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2015-2016 Regular Sessions

I N A S S E M B L Y

March 27, 2015

Introduced by M. of A. ENGLEBRIGHT, COLTON, CYMBROWITZ, SCHIMMINGER, ORTIZ, SCHIMEL -- Multi-Sponsored by -- M. of A. AUBRY, CLARK, COOK, DINOWITZ, GALEF, LENTOL, McDONOUGH, PERRY, RIVERA, ROBINSON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to pollution tax credits for the purchase of certain equipment made by dry cleaning businesses

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

1 Section 1. Subdivision (a) of section 1115 of the tax law is amended
2 by adding a new paragraph 44 to read as follows:
3 (44) EQUIPMENT OR MACHINERY CERTIFIED BY THE DEPARTMENT OF ENVIRON-
4 MENTAL CONSERVATION, PURSUANT TO REGULATIONS PROMULGATED BY SUCH DEPART-
5 MENT, FOR POLLUTION PREVENTION OR CONTROL WHICH, FOR PURPOSES OF THIS
6 PARAGRAPH, SHALL MEAN ANY PROCESS, FACILITY, DEVICE, FIXTURE, EQUIPMENT
7 OR MACHINERY USED PRIMARILY FOR THE CONTROL, PREVENTION OR ABATEMENT OF
8 POLLUTION OR CONTAMINANTS FROM THE OPERATION OF A DRY CLEANING PLANT,
9 INCLUDING ANY STRUCTURE, MACHINERY OR EQUIPMENT INSTALLED IN THE RECON-
10 STRUCTION OR REPLACEMENT OF SUCH PROCESS, FACILITY, DEVICE, FIXTURE,
11 EQUIPMENT OR MACHINERY.
12 S 2. Subparagraph (A) of paragraph 2 of subsection (a) of section
13 606 of the tax law, as amended by chapter 637 of the laws of 2008, is
14 amended to read as follows:
15 (A) A credit shall be allowed under this subsection with respect to
16 tangible personal property and other tangible property, including build-
17 ings and structural components of buildings, which are: depreciable
18 pursuant to section one hundred sixty-seven of the internal revenue
19 code, have a useful life of four years or more, are acquired by purchase
20 as defined in section one hundred seventy-nine (d) of the internal
21 revenue code, have a situs in this state and are (i) principally used by
22 the taxpayer in the production of goods by manufacturing, processing,
23 assembling, refining, mining, extracting, farming, agriculture, horti-

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

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1 culture, floriculture, viticulture or commercial fishing, (ii) indus-
2 trial waste treatment facilities or air pollution control facilities,
3 used in the taxpayer's trade or business OR BUSINESS INVESTMENTS MADE BY
4 DRY CLEANING BUSINESSES TO ACHIEVE POLLUTION PREVENTION INCLUDING
5 INVESTMENTS INTO CHANGES IN FACILITY PROCESSES OR OPERATIONS METHODS,
6 (iii) research and development property, (iv) principally used in the
7 ordinary course of the taxpayer's trade or business as a broker or deal-
8 er in connection with the purchase or sale (which shall include but not
9 be limited to the issuance, entering into, assumption, offset, assign-
10 ment, termination, or transfer) of stocks, bonds or other securities as
11 defined in section four hundred seventy-five (c)(2) of the Internal
12 Revenue Code, or of commodities as defined in section 475(e) of the
13 Internal Revenue Code, (v) principally used in the ordinary course of
14 the taxpayer's trade or business of providing investment advisory
15 services for a regulated investment company as defined in section eight
16 hundred fifty-one of the Internal Revenue Code, or lending, loan
17 arrangement or loan origination services to customers in connection with
18 the purchase or sale (which shall include but not be limited to the
19 issuance, entering into, assumption, offset, assignment, termination, or
20 transfer) of securities as defined in section four hundred seventy-five
21 (c)(2) of the Internal Revenue Code, or (vi) principally used as a qual-
22 ified film production facility including qualified film production
23 facilities having a situs in an empire zone designated as such pursuant
24 to article eighteen-B of the general municipal law, where the taxpayer
25 is providing three or more services to any qualified film production
26 company using the facility, including such services as a studio lighting
27 grid, lighting and grip equipment, multi-line phone service, broadband
28 information technology access, industrial scale electrical capacity,
29 food services, security services, and heating, ventilation and air
30 conditioning. For purposes of clauses (iv) and (v) of this subparagraph,
31 property purchased by a taxpayer affiliated with a regulated broker,
32 dealer, or registered investment adviser is allowed a credit under this
33 subsection if the property is used by its affiliated regulated broker,
34 dealer or registered investment adviser in accordance with this
35 subsection. For purposes of determining if the property is principally
36 used in qualifying uses, the uses by the taxpayer described in clauses
37 (iv) and (v) of this subparagraph may be aggregated. In addition, the
38 uses by the taxpayer, its affiliated regulated broker, dealer and regis-
39 tered investment adviser under either or both of those clauses may be
40 aggregated. Provided, however, a taxpayer shall not be allowed the cred-
41 it provided by clauses (iv) and (v) of this subparagraph unless (I)
42 eighty percent or more of the employees performing the administrative
43 and support functions resulting from or related to the qualifying uses
44 of such equipment are located in this state, or (II) the average number
45 of employees that perform the administrative and support functions
46 resulting from or related to the qualifying uses of such equipment and
47 are located in this state during the taxable year for which the credit
48 is claimed is equal to or greater than ninety-five percent of the aver-
49 age number of employees that perform these functions and are located in
50 this state during the thirty-six months immediately preceding the year
51 for which the credit is claimed, or (III) the number of employees
52 located in this state during the taxable year for which the credit is
53 claimed is equal to or greater than ninety percent of the number of
54 employees located in this state on December thirty-first, nineteen
55 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
56 er in nineteen hundred ninety-eight, the last day of its first taxable

1 year ending after December thirty-first, nineteen hundred ninety-eight.
2 If the taxpayer becomes subject to tax in this state after the taxable
3 year beginning in nineteen hundred ninety-eight, then the taxpayer is
4 not required to satisfy the employment test provided in the preceding
5 sentence of this subparagraph for its first taxable year. For the
6 purposes of clause (III) of this subparagraph the employment test will
7 be based on the number of employees located in this state on the last
8 day of the first taxable year the taxpayer is subject to tax in this
9 state. If the uses of the property must be aggregated to determine
10 whether the property is principally used in qualifying uses, then either
11 each affiliate using the property must satisfy this employment test or
12 this employment test must be satisfied through the aggregation of the
13 employees of the taxpayer, its affiliated regulated broker, dealer, and
14 registered investment adviser using the property. For purposes of this
15 subsection, the term "goods" shall not include electricity.

16 S 3. Subparagraph (B) of paragraph 2 of subsection (a) of section 606
17 of the tax law is amended by adding three new clauses (vi), (vii) and
18 (viii) to read as follows:

19 (VI) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR
20 RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR
21 HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS
22 PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS,
23 CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS,
24 CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE
25 REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES,
26 EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTI-
27 TUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE,
28 TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS
29 THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS
30 IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERATION,
31 TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA,
32 OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR
33 POLLUTION CONTROL.

34 (VII) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMISSION
35 WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE
36 ENVIRONMENTAL CONSERVATION LAW.

37 (VIII) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS
38 A SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN
39 REGULATIONS PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRONMENTAL
40 CONSERVATION LAW.

41 S 4. Subparagraph (i) of paragraph (b) of subdivision 1 of section
42 210-B of the tax law, as added by section 17 of part A of chapter 59 of
43 the laws of 2014, is amended to read as follows:

44 (i) A credit shall be allowed under this subdivision with respect to
45 tangible personal property and other tangible property, including buildings
46 and structural components of buildings, which are: depreciable
47 pursuant to section one hundred sixty-seven of the internal revenue
48 code, have a useful life of four years or more, are acquired by purchase
49 as defined in section one hundred seventy-nine (d) of the internal
50 revenue code, have a situs in this state and are (A) principally used by
51 the taxpayer in the production of goods by manufacturing, processing,
52 assembling, refining, mining, extracting, farming, agriculture, horticulture,
53 floriculture, viticulture or commercial fishing, (B) industrial waste
54 treatment facilities or air pollution control facilities, used in
55 the taxpayer's trade or business, (C) research and development property
56 OR BUSINESS INVESTMENTS MADE BY DRY CLEANING BUSINESSES TO ACHIEVE

1 POLLUTION PREVENTION INCLUDING INVESTMENTS INTO CHANGES IN FACILITY
2 PROCESSES OR OPERATIONS OR PRODUCTION METHODS, or (D) principally used
3 in the ordinary course of the taxpayer's trade or business as a broker
4 or dealer in connection with the purchase or sale (which shall include
5 but not be limited to the issuance, entering into, assumption, offset,
6 assignment, termination, or transfer) of stocks, bonds or other securi-
7 ties as defined in section four hundred seventy-five (c)(2) of the
8 Internal Revenue Code, or of commodities as defined in section four
9 hundred seventy-five (e) of the Internal Revenue Code, (E) principally
10 used in the ordinary course of the taxpayer's trade or business of
11 providing investment advisory services for a regulated investment compa-
12 ny as defined in section eight hundred fifty-one of the Internal Revenue
13 Code, or lending, loan arrangement or loan origination services to
14 customers in connection with the purchase or sale (which shall include
15 but not be limited to the issuance, entering into, assumption, offset,
16 assignment, termination, or transfer) of securities as defined in
17 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
18 (F) originally used in the ordinary course of the taxpayer's business as
19 an exchange registered as a national securities exchange within the
20 meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of
21 1934 or a board of trade as defined in section 1410(a)(1) of the New
22 York Not-for-Profit Corporation Law or as an entity that is wholly owned
23 by one or more such national securities exchanges or boards of trade and
24 that provides automation or technical services thereto, or (G) princi-
25 pally used as a qualified film production facility including qualified
26 film production facilities having a situs in an empire zone designated
27 as such pursuant to article eighteen-B of the general municipal law,
28 where the taxpayer is providing three or more services to any qualified
29 film production company using the facility, including such services as a
30 studio lighting grid, lighting and grip equipment, multi-line phone
31 service, broadband information technology access, industrial scale elec-
32 trical capacity, food services, security services, and heating, venti-
33 lation and air conditioning. Provided, however, a taxpayer shall not be
34 allowed the credit provided by clauses (D), (E) and (F) of this subpara-
35 graph unless (i) eighty percent or more of the employees performing the
36 administrative and support functions resulting from or related to the
37 qualifying uses of such equipment are located in this state or (ii) the
38 average number of employees that perform the administrative and support
39 functions resulting from or related to the qualifying uses of such
40 equipment and are located in this state during the taxable year for
41 which the credit is claimed is equal to or greater than ninety-five
42 percent of the average number of employees that perform these functions
43 and are located in this state during the thirty-six months immediately
44 preceding the year for which the credit is claimed, or (iii) the number
45 of employees located in this state during the taxable year for which the
46 credit is claimed is equal to or greater than ninety percent of the
47 number of employees located in this state on December thirty-first,
48 nineteen hundred ninety-eight or, if the taxpayer was not a calendar
49 year taxpayer in nineteen hundred ninety-eight, the last day of its
50 first taxable year ending after December thirty-first, nineteen hundred
51 ninety-eight. If the taxpayer becomes subject to tax in this state after
52 the taxable year beginning in nineteen hundred ninety-eight, then the
53 taxpayer is not required to satisfy the employment test provided in the
54 preceding sentence of this subparagraph for its first taxable year. For
55 purposes of clause (iii) of this subparagraph the employment test will
56 be based on the number of employees located in this state on the last

1 day of the first taxable year the taxpayer is subject to tax in this
2 state. If the uses of the property must be aggregated to determine
3 whether the property is principally used in qualifying uses, then either
4 each affiliate using the property must satisfy this employment test or
5 this employment test must be satisfied through the aggregation of the
6 employees of the taxpayer, its affiliated regulated broker, dealer, and
7 registered investment adviser using the property. For purposes of this
8 subdivision, the term "goods" shall not include electricity.

9 S 5. Subparagraph (ii) of paragraph (b) of subdivision 1 of section
10 210-B of the tax law is amended by adding three new clauses (F), (G) and
11 (H) to read as follows:

12 (F) POLLUTION PREVENTION SHALL MEAN CHANGES IN PRODUCTION METHODS OR
13 RAW MATERIALS THAT REDUCE, AVOID OR ELIMINATE THE USE OF TOXIC OR
14 HAZARDOUS SUBSTANCES OR THE GENERATION OF SUCH SUBSTANCES OR POLLUTANTS
15 PER UNIT OF PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS,
16 CONSUMERS OR THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS,
17 CONSUMERS OR ENVIRONMENTAL MEDIA. POLLUTION PREVENTION INCLUDES THE
18 REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PRODUCTION PROCESSES,
19 EQUIPMENT OR TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTI-
20 TUTION OF INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE,
21 TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS
22 THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS
23 IN-PROCESS, CLOSED-LOOP RECYCLING. SUCH TERM DOES NOT INCLUDE INCINERATION,
24 TRANSFER FROM ONE MEDIUM OF RELEASE OR DISCHARGE TO ANOTHER MEDIA,
25 OFF-SITE OR OUT-OF-PRODUCTION RECYCLING, END-OF-PIPE TREATMENT OR
26 POLLUTION CONTROL.

27 (G) POLLUTANT SHALL MEAN ANY SUBSTANCE, CONTAMINANT, WASTE OR EMISSION
28 WHICH CONTRIBUTES TO POLLUTION AS DEFINED IN ARTICLE ONE OF THE ENVIRONMENTAL
29 CONSERVATION LAW.

30 (H) TOXIC OR HAZARDOUS SUBSTANCE SHALL MEAN ANY SUBSTANCE LISTED AS A
31 SUBSTANCE HAZARDOUS TO PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT IN REGULATIONS
32 PROMULGATED PURSUANT TO ARTICLE THIRTY-SEVEN OF THE ENVIRONMENTAL
33 CONSERVATION LAW.

34 S 6. This act shall take effect three years after it shall have become
35 a law and shall apply to taxable years ending on or after such effective
36 date, except that section one of this act shall take effect on the first
37 day of the sales tax quarterly period, as designated in subdivision (b)
38 of section 1136 of the tax law, next commencing on or after the effective
39 date of this act and shall apply to sales made on or after the effective
40 date of section one of this act and shall apply to all equipment or machinery
41 purchased on or after such date although purchased
42 under a prior contract.