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

2518--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 16, 2015

Introduced by M. of A. SANTABARBARA -- 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 establishing business franchise and personal income tax credits for upstate reinvestment zones; 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:

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 51 to read as follows:

51. UPSTATE REINVESTMENT ZONE TAX CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE DEVELOPMENT TO EXISTING UPSTATE ZONES INCLUDING, BUT NOT LIMITED TO, THE QUALIFIED PURCHASE OF BUILDINGS AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS IN SUCH UPSTATE REINVESTMENT ZONES WHERE AT LEAST FIFTY PERCENT OF THE SQUARE FOOTAGE OF SUCH BUILDINGS, AT THE TIME OF PURCHASE OR REHABILITATION, IS VACANT OR OTHERWISE UNUSED. THE AMOUNT OF THE CREDIT SHALL BE TWENTY PERCENT OF THE QUALIFIED PURCHASE AND QUALIFIED REHABILITATION EXPENDITURES OF ANY BUILDINGS AND REHABILITATIONS WITH SUCH CREDIT NOT EXCEEDING THE AMOUNT SET FORTH IN PARAGRAPH (D) OF THIS SUBDIVISION.

(B) FOR THE PURPOSE OF THIS SUBDIVISION, THE TERM "QUALIFIED PURCHASE" SHALL MEAN THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF ACQUISITION COST OF BUILDING. THE TERM "QUALIFIED REHABILITATION EXPENDITURES" SHALL MEAN QUALIFIED EXPENDITURES AS DEFINED IN SECTION 47(C)(2)(A) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO CLAUSE (II) IN SUCH SECTION 47(C)(2)(A).

(C) FOR THE PURPOSE OF THIS SUBDIVISION, THE TERM "UPSTATE REINVESTMENT ZONE" SHALL MEAN AN AREA: (1) THAT, ACCORDING TO THE MOST RECENT AMERICAN COMMUNITY SURVEY BY THE UNITED STATES CENSUS BUREAU, LIES WITH-

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

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IN A CENSUS TRACT WITH A POVERTY RATE EQUAL TO OR GREATER THAN TWENTY PERCENT OR AN EMPLOYMENT RATE THAT IS EQUAL TO OR GREATER THAN ONE AND ONE-HALF PERCENT TIMES THE NATIONAL AVERAGE UNEMPLOYMENT RATE AND (2) IS WITHIN THE INCORPORATED BOUNDARIES OF A VILLAGE, TOWN OR CITY HAVING A POPULATION OF LESS THAN ONE MILLION.

(D) THE SUM OF ALL TAX CREDITS GRANTED PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ANY ONE TAXPAYER INCLUDING SUCH PARTY'S AFFILIATES AND RELATED ENTITIES.

(E) MAXIMUM AMOUNT OF CREDITS. (1) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SUBDIVISION, IN ANY TAXABLE YEAR SHALL BE TEN MILLION DOLLARS. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE DEPARTMENT AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF UPSTATE REINVESTMENT ZONE TAX CREDITS WITH SUCH DEPARTMENT. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

(2) THE COMMISSIONER SHALL PROMULGATE REGULATIONS BY DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN TO ESTABLISH PROCEDURES FOR THE ALLOCATION OF TAX CREDITS AS REQUIRED. SUCH RULES AND REGULATIONS SHALL INCLUDE PROVISIONS DESCRIBING THE APPLICATION PROCESS, THE DUE DATES FOR SUCH APPLICATIONS, THE STANDARDS WHICH SHALL BE USED TO EVALUATE THE APPLICATIONS, THE DOCUMENTATION THAT WILL BE PROVIDED TO TAXPAYERS TO SUBSTANTIATE TO THE DEPARTMENT THE AMOUNT OF TAX CREDITS ALLOCATED TO SUCH TAXPAYERS, AND SUCH OTHER PROVISIONS AS DEEMED NECESSARY AND APPROPRIATE. NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, SUCH RULES AND REGULATIONS MAY BE ADOPTED ON AN EMERGENCY BASIS IF NECESSARY TO MEET SUCH DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN DEADLINE.

(F) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED TEN FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED FURTHER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

(CCC) UPSTATE REINVESTMENT ZONE TAX CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE DEVELOPMENT TO EXISTING UPSTATE ZONES INCLUDING, BUT NOT LIMITED TO, THE QUALIFIED PURCHASE OF BUILDINGS AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS IN SUCH UPSTATE REINVESTMENT ZONES. THE AMOUNT OF THE CREDIT SHALL BE TWENTY PERCENT OF THE QUALIFIED PURCHASE AND QUALIFIED REHABILITATION EXPENDITURES OF ANY BUILDINGS AND REHABILITATIONS WITH SUCH CREDIT NOT EXCEEDING THE AMOUNT SET FORTH IN PARAGRAPH FOUR OF THIS SUBSECTION.

(2) FOR THE PURPOSE OF THIS SUBSECTION, THE TERM "QUALIFIED PURCHASE" SHALL MEAN THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF ACQUISITION COST OF BUILDING. THE TERM, "QUALIFIED REHABILITATION EXPENDITURES" SHALL MEAN QUALIFIED EXPENDITURES AS DEFINED IN SECTION

47(C)(2)(A) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO CLAUSE (II) IN SUCH SECTION 47(C)(2)(A).

(3) FOR THE PURPOSE OF THIS SUBSECTION, THE TERM "UPSTATE REINVESTMENT ZONE" SHALL MEAN AN AREA: (A) THAT, ACCORDING TO THE MOST RECENT AMERICAN COMMUNITY SURVEY BY THE UNITED STATES CENSUS BUREAU, LIES WITHIN A CENSUS TRACT WITH A POVERTY RATE EQUAL TO OR GREATER THAN TWENTY PERCENT OR AN EMPLOYMENT RATE THAT IS EQUAL TO OR GREATER THAN ONE AND ONE-HALF PERCENT TIMES THE NATIONAL AVERAGE UNEMPLOYMENT RATE AND (B) IS WITHIN THE INCORPORATED BOUNDARIES OF A VILLAGE, TOWN OR CITY HAVING A POPULATION OF LESS THAN ONE MILLION.

(4) THE SUM OF ALL TAX CREDITS GRANTED PURSUANT TO THE PROVISIONS OF THIS SUBSECTION SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ANY ONE TAXPAYER INCLUDING SUCH PARTY'S AFFILIATES AND RELATED ENTITIES.

(5) MAXIMUM AMOUNT OF CREDITS. (A) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SUBSECTION IN ANY TAXABLE YEAR SHALL BE TEN MILLION DOLLARS. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE DEPARTMENT AMONG TAXPAYERS IN ORDER OF PRIORITY BASED UPON THE DATE OF FILING AN APPLICATION OF UPSTATE REINVESTMENT ZONE TAX CREDITS WITH SUCH DEPARTMENT. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

(B) THE COMMISSIONER SHALL PROMULGATE REGULATIONS BY DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN TO ESTABLISH PROCEDURES FOR THE ALLOCATION OF TAX CREDITS AS REQUIRED. SUCH RULES AND REGULATIONS SHALL INCLUDE PROVISIONS DESCRIBING THE APPLICATION PROCESS, THE DUE DATES FOR SUCH APPLICATIONS, THE STANDARDS WHICH SHALL BE USED TO EVALUATE THE APPLICATIONS, THE DOCUMENTATION THAT WILL BE PROVIDED TO TAXPAYERS TO SUBSTANTIATE TO THE DEPARTMENT THE AMOUNT OF TAX CREDITS ALLOCATED TO SUCH TAXPAYERS, AND SUCH OTHER PROVISIONS AS DEEMED NECESSARY AND APPROPRIATE. NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, SUCH RULES AND REGULATIONS MAY BE ADOPTED ON AN EMERGENCY BASIS IF NECESSARY TO MEET SUCH DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN DEADLINE.

(6) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION EXCEEDS THE TAXPAYER'S TAX FOR THE TAXABLE YEAR, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN THAT TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE. PROVIDED, HOWEVER, NO INTEREST WILL BE PAID THEREON. A TAXPAYER THAT IS A PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR A SHAREHOLDER OF S CORPORATION SHALL ONLY BE ALLOWED ITS PRO RATA SHARE OF THE CREDIT EARNED BY SUCH AN ENTITY.

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

(XLI) UPSTATE REINVESTMENT ZONE TAX CREDIT UNDER SUBSECTION (CCC)	AMOUNT OF THE CREDIT UNDER SUBDIVISION FIFTY-ONE OF SECTION TWO HUNDRED TEN-B

S 4. This act shall take effect immediately; provided, however, that:

(a) section two of this act shall take effect on the one hundred eightieth day after this act shall have become a law; and

(b) the commissioner of taxation and finance shall promulgate any rules and regulations necessary for the timely implementation of this act on or before the effective date of section two of this act.