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

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I N A S S E M B L Y

June 4, 2015

Introduced by M. of A. SANTABARBARA -- read once and referred to the Committee on Ways and Means -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the economic development law and the tax law, in relation to tax credits for upstate reinvestment zones

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

Section 1. The economic development law is amended by adding a new article 23 to read as follows:

ARTICLE 23

UPSTATE REINVESTMENT ZONES

SECTION 460. POWER TO ADMINISTER THE UPSTATE REINVESTMENT ZONES TAX CREDIT.

S 460. POWER TO ADMINISTER THE UPSTATE REINVESTMENT ZONES TAX CREDIT. (A) THE COMMISSIONER IS AUTHORIZED TO ADMINISTER THE UPSTATE REINVESTMENT ZONES TAX CREDIT PROGRAM TO PROVIDE TAX INCENTIVES TO BUSINESSES FOR THE QUALIFIED PURCHASE OF A BUILDING OR BUILDINGS OR QUALIFIED REHABILITATION EXPENDITURES IN SUCH ZONE. THE COMMISSIONER IS AUTHORIZED TO ALLOCATE UP TO TEN MILLION DOLLARS OF TAX CREDITS UNDER THIS PROGRAM PER YEAR. THE AMOUNT OF CREDIT SHALL BE TWENTY PERCENT OF THE QUALIFIED PURCHASE AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS AND REHABILITATIONS, AS SUCH AMOUNT IS COMPUTED PURSUANT TO SECTION FORTY-TWO OF THE TAX LAW.

(B) DEFINITIONS. (1) THE TERM "UPSTATE REINVESTMENT ZONE" SHALL MEAN AN AREA: (I) 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 UNEMPLOYMENT RATE THAT IS EQUAL TO OR GREATER THAN ONE AND ONE-HALF PERCENT TIMES THE NATIONAL AVERAGE UNEMPLOYMENT RATE AND (II) IS WITHIN THE

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

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INCORPORATED BOUNDARIES OF A VILLAGE, TOWN OR CITY HAVING A POPULATION OF LESS THAN ONE MILLION.

(2) THE TERM "QUALIFIED PURCHASE" SHALL MEAN THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF ACQUISITION COST OF BUILDING FOR WHICH DEPRECIATION IS ALLOWED UNDER SECTION ONE HUNDRED SIXTY-EIGHT OF THE INTERNAL REVENUE CODE AND WHICH IS (I) NONRESIDENTIAL PROPERTY, (II) RESIDENTIAL PROPERTY, OR (III) AN ADDITION OR IMPROVEMENT TO PROPERTY DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH.

(3) THE TERM "QUALIFIED REHABILITATION EXPENDITURES" SHALL MEAN QUALIFIED EXPENDITURES AS DEFINED IN PARAGRAPH (2) OF SUBSECTION (C) OF SECTION FORTY-SEVEN OF THE INTERNAL REVENUE CODE OTHER THAN THE QUALIFIED PURCHASE MADE IN PARAGRAPH TWO OF THIS SUBDIVISION.

(C) ALLOCATION 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 COMMISSIONER AMONG TAXPAYERS IN THE ORDER IN WHICH APPLICATIONS ARE RECEIVED. 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 COMMISSIONER 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.

(D) IN ORDER TO BE ELIGIBLE FOR THE TAX CREDITS, A TAXPAYER MUST SUBMIT AN APPLICATION (IN A FORM PRESCRIBED BY THE COMMISSIONER) TO THE COMMISSIONER. THE COMMISSIONER SHALL ESTABLISH GUIDELINES AND CRITERIA FOR A DESIGNATION OF UPSTATE REINVESTMENT ZONES.

(E) IF, AFTER REVIEWING THE APPLICATION SUBMITTED BY THE TAXPAYER, THE COMMISSIONER DETERMINES THAT SUCH QUALIFIED PURCHASE OF THE BUILDING OR QUALIFIED REHABILITATION EXPENDITURES WERE MADE IN AN UPSTATE REINVESTMENT ZONE, THEN THE COMMISSIONER SHALL ISSUE THE TAXPAYER A CERTIFICATE OF ELIGIBILITY THAT ESTABLISHES THE TAXPAYER AS A QUALIFIED TAXPAYER.

S 2. The tax law is amended by adding a new section 42 to read as follows:

S 42. UPSTATE REINVESTMENT ZONES TAX CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY ARTICLES NINE-A AND TWENTY-TWO OF THIS CHAPTER FOR THE DEVELOPMENT TO UPSTATE REINVESTMENT ZONES INCLUDING, BUT NOT LIMITED TO, THE QUALIFIED PURCHASE OF BUILDINGS AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS IN SUCH 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 BUILDINGS AND REHABILITATIONS IN SUCH ZONES WITH SUCH CREDIT SUBJECT TO RESTRICTIONS SET FORTH IN SUBDIVISION (D) OF THIS SECTION. THIS CREDIT WILL NOT BE ALLOWED IF THE QUALIFIED PURCHASE OF BUILDINGS AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS THAT

ARE THE BASIS FOR THIS CREDIT ARE INCLUDED IN THE CALCULATION OF ANOTHER CREDIT CLAIMED BY THE TAXPAYER UNDER THIS CHAPTER.

(B) FOR THE PURPOSE OF THIS SECTION, THE TERM "QUALIFIED PURCHASE" SHALL MEAN THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF ACQUISITION COST OF BUILDING FOR WHICH DEPRECIATION IS ALLOWED UNDER SECTION ONE HUNDRED SIXTY-EIGHT OF THE INTERNAL REVENUE CODE AND WHICH IS (1) NONRESIDENTIAL PROPERTY, (2) RESIDENTIAL PROPERTY, OR (3) AN ADDITION OR IMPROVEMENT TO PROPERTY DESCRIBED IN PARAGRAPH (1) OR (2) OF THIS SUBDIVISION. THE TERM "QUALIFIED REHABILITATION EXPENDITURES" SHALL MEAN QUALIFIED EXPENDITURES AS DEFINED IN PARAGRAPH (2) OF SUBSECTION (C) OF SECTION FORTY-SEVEN OF THE INTERNAL REVENUE CODE.

(C) FOR THE PURPOSE OF THIS SECTION, THE TERM "UPSTATE REINVESTMENT ZONES" SHALL MEAN AN AREA: (I) 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 UNEMPLOYMENT RATE THAT IS EQUAL TO OR GREATER THAN ONE AND ONE-HALF PERCENT TIMES THE NATIONAL AVERAGE UNEMPLOYMENT RATE AND (II) 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 SECTION SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ANY ONE TAXPAYER INCLUDING SUCH PARTY'S AFFILIATES AND RELATED ENTITIES FOR A TAXABLE YEAR. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE ANNUAL LIMIT BY THE PRECEDING SENTENCE SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS, MEMBERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE FIVE HUNDRED THOUSAND DOLLAR ANNUAL LIMIT.

(E) (1) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SECTION, IN ANY TAXABLE YEAR SHALL BE TEN MILLION DOLLARS. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT AMONG TAXPAYERS IN THE ORDER IN WHICH APPLICATIONS ARE RECEIVED. 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 OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL PROMULGATE REGULATIONS BY DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN TO ESTABLISH PROCEDURES FOR THE ALLOCATION OF TAX CREDITS AS REQUIRED PURSUANT TO SECTION FOUR HUNDRED SIXTY OF THE ECONOMIC DEVELOPMENT LAW. 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.

(F) THE CREDIT ALLOWED UNDER THIS SECTION 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 CHAPTER. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SECTION 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.

(G) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION FOUR HUNDRED SIXTY OF THE ECONOMIC DEVELOPMENT LAW.

(H) WHERE THE BUILDING WHICH WAS THE BASIS FOR THE ALLOWANCE OF THE CREDIT PROVIDED FOR UNDER THIS SECTION IS SOLD BEFORE THE CLOSE OF THE RECAPTURE PERIOD, THE TAXPAYER SHALL ADD BACK, IN THE TAXABLE YEAR IN WHICH SUCH BUILDING WAS SOLD, THE CREDIT RECAPTURE AMOUNT. THE CREDIT RECAPTURE AMOUNT IS THE PRODUCT OF THE CREDIT AMOUNT CLAIMED AND THE RECAPTURE PERCENTAGE IN ACCORDANCE WITH THE FOLLOWING TABLE.

IF THE BUILDING IS SOLD WITHIN	THE RECAPTURE PERCENTAGE
(I) ONE FULL YEAR AFTER PLACED IN SERVICE	100
(II) ONE FULL YEAR AFTER THE CLOSE OF THE PERIOD DESCRIBED IN PARAGRAPH (I)	80
(III) ONE FULL YEAR AFTER THE CLOSE OF THE PERIOD DESCRIBED IN PARAGRAPH (II)	60
(IV) ONE FULL YEAR AFTER THE CLOSE OF THE PERIOD DESCRIBED IN PARAGRAPH (III)	40
(V) ONE FULL YEAR AFTER THE CLOSE OF THE PERIOD DESCRIBED IN PARAGRAPH (IV)	20

(I) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9A: SECTION 210-B, SUBDIVISION 51.

(2) ARTICLE 22: SECTION 606, SUBSECTION (I), PARAGRAPH (1), SUBPARAGRAPH (B), CLAUSE (XLI).

(3) ARTICLE 22: SECTION 606, SUBSECTION (CCC).

S 3. Section 210-B of the tax law is amended by adding a new subdivision 51 to read as follows:

51. UPSTATE REINVESTMENT ZONES TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION FORTY-TWO OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY 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. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL 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, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 4. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(CCC) UPSTATE REINVESTMENT ZONES TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION FORTY-TWO OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) 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.

S 5. 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 ZONES CREDIT UNDER SUBSECTION (CCC)	AMOUNT OF THE CREDIT UNDER SUBDIVISION FIFTY-ONE OF SECTION TWO HUNDRED TEN-B

S 6. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2017. The commissioner of taxation and finance is authorized to issue regulations and guidance necessary to implement this act on or before the effective date.