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

2396

2013-2014 Regular Sessions

I N  A S S E M B L Y

January 15, 2013

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

AN ACT to amend the tax law, in relation to establishing a corporate and a personal income tax credit for wind energy system equipment

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 46 to read as follows:

46. WIND ENERGY SYSTEM EQUIPMENT CREDIT. (A) GENERAL. A TAXPAYER, WHO OWNS OR OPERATES WIND ENERGY SYSTEM EQUIPMENT, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO TWENTY-FIVE PERCENT OF QUALIFIED WIND ENERGY SYSTEM EQUIPMENT EXPENDITURES. THIS CREDIT SHALL NOT EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS.

(B) QUALIFIED WIND ENERGY SYSTEM EQUIPMENT EXPENDITURES. (I) THE TERM "QUALIFIED WIND ENERGY SYSTEM EQUIPMENT EXPENDITURES" MEANS EXPENDITURES, LIMITED TO THE EXPENDITURE CAP PRESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, FOR THE PURCHASE OF WIND ENERGY SYSTEM EQUIPMENT WHICH IS INSTALLED IN CONNECTION WITH PROPERTY WHICH IS (A) LOCATED IN THIS STATE AND (B) WHICH IS USED BY THE TAXPAYER AS HIS OR HER PRINCIPAL PREMISES AT THE TIME THE WIND ENERGY SYSTEM EQUIPMENT IS PLACED IN SERVICE.

(II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE TERM "EXPENDITURE CAP" SHALL MEAN THE PRODUCT OF (A) SIX DOLLARS AND (B) THE NUMBER OF WATTS INCLUDED IN THE RATED CAPACITY OF THE WIND ENERGY SYSTEM EQUIPMENT.

(III) SUCH QUALIFIED EXPENDITURES SHALL INCLUDE EXPENDITURES FOR MATERIALS, LABOR COSTS PROPERLY ALLOCABLE TO ON-SITE PREPARATION, ASSEMBLY AND ORIGINAL INSTALLATION, ARCHITECTURAL AND ENGINEERING SERVICES, AND DESIGNS AND PLANS DIRECTLY RELATED TO THE CONSTRUCTION OR INSTALLATION OF THE WIND ENERGY SYSTEM EQUIPMENT.

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

LBD05733-01-3

(IV) SUCH QUALIFIED EXPENDITURES SHALL NOT INCLUDE INTEREST OR OTHER FINANCE CHARGES.

(C) WIND ENERGY SYSTEM EQUIPMENT. THE TERM "WIND ENERGY SYSTEM EQUIPMENT" SHALL MEAN EQUIPMENT WHICH, WHEN INSTALLED AT A TAXPAYER'S PREMISES, USES WIND ENERGY FOR THE PURPOSE OF GENERATING ELECTRICITY FOR USE IN SUCH PREMISES.

(D) MULTIPLE TAXPAYERS. WHERE WIND ENERGY SYSTEM EQUIPMENT IS PURCHASED AND INSTALLED IN A PRINCIPAL PREMISES SHARED BY TWO OR MORE TAXPAYERS, THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR EACH SUCH TAXPAYER SHALL BE PRORATED ACCORDING TO THE PERCENTAGE OF THE TOTAL EXPENDITURE FOR SUCH WIND ENERGY SYSTEM EQUIPMENT CONTRIBUTED BY EACH TAXPAYER.

(E) WHEN CREDIT ALLOWED. THE CREDIT FOR WIND ENERGY SYSTEM EQUIPMENT PROVIDED FOR IN THIS SUBDIVISION SHALL BE ALLOWED WITH RESPECT TO THE TAXABLE YEAR, COMMENCING AFTER TWO THOUSAND THIRTEEN, IN WHICH THE WIND ENERGY SYSTEM EQUIPMENT IS PLACED IN SERVICE.

(F) CARRYOVER OF CREDIT. IF THE AMOUNT OF THE CREDIT, AND CARRYOVERS OF SUCH CREDIT, ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, SUCH EXCESS AMOUNT MAY BE CARRIED OVER TO THE FIVE TAXABLE YEARS NEXT FOLLOWING THE TAXABLE YEAR WITH RESPECT TO WHICH THE CREDIT IS ALLOWED AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 2. The subsection heading and paragraphs 1, 2, 3, 4, 5 and 7 of subsection (g-1) of section 606 of the tax law, the subsection heading and paragraphs 4 and 7 as amended by chapter 378 of the laws of 2005, paragraphs 1 and 2 as amended by chapter 375 of the laws of 2012, paragraph 3 as amended, paragraph 5 as added and paragraph 7 as renumbered by chapter 128 of the laws of 2007, are amended to read as follows:

Solar AND WIND energy system equipment credit. (1) General. [An individual] A taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty-five percent of qualified solar OR WIND energy system equipment expenditures, except as provided in subparagraph (D) of paragraph two of this subsection. This credit shall not exceed three thousand seven hundred fifty dollars for qualified solar energy equipment placed in service before September first, two thousand six, and five thousand dollars for qualified solar energy equipment placed in service on or after September first, two thousand six, AND SEVEN THOUSAND FIVE HUNDRED DOLLARS FOR QUALIFIED WIND ENERGY SYSTEM EQUIPMENT.

(2) Qualified solar OR WIND energy system equipment expenditures. (A) The term "qualified solar OR WIND energy system equipment expenditures" means expenditures for:

(i) the purchase of solar OR WIND energy system equipment which is installed in connection with residential property which is (I) located in this state and (II) which is used by the taxpayer as his or her principal [residence] PREMISES at the time the solar OR WIND energy system equipment is placed in service;

(ii) the lease of solar OR WIND energy system equipment under a written agreement that spans at least ten years where such equipment owned by a person other than the taxpayer is installed in connection with residential property which is (I) located in this state and (II) which is used by the taxpayer as his or her principal [residence] PREMISES at the time the solar OR WIND energy system equipment is placed in service; or

(iii) the purchase of power under a written agreement that spans at least ten years whereunder the power purchased is generated by solar OR WIND energy system equipment owned by a person other than the taxpayer

which is installed in connection with residential property which is (I) located in this state and (II) which is used by the taxpayer as his or her principal [residence] PREMISES at the time the solar OR WIND energy system equipment is placed in service.

(B) Such qualified expenditures shall include expenditures for materials, labor costs properly allocable to on-site preparation, assembly and original installation, architectural and engineering services, and designs and plans directly related to the construction or installation of the solar OR WIND energy system equipment.

(C) Such qualified expenditures for the purchase of solar OR WIND energy system equipment shall not include interest or other finance charges.

(D) Such qualified expenditures for the lease of solar OR WIND energy system equipment or the purchase of power under an agreement described in clauses (ii) or (iii) of subparagraph (A) of this paragraph shall include an amount equal to all payments made during the taxable year under such agreement. Provided, however, such credits shall only be allowed for fourteen years after the first taxable year in which such credit is allowed. Provided further, however, the twenty-five percent limitation in paragraph one of this subsection shall only apply to the total aggregate amount of all payments to be made pursuant to an agreement referenced in clauses (ii) or (iii) of subparagraph (A) of this paragraph, and shall not apply to individual payments made during a taxable year under such agreement except to the extent such limitation on an aggregate basis has been reached.

(3) Solar OR WIND energy system equipment. The term "solar OR WIND energy system equipment" shall mean an arrangement or combination of components utilizing solar radiation OR WIND POWER, which, when installed in a residence, produces energy designed to provide heating, cooling, hot water or electricity for use in such [residence] PREMISES. Such arrangement or components shall not include equipment connected to solar OR WIND energy system equipment that is a component of part or parts of a non-solar OR NON-WIND energy system or which uses any sort of recreational facility or equipment as a storage medium. Solar OR WIND energy system equipment that generates electricity for use in a [residence] TAXPAYER'S PREMISES must conform to applicable requirements set forth in section sixty-six-j of the public service law. Provided, however, where solar OR WIND energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation, for purposes of this subsection only, the term "ten kilowatts" in such section sixty-six-j shall be read as "fifty kilowatts."

(4) Multiple taxpayers. Where solar OR WIND energy system equipment is purchased and installed in a principal [residence] PREMISES shared by two or more taxpayers, the amount of the credit allowable under this subsection for each such taxpayer shall be prorated according to the percentage of the total expenditure for such solar OR WIND energy system equipment contributed by each taxpayer.

(5) Proportionate share. Where solar OR WIND energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation, a taxpayer who is a member of the condominium management association or who is a tenant-stockholder in the cooperative housing corporation may for the purpose of this subsection claim a proportionate share of the total expense as the expenditure for the purposes of the credit attributable to his OR HER principal residence.

(7) When credit allowed. The credit FOR SOLAR ENERGY SYSTEM EQUIPMENT provided for [herein] IN THIS SUBSECTION shall be allowed with respect to the taxable year, commencing after nineteen hundred ninety-seven, in which the solar energy system equipment is placed in service. THE CREDIT FOR WIND ENERGY SYSTEM EQUIPMENT PROVIDED FOR IN THIS SUBSECTION SHALL BE ALLOWED WITH RESPECT TO THE TAXABLE YEAR, COMMENCING AFTER TWO THOUSAND THIRTEEN, IN WHICH THE WIND ENERGY SYSTEM EQUIPMENT IS PLACED IN SERVICE.

S 3. This act shall take effect immediately.