

1953

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I N A S S E M B L Y

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Introduced by M. of A. GUNTHER, SCHIMMINGER, LUPARDO, COLTON, CUSICK, ZEBROWSKI, PEOPLES-STOKES, JAFFEE, HOOPER, AUBRY, SCARBOROUGH, PERRY, McLAUGHLIN, BORELLI, RAIA, TENNEY, LOPEZ -- Multi-Sponsored by -- M. of A. BROOK-KRASNY, COOK, DAVILA, GOODELL, HEASTIE, MAGEE, MARKEY, MOSLEY, ORTIZ, RIVERA, ROBINSON, TITONE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to a small business electric energy tax credit

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

1 Section 1. Section 210-B of the tax law is amended by adding a new
2 subdivision 49 to read as follows:

3 49. SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (A) A TAXPAYER THAT IS
4 ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH (B) OF THIS SUBDI-
5 VISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
6 CLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT OF TWO
7 CENTS PER KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT
8 THE TAXPAYER'S PRIMARY BUSINESS LOCATION.

9 (B) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL
10 TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED
11 MEMBERS OR AFFILIATES, (II) NOT BE A SOLE-PROPRIETORSHIP IF SUCH
12 SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH
13 SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO
14 ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIV-
15 ING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER
16 ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.

17 (C) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO
18 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE
19 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM
20 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS
21 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE

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

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1 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS
2 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS"
3 SHALL HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF
4 SUBPARAGRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO
5 HUNDRED EIGHT OF THIS ARTICLE, AND THE TERM "AFFILIATES" SHALL MEAN
6 THOSE CORPORATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS
7 DEFINED IN SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS
8 THE TAXPAYER.

9 (D) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF
10 THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAY-
11 ER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART
12 PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE
13 PROVIDER.

14 (E) IN NO EVENT SHALL THE CREDIT PROVIDED FOR IN THIS SUBDIVISION BE
15 ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE
16 FIXED DOLLAR MINIMUM AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION
17 ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE. HOWEVER, IF THE AMOUNT
18 OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES
19 THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH
20 TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
21 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN HUNDRED EIGHT-
22 Y-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION
23 (C) OF SECTION TEN HUNDRED EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING,
24 NO INTEREST SHALL BE PAID THEREON.

25 S 2. Section 606 of the tax law is amended by adding a new subsection
26 (ccc) to read as follows:

27 (CCC) SMALL BUSINESS ELECTRIC ENERGY TAX CREDIT. (1) A TAXPAYER THAT
28 IS ELIGIBLE UNDER THE LIMITATIONS SPECIFIED IN PARAGRAPH TWO OF THIS
29 SUBSECTION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS
30 ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE PRODUCT (OR PRO
31 RATA SHARE OF THE PRODUCT IN THE CASE OF A PARTNERSHIP) OF TWO CENTS PER
32 KILOWATT HOUR FOR ALL BUSINESS RELATED ELECTRICITY USAGE AT THE TAXPAY-
33 ER'S PRIMARY BUSINESS LOCATION.

34 (2) AN ELIGIBLE TAXPAYER SHALL (I) HAVE NO MORE THAN NINETEEN FULL
35 TIME EQUIVALENT EMPLOYEES IN NEW YORK STATE, INCLUDING ANY RELATED
36 MEMBERS OR AFFILIATES, (II) SHALL NOT BE A SOLE-PROPRIETORSHIP IF SUCH
37 SOLE-PROPRIETOR'S PRIMARY BUSINESS LOCATION IS SITED IN OR PART OF SUCH
38 SOLE-PROPRIETOR'S PLACE OF RESIDENCE, (III) NOT BE CERTIFIED PURSUANT TO
39 ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AND (IV) NOT BE RECEIV-
40 ING ANY ALLOCATION OR AWARD PURSUANT TO ANY PROGRAM AUTHORIZED UNDER
41 ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW.

42 (3) (I) THE TERM "BUSINESS RELATED ELECTRICITY USAGE" SHALL REFER TO
43 ELECTRICAL POWER USAGE USED TO FURTHER THE ECONOMIC ACTIVITY OF THE
44 TAXPAYER AT THE PRIMARY BUSINESS LOCATION THAT IS CLEARLY DELIMITED FROM
45 ANY SHARED ELECTRICAL POWER USAGE COST. (II) THE TERM "PRIMARY BUSINESS
46 LOCATION" SHALL MEAN THE PHYSICAL SITE OF THE TAXPAYER WITHIN THE STATE
47 OF NEW YORK WHERE THE MAJORITY OF THE TAXPAYER'S ECONOMIC ACTIVITY IS
48 GENERATED OR COORDINATED THROUGH. (III) THE TERM "RELATED MEMBERS" SHALL
49 HAVE THE SAME MEANING AS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARA-
50 GRAPH ONE OF PARAGRAPH (O) OF SUBDIVISION NINE OF SECTION TWO HUNDRED
51 EIGHT OF THIS CHAPTER, AND THE TERM "AFFILIATES" SHALL MEAN THOSE CORPO-
52 RATIONS THAT ARE MEMBERS OF THE SAME AFFILIATED GROUP (AS DEFINED IN
53 SECTION FIFTEEN HUNDRED FOUR OF THE INTERNAL REVENUE CODE) AS THE
54 TAXPAYER.

55 (4) THE ELIGIBLE USAGE LEVEL SHALL BE THE TOTAL KILOWATT HOUR USAGE OF
56 THE TAXPAYER FOR BUSINESS RELATED ELECTRICITY USAGE DURING THE TAXPAY-

1 ER'S TAXABLE YEAR AS VERIFIED THROUGH BILLS OR OTHER FORM OF USAGE CHART
2 PROVIDED TO THE TAXPAYER BY THE TAXPAYER'S ELECTRICITY POWER SERVICE
3 PROVIDER.

4 (5) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY
5 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
6 SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN
7 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
8 ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

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

12 (XLI) SMALL BUSINESS ELECTRIC	QUALIFYING ELECTRICITY USAGE
13 ENERGY TAX CREDIT	UNDER SUBDIVISION FORTY-NINE
14 UNDER SUBSECTION (CCC)	OF SECTION TWO HUNDRED TEN-B

15 S 4. This act shall take effect immediately and shall apply to taxable
16 years beginning on or after January 1, 2015.