

5563--C

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Commerce, Economic Development and Small Business in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law and the tax law, in relation to a restaurant renovation incentive program

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 RESTAURANT RENOVATION TAX INCENTIVE PROGRAM
5 SECTION 450. DEFINITIONS.

6 451. ADMINISTRATION.

7 452. TAX INCENTIVE.

8 453. APPLICATION AND APPROVAL PROCESS.

9 454. CAP ON TAX CREDITS.

10 SECTION 450. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS
11 SHALL HAVE THE FOLLOWING MEANINGS:

12 1. "ACTUAL PROJECT COSTS" MEANS COSTS ATTRIBUTABLE TO A PROJECT THAT
13 ARE INCURRED BY A QUALIFIED APPLICANT BETWEEN THE COMMENCEMENT AND
14 COMPLETION DATES SPECIFIED BY THE DEPARTMENT PURSUANT TO SECTION FOUR
15 HUNDRED FIFTY-THREE OF THIS ARTICLE.

16 2. "APPLICANT" MEANS A PERSON, CORPORATION, OR OTHER ENTITY THAT OWNS
17 AND OPERATES A RESTAURANT.

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

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1 3. "PROJECT" MEANS THE RENOVATION, IMPROVEMENT, REPAIR OR UPGRADE OF
2 AN EXISTING RESTAURANT. THE TERM DOES NOT INCLUDE NEW CONSTRUCTION.

3 4. "QUALIFIED APPLICANT" MEANS AN APPLICANT THAT HAS BEEN ISSUED A
4 CERTIFICATE BY THE DEPARTMENT UNDER SECTION FOUR HUNDRED FIFTY-THREE OF
5 THIS ARTICLE.

6 5. "RESTAURANT" MEANS A PUBLIC FOOD SERVICE ESTABLISHMENT REGISTERED
7 TO COLLECT TAX AS REQUIRED BY SECTION ELEVEN HUNDRED THIRTY-FOUR OF THE
8 TAX LAW.

9 S 451. ADMINISTRATION. THERE IS CREATED IN THE DEPARTMENT A RESTAURANT
10 RENOVATION TAX INCENTIVE PROGRAM. THE DEPARTMENT SHALL DEVELOP, IMPL-
11 MENT, AND ADMINISTER THE PROGRAM. THE DEPARTMENT AND THE DEPARTMENT OF
12 TAXATION AND FINANCE ARE AUTHORIZED TO ADOPT RULES AND PUBLISH FORMS
13 NECESSARY TO ADMINISTER AND ENFORCE THIS ARTICLE.

14 S 452. TAX INCENTIVE. 1. AN APPLICANT MAY RECEIVE A CREDIT AGAINST THE
15 TAXES IMPOSED BY ARTICLE NINE-A OR TWENTY-TWO OF THE TAX LAW IN AN
16 AMOUNT CERTIFIED BY THE DEPARTMENT AS PROVIDED IN SECTION FOUR HUNDRED
17 FIFTY-THREE OF THIS ARTICLE, IF THE APPLICANT COMPLETES A PROJECT THAT
18 IS A RENOVATION, IMPROVEMENT, REPAIR OR UPGRADE OF DINING AREAS, REST-
19 ROOMS, KITCHENS, COMMON AREAS OR THE EXTERIOR OF A RESTAURANT WITH TOTAL
20 EXPENDITURES OF AT LEAST ONE HUNDRED THOUSAND DOLLARS.

21 2. A QUALIFIED APPLICANT MEETING THE REQUIREMENTS OF THIS SECTION
22 SHALL RECEIVE A TAX CREDIT EQUAL TO TWENTY-FIVE PERCENT OF THE QUALIFIED
23 APPLICANT'S ACTUAL PROJECT COSTS FOR APPROVED PROJECTS. FOLLOWING
24 APPROVAL BY THE COMMISSIONER OF AN APPLICATION TO PARTICIPATE IN THE
25 RENOVATION INCENTIVE PROGRAM UNDER THIS ARTICLE, THE COMMISSIONER SHALL
26 ISSUE A CERTIFICATE OF TAX CREDIT TO THE APPLICANT UPON ITS DEMONSTRAT-
27 ING SUCCESSFUL COMPLETION OF SUCH ELIGIBLE PROJECT TO THE SATISFACTION
28 OF THE COMMISSIONER. THE TAX CREDITS SHALL BE CLAIMED BY THE QUALIFIED
29 APPLICANT AS SPECIFIED IN SUBDIVISION FIFTY-ONE OF SECTION TWO HUNDRED
30 TEN-B AND SUBSECTION (EEE) OF SECTION SIX HUNDRED SIX OF THE TAX LAW.

31 S 453. APPLICATION AND APPROVAL PROCESS. 1. AN APPLICANT SEEKING A
32 CREDIT UNDER THIS PROGRAM SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT
33 BEFORE COMMENCEMENT OF THE PROJECT. THE APPLICATION MUST INCLUDE:

34 (A) PLANS FOR THE PROPOSED PROJECT AND ESTIMATED PROJECT COSTS; AND

35 (B) A DETAILED DESCRIPTION OF THE PROPOSED PROJECT, INCLUDING ESTI-
36 MATED COMMENCEMENT AND COMPLETION DATES.

37 2. THE DEPARTMENT SHALL REVIEW EACH SUBMITTED APPLICATION FOR
38 COMPLETENESS AND PROVIDE PRELIMINARY APPROVAL OR DISAPPROVAL WITHIN
39 SIXTY DAYS AFTER RECEIVING THE APPLICATION. THE DEPARTMENT SHALL ISSUE A
40 CERTIFICATE TO EACH PRELIMINARILY APPROVED APPLICANT THAT:

41 (A) DESIGNATES THE APPLICANT AS A QUALIFIED APPLICANT ELIGIBLE TO
42 RECEIVE A TAX CREDIT UNDER THIS ARTICLE; AND

43 (B) SPECIFIES PROJECT COMMENCEMENT AND COMPLETION DATES. THE PERIOD
44 BETWEEN THE COMMENCEMENT AND COMPLETION DATES SPECIFIED BY THE DEPART-
45 MENT MAY NOT EXCEED TWELVE MONTHS FOR A PROPOSED PROJECT DESCRIBED IN
46 SUBDIVISION ONE OF SECTION FOUR HUNDRED FIFTY-TWO OF THIS ARTICLE.

47 3. (A) EACH QUALIFIED APPLICANT SHALL, UPON COMPLETION OF ITS PROJECT,
48 PROVIDE DOCUMENTATION TO THE DEPARTMENT DEMONSTRATING ACTUAL PROJECT
49 COSTS. SUCH COSTS SHALL BE VERIFIED BY AN INDEPENDENT CERTIFIED PUBLIC
50 ACCOUNTANT LICENSED IN THIS STATE AT THE EXPENSE OF THE QUALIFIED APPLI-
51 CANT.

52 (B) THE DEPARTMENT SHALL VERIFY THAT ACTUAL PROJECT COSTS MEET THE
53 EXPENDITURE REQUIREMENTS PROVIDED IN THIS ARTICLE. A QUALIFIED APPLICANT
54 THAT FAILS TO MEET THE EXPENDITURE REQUIREMENTS MAY NOT RECEIVE A TAX
55 CREDIT UNDER THIS PROGRAM.

1 S 454. CAP ON TAX CREDITS. THE TOTAL AMOUNT OF TAX CREDITS LISTED ON
2 CERTIFICATES OF TAX CREDIT ISSUED BY THE COMMISSIONER FOR ANY TAXABLE
3 YEAR MAY NOT EXCEED TWO HUNDRED FIFTY MILLION DOLLARS.

4 S 2. Section 210-B of the tax law is amended by adding a new subdivi-
5 sion 51 to read as follows:

6 51. RESTAURANT RENOVATION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER
7 WHO IS ELIGIBLE PURSUANT TO ARTICLE TWENTY-THREE OF THE ECONOMIC DEVEL-
8 OPMENT LAW SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN SUCH
9 ARTICLE AGAINST THE TAX IMPOSED BY THIS ARTICLE.

10 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
11 FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
12 THAN THE FIXED DOLLAR MINIMUM AMOUNT PRESCRIBED IN PARAGRAPH (D) OF
13 SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE. PROVIDED,
14 HOWEVER, THAT IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVI-
15 SION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT OR IF THE
16 TAXPAYER OTHERWISE PAYS TAX BASED ON THE FIXED DOLLAR MINIMUM AMOUNT,
17 THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
18 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
19 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
20 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
21 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

22 S 3. Section 606 of the tax law is amended by adding a new subsection
23 (eee) to read as follows:

24 (EEE) RESTAURANT RENOVATION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAY-
25 ER WHO IS ELIGIBLE PURSUANT TO ARTICLE TWENTY-THREE OF THE ECONOMIC
26 DEVELOPMENT LAW SHALL BE ALLOWED A CREDIT TO BE COMPUTED AS PROVIDED IN
27 SUCH ARTICLE AGAINST THE TAX IMPOSED BY THIS ARTICLE.

28 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER
29 THIS SUBSECTION FOR ANY TAXABLE YEAR EXCESS THE TAXPAYER'S TAX FOR SUCH
30 YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDIT-
31 ED OR REFUNDED AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS
32 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREIN.

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

36 (XLIII) RESTAURANT	AMOUNT OF CREDIT
37 RENOVATION INCENTIVE	UNDER SUBDIVISION
38 PROGRAM CREDIT UNDER	FIFTY-ONE OF SECTION
39 SUBSECTION (EEE)	TWO HUNDRED TEN-B

40 S 5. This act shall take effect January 1, 2017 and shall apply to
41 taxable years beginning on and after such date; provided, however, that
42 effective immediately, the addition, amendment and/or repeal of any rule
43 or regulation necessary for the implementation of this act on its effec-
44 tive date are authorized to be made and completed on or before such
45 date.