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

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:

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

ARTICLE 23

RESTAURANT RENOVATION TAX INCENTIVE PROGRAM

SECTION 450. DEFINITIONS.
451. ADMINISTRATION.
452. TAX INCENTIVE.
453. APPLICATION AND APPROVAL PROCESS.
454. CAP ON TAX CREDITS.

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

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

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

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

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

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

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

S 451. ADMINISTRATION. THERE IS CREATED IN THE DEPARTMENT A RESTAURANT RENOVATION TAX INCENTIVE PROGRAM. THE DEPARTMENT SHALL DEVELOP, IMPLEMENT, AND ADMINISTER THE PROGRAM. THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE ARE AUTHORIZED TO ADOPT RULES AND PUBLISH FORMS NECESSARY TO ADMINISTER AND ENFORCE THIS ARTICLE.

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

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

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

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

(B) A DETAILED DESCRIPTION OF THE PROPOSED PROJECT, INCLUDING ESTIMATED COMMENCEMENT AND COMPLETION DATES.

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

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

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

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

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

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

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

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

(B) 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 FIXED DOLLAR MINIMUM 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 THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT OR IF THE TAXPAYER OTHERWISE PAYS TAX BASED ON THE FIXED DOLLAR MINIMUM 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, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

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

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

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

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

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