

8004--A

Cal. No. 326

2015-2016 Regular Sessions

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:

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

3 ARTICLE 23

4 UPSTATE REINVESTMENT ZONES

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

7 S 460. POWER TO ADMINISTER THE UPSTATE REINVESTMENT ZONES TAX CREDIT.

8 (A) THE COMMISSIONER IS AUTHORIZED TO ADMINISTER THE UPSTATE REINVEST-
9 MENT ZONES TAX CREDIT PROGRAM TO PROVIDE TAX INCENTIVES TO BUSINESSES
10 FOR THE QUALIFIED PURCHASE OF A BUILDING OR BUILDINGS OR QUALIFIED REHA-
11 BILITATION EXPENDITURES IN SUCH ZONE. THE COMMISSIONER IS AUTHORIZED TO
12 ALLOCATE UP TO TEN MILLION DOLLARS OF TAX CREDITS UNDER THIS PROGRAM PER
13 YEAR. THE AMOUNT OF CREDIT SHALL BE TWENTY PERCENT OF THE QUALIFIED
14 PURCHASE AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS AND
15 REHABILITATIONS, AS SUCH AMOUNT IS COMPUTED PURSUANT TO SECTION
16 FORTY-TWO OF THE TAX LAW.

17 (B) DEFINITIONS. (1) THE TERM "UPSTATE REINVESTMENT ZONE" SHALL MEAN
18 AN AREA: (I) THAT, ACCORDING TO THE MOST RECENT AMERICAN COMMUNITY
19 SURVEY BY THE UNITED STATES CENSUS BUREAU, LIES WITHIN A CENSUS TRACT
20 WITH A POVERTY RATE EQUAL TO OR GREATER THAN TWENTY PERCENT OR AN UNEM-
21 PLOYMENT RATE THAT IS EQUAL TO OR GREATER THAN ONE AND ONE-HALF PERCENT
22 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.

LBD11419-02-5

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

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

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

13 (C) ALLOCATION OF CREDITS. (1) THE AGGREGATE AMOUNT OF TAX CREDITS
14 ALLOWED UNDER THIS SUBDIVISION IN ANY TAXABLE YEAR SHALL BE TEN MILLION
15 DOLLARS. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE
16 COMMISSIONER AMONG TAXPAYERS IN THE ORDER IN WHICH APPLICATIONS ARE
17 RECEIVED. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY
18 PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR
19 SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING
20 BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

21 (2) THE COMMISSIONER SHALL PROMULGATE REGULATIONS BY DECEMBER THIRTY-
22 FIRST, TWO THOUSAND SIXTEEN TO ESTABLISH PROCEDURES FOR THE ALLOCATION
23 OF TAX CREDITS AS REQUIRED. SUCH RULES AND REGULATIONS SHALL INCLUDE
24 PROVISIONS DESCRIBING THE APPLICATION PROCESS, THE DUE DATES FOR SUCH
25 APPLICATIONS, THE STANDARDS WHICH SHALL BE USED TO EVALUATE THE APPLICA-
26 TIONS, THE DOCUMENTATION THAT WILL BE PROVIDED TO TAXPAYERS TO SUBSTAN-
27 TIATE TO THE COMMISSIONER THE AMOUNT OF TAX CREDITS ALLOCATED TO SUCH
28 TAXPAYERS, AND SUCH OTHER PROVISIONS AS DEEMED NECESSARY AND APPROPRI-
29 ATE. NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY IN THE STATE
30 ADMINISTRATIVE PROCEDURE ACT, SUCH RULES AND REGULATIONS MAY BE ADOPTED
31 ON AN EMERGENCY BASIS IF NECESSARY TO MEET SUCH DECEMBER THIRTY-FIRST,
32 TWO THOUSAND SIXTEEN DEADLINE.

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

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

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

44 S 42. UPSTATE REINVESTMENT ZONES TAX CREDIT. (A) A TAXPAYER SHALL BE
45 ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE
46 TAX IMPOSED BY ARTICLES NINE-A AND TWENTY-TWO OF THIS CHAPTER FOR THE
47 DEVELOPMENT TO UPSTATE REINVESTMENT ZONES INCLUDING, BUT NOT LIMITED TO,
48 THE QUALIFIED PURCHASE OF BUILDINGS AND QUALIFIED REHABILITATION EXPEND-
49 ITURES OF BUILDINGS IN SUCH ZONES WHERE AT LEAST FIFTY PERCENT OF THE
50 SQUARE FOOTAGE OF SUCH BUILDINGS, AT THE TIME OF PURCHASE OR REHABILI-
51 TATION, IS VACANT OR OTHERWISE UNUSED. THE AMOUNT OF THE CREDIT SHALL BE
52 TWENTY PERCENT OF THE QUALIFIED PURCHASE AND QUALIFIED REHABILITATION
53 EXPENDITURES OF BUILDINGS AND REHABILITATIONS IN SUCH ZONES WITH SUCH
54 CREDIT SUBJECT TO RESTRICTIONS SET FORTH IN SUBDIVISION (D) OF THIS
55 SECTION. THIS CREDIT WILL NOT BE ALLOWED IF THE QUALIFIED PURCHASE OF
56 BUILDINGS AND QUALIFIED REHABILITATION EXPENDITURES OF BUILDINGS THAT

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

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

12 (C) FOR THE PURPOSE OF THIS SECTION, THE TERM "UPSTATE REINVESTMENT
13 ZONES" SHALL MEAN AN AREA: (I) THAT, ACCORDING TO THE MOST RECENT AMER-
14 ICAN COMMUNITY SURVEY BY THE UNITED STATES CENSUS BUREAU, LIES WITHIN A
15 CENSUS TRACT WITH A POVERTY RATE EQUAL TO OR GREATER THAN TWENTY PERCENT
16 OR AN UNEMPLOYMENT RATE THAT IS EQUAL TO OR GREATER THAN ONE AND
17 ONE-HALF PERCENT TIMES THE NATIONAL AVERAGE UNEMPLOYMENT RATE AND (II)
18 IS WITHIN THE INCORPORATED BOUNDARIES OF A VILLAGE, TOWN OR CITY HAVING
19 A POPULATION OF LESS THAN ONE MILLION.

20 (D) THE SUM OF ALL TAX CREDITS GRANTED PURSUANT TO THE PROVISIONS OF
21 THIS SECTION SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ANY ONE
22 TAXPAYER INCLUDING SUCH PARTY'S AFFILIATES AND RELATED ENTITIES FOR A
23 TAXABLE YEAR. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, MEMBER OF
24 A LIMITED LIABILITY COMPANY OR SHAREHOLDER OF A NEW YORK S CORPORATION,
25 THEN THE ANNUAL LIMIT BY THE PRECEDING SENTENCE SHALL BE APPLIED AT THE
26 ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS,
27 MEMBERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT
28 EXCEED THE FIVE HUNDRED THOUSAND DOLLAR ANNUAL LIMIT.

29 (E) (1) THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS
30 SECTION, IN ANY TAXABLE YEAR SHALL BE TEN MILLION DOLLARS. SUCH AGGRE-
31 GATE AMOUNT OF CREDITS SHALL BE ALLOCATED BY THE COMMISSIONER OF ECONOM-
32 IC DEVELOPMENT AMONG TAXPAYERS IN THE ORDER IN WHICH APPLICATIONS ARE
33 RECEIVED. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY
34 PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR
35 SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING
36 BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

37 (2) THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL
38 PROMULGATE REGULATIONS BY DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN TO
39 ESTABLISH PROCEDURES FOR THE ALLOCATION OF TAX CREDITS AS REQUIRED
40 PURSUANT TO SECTION FOUR HUNDRED SIXTY OF THE ECONOMIC DEVELOPMENT LAW.
41 SUCH RULES AND REGULATIONS SHALL INCLUDE PROVISIONS DESCRIBING THE
42 APPLICATION PROCESS, THE DUE DATES FOR SUCH APPLICATIONS, THE STANDARDS
43 WHICH SHALL BE USED TO EVALUATE THE APPLICATIONS, THE DOCUMENTATION THAT
44 WILL BE PROVIDED TO TAXPAYERS TO SUBSTANTIATE TO THE DEPARTMENT THE
45 AMOUNT OF TAX CREDITS ALLOCATED TO SUCH TAXPAYERS, AND SUCH OTHER
46 PROVISIONS AS DEEMED NECESSARY AND APPROPRIATE.

47 (F) THE CREDIT ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR SHALL
48 NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED
49 IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS
50 CHAPTER. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE
51 UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT,
52 THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
53 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
54 EIGHTY-SIX OF THIS CHAPTER. PROVIDED FURTHER, THE PROVISIONS OF
55 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
56 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

1 PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE. PROVIDED,
2 HOWEVER, NO INTEREST WILL BE PAID THEREON.

3 S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
4 of the tax law is amended by adding a new clause (xli) to read as
5 follows:

6 (XLI) UPSTATE REINVESTMENT	AMOUNT OF THE CREDIT UNDER
7 ZONES CREDIT UNDER	SUBDIVISION FIFTY-ONE OF SECTION
8 SUBSECTION (CCC)	TWO HUNDRED TEN-B

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