS, OR REIMBURSEMENTS, AND NOT TO EXCEED SIX HUNDRED FIFTY DOLLARS PER QUALIFIED MANHOLE UPON WHICH A DEVICE IS INSTALLED.

(4) "COMMONLY AVAILABLE SELF CONTAINED INDEPENDENT MANHOLE BARRIER LOCKING DEVICE" MEANS A MECHANICAL DEVICE WHICH BLOCKS A PERSON FROM ENTERING A MANHOLE, IS READILY REMOVABLE AND REUSABLE, AND REQUIRES A PROPRIETARY, CUSTOM, OR UNIQUE KEY OR WRENCH TO REMOVE, AND ANY ASSOCIATED KEY OR WRENCHES TO LOCK AND UNLOCK SUCH DEVICE.

(C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISION OF THIS CHAPTER:

(1) ARTICLE 9: SECTION 187-Q.

(2) ARTICLE 9-A: SECTION 210: SUBDIVISION 43.

(3) ARTICLE 32: SECTION 1456: SUBSECTION (X).

S 2. The tax law is amended by adding a new section 187-q to read as follows:

S 187-Q. UNDERGROUND INFRASTRUCTURE SECURITY DEVICE CREDIT. 1. ALLOWANCE OF CREDIT. FOR TAX YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

2. APPLICATION OF CREDIT. IN NO EVENT SHALL THE CREDIT UNDER THIS SECTION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE APPLICABLE MINIMUM TAX FIXED BY SECTION ONE HUNDRED EIGHTY-THREE OR ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SECTION 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 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 3. Section 210 of the tax law is amended by adding a new subdivision 43 to read as follows:

43. UNDERGROUND INFRASTRUCTURE SECURITY DEVICE CREDIT. (A) ALLOWANCE OF CREDIT. FOR TAX YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. IN NO EVENT SHALL THE CREDIT UNDER THIS SECTION BE ALLOWED IN AN AMOUNT THAT SHALL REDUCE THE TAX PAYABLE TO LESS THAN THE APPLICABLE MINIMUM TAX FIXED BY SECTION ONE HUNDRED EIGHTY-THREE OR ONE HUNDRED EIGHTY-FIVE OF THIS CHAPTER. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SECTION 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 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 4. Section 1456 of the tax law is amended by adding a new subsection (x) to read as follows:

(X) UNDERGROUND INFRASTRUCTURE SECURITY DEVICE CREDIT. (1) ALLOWANCE OF CREDIT. FOR TAX YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IN NO EVENT SHALL THE CREDIT UNDER THIS SECTION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE APPLICABLE MINIMUM TAX FIXED BY SECTION ONE HUNDRED EIGHTY-THREE OR ONE HUNDRED EIGHTY-FIVE OF THIS CHAPTER. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SECTION 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 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 5. 1. The director of the office of homeland security, in consultation with the office of cyber security and critical infrastructure coordination, is hereby directed to develop standards for identifying highly critical underground infrastructure, loss or failure of which would lead to a substantial loss of life or serious injury, significant economic loss, and would undermine the morale and confidence of substantial portions of the community, and may include those which provide access to points of multiple critical infrastructure components and those near or directly serving secure government facilities, major financial centers, significant ports of entry, or mass transit centers or lines.

2. The director of the office of homeland security shall make or cause to be made a survey of access points to underground infrastructure to identify those points which provide access to highly critical underground infrastructure, as defined in section 35 of the tax law, and certify manholes identified in such survey which qualify for such credit. For the purposes of carrying out this section, the director of the office of homeland security may request that an initial survey be completed by the entities which own or maintain access points to such underground infrastructure, and that such entities provide information regarding such access points and such infrastructure to the director, provided however, that this section shall not be construed as requiring such entities to provide such information, provided further however that the director of the office of homeland security may decline to certify any access point as being eligible for highly critical underground infrastructure security tax credit when the entity which owns or controls such access point fails to provide information requested by the director. Nothing in this section shall be construed as limiting the director of the office of homeland security for collecting, requesting, or requiring any information as provided for elsewhere in law, or by order or regulation.

S 6. This act shall take effect immediately.