

761--A

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

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 46 to read as follows:  
3     46. 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  
21    ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS  
22    LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE  
23    OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS

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

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1 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS"  
2 SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF  
3 SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO  
4 HUNDRED EIGHT OF THIS ARTICLE, AS AMENDED BY SECTION ONE OF PART M OF  
5 CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND  
6 THE TERM "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF  
7 THE SAME AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF  
8 THE INTERNAL REVENUE CODE) AS THE TAXPAYER.

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

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

25 S 2. Section 606 of the tax law is amended by adding a new subsection  
26 (vv) to read as follows:

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

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

43 (3) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO  
44 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE  
45 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM  
46 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS  
47 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE  
48 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS  
49 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL  
50 HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARA-  
51 GRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED  
52 EIGHT OF THIS CHAPTER, AS AMENDED BY SECTION ONE OF PART M OF CHAPTER  
53 SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, AND THE TERM  
54 "AFFILIATES" SHALL MEAN THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME  
55 AFFILIATED GROUP (AS DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE  
56 INTERNAL REVENUE CODE) AS THE TAXPAYER.

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

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

11 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
12 of the tax law is amended by adding a new clause (xxxv) to read as  
13 follows:

|                                   |                              |
|-----------------------------------|------------------------------|
| 14 (XXXV) SMALL BUSINESS ELECTRIC | QUALIFYING ELECTRICITY USAGE |
| 15 ENERGY TAX CREDIT              | UNDER SUBDIVISION FORTY-SIX  |
| 16 UNDER SUBSECTION (VV)          | OF SECTION TWO HUNDRED TEN   |

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