

761--B

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. CRESPO -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1     Section 1. Section 210 of the tax law is amended by adding a new  
2     subdivision 48 to read as follows:  
3     48. SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (A) A TAXPAYER THAT IS  
4     ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDI-  
5     VISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-  
6     CLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT OF TWO  
7     CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT  
8     THE TAXPAYER'S PRIMARY BUSINESS LOCATION UP TO A ONE THOUSAND DOLLAR  
9     LIMIT DURING THE TAXABLE YEAR.  
10    (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL  
11    TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED  
12    MEMBERS OR AFFILIATES, (II) NOT BE A SOLE-PROPRIETORSHIP IF SUCH  
13    SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH  
14    SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO  
15    ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIV-  
16    ING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER  
17    ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.  
18    (C) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO  
19    ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE  
20    TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM

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

LBD02563-05-4

1 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS  
2 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE  
3 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS  
4 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS"  
5 SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF  
6 SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO  
7 HUNDRED EIGHT OF THIS ARTICLE, AND THE TERM "AFFILIATES" SHALL MEAN  
8 THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS  
9 DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS  
10 THE TAXPAYER.

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

16 (E) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR  
17 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF  
18 THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF  
19 THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDI-  
20 VISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT  
21 OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN  
22 OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE  
23 PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED,  
24 HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHT-  
25 Y-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THER-  
26 EON.

27 S 2. Subsections (yy) and (zz) of section 606 of the tax law, as  
28 relettered by section 5 of part H of chapter 1 of the laws of 2003, are  
29 relettered subsections (yyy) and (zzz) and a new subsection (xx) is  
30 added to read as follows:

31 (XX) SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (1) A TAXPAYER THAT IS  
32 ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH TWO OF THIS  
33 SUBSECTION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS  
34 ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT (OR PRO  
35 RATA SHARE OF THE PRODUCT IN THE CASE OF A PARTNERSHIP) OF TWO CENTS PER  
36 KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT THE TAXPAY-  
37 ER'S PRIMARY BUSINESS LOCATION UP TO A ONE THOUSAND DOLLAR LIMIT DURING  
38 THE TAXABLE YEAR.

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

47 (3) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO  
48 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE  
49 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM  
50 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS  
51 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE  
52 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS  
53 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL  
54 HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARA-  
55 GRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED  
56 EIGHT OF THIS CHAPTER, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPO-

1 RATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN  
2 SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE  
3 TAXPAYER.

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

9 (5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY  
10 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS  
11 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN  
12 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS  
13 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

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

17 (XXXVII) SMALL BUSINESS ELECTRIC	QUALIFYING ELECTRICITY USAGE
18 ENERGY TAX CREDIT	UNDER SUBDIVISION FORTY-EIGHT
19 UNDER SUBSECTION (XX)	OF SECTION TWO HUNDRED TEN

20 S 4. This act shall take effect on the first of January next succeed-  
21 ing the date on which it shall have become a law.