

# STATE OF NEW YORK

4397--A

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

Introduced by M. of A. SCHIMMINGER, CUSICK, COLTON, MAGNARELLI, CROUCH  
-- Multi-Sponsored by -- M. of A. CYMBROWITZ, KEARNS, LUPINACCI,  
WALTER -- read once and referred to the Committee on Ways and Means --  
committee discharged, bill amended, ordered reprinted as amended and  
recommitted to said committee

AN ACT to amend the tax law, in relation to establishing a credit  
against income tax for the rehabilitation of distressed commercial  
properties

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 606 of the tax law is amended by adding a new  
2 subsection (ccc) to read as follows:

3 (ccc) Credit for rehabilitation of distressed commercial properties.

4 (1) For taxable years beginning on or after January first, two thousand  
5 seventeen, a taxpayer shall be allowed a credit as hereinafter provided,  
6 against the tax imposed by this article, in an amount equal to thirty  
7 percent of the qualified rehabilitation expenditures made by the taxpay-  
8 er with respect to a qualified distressed commercial property. Provided,  
9 however, the credit shall not exceed one hundred thousand dollars.

10 (2) Tax credits allowed pursuant to this subsection shall be allowed  
11 in the taxable year in which the property is deemed a certified rehabil-  
12 itation.

13 (3) If the amount of the credit allowable under this subsection for  
14 any taxable year shall exceed the taxpayer's tax for such year, the  
15 excess may be carried over to the following year or years, and may be  
16 applied against the taxpayer's tax for such year or years.

17 (4) (A) The term "qualified rehabilitation expenditure" means, for  
18 purposes of this subsection, any amount properly chargeable to a capital  
19 account:

20 (i) in connection with the certified rehabilitation of a qualified  
21 distressed commercial property, and

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

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(ii) for property for which depreciation would be allowable under section 168 of the internal revenue code.

(B) Such term shall not include (i) the cost of acquiring any building or interest therein, (ii) any expenditure attributable to the enlargement of an existing building, or (iii) any expenditure made prior to January first, two thousand seventeen or after December thirty-first, two thousand twenty-two.

(5) The term "certified rehabilitation" means, for purposes of this subsection, any rehabilitation of a certified distressed commercial property which has been approved and certified by a local government as being completed, with a certificate of occupancy issued, and that the costs are consistent with the work completed. Such certification shall be acceptable as proof that the expenditures related to such rehabilitation qualify as qualified rehabilitation expenditures for purposes of the credit allowed under paragraph one of this subsection.

(6) (A) The term "qualified distressed commercial property" means, for purposes of this subsection, a distressed commercial property located within New York state:

(i) which has been substantially rehabilitated,

(ii) which is owned by the taxpayer, and

(iii) which is located within a distressed commercial area, as identified by each locality through local law, that is deemed an area in need of community renewal due to dilapidation and vacancies.

(B) If the distressed commercial property is rental property, such property shall have been more than thirty percent vacant for twelve months while actively marketed for lease.

(C) A building shall be treated as having been "substantially rehabilitated" if the qualified rehabilitation expenditures in relation to such building total ten thousand dollars or more.

(7) (A) If the taxpayer disposes of such taxpayer's interest in the qualified distressed commercial property, or such property ceases to be used as a commercial property of the taxpayer within five years of receiving the credit under this subsection, the taxpayer's tax imposed by this article for the taxable year in which such disposition or cessation occurs shall be increased by the recapture portion of the credit allowed under this subsection for all prior taxable years with respect to such rehabilitation.

(B) For purposes of subparagraph (A) of this paragraph, the recapture portion shall be the product of the amount of credit claimed by the taxpayer multiplied by a ratio, the numerator of which is equal to sixty less the number of months the building is owned or used as commercial property by the taxpayer and the denominator of which is sixty.

(8) Any expenditure for which a credit is claimed under this subsection shall not be eligible for any other credit under this chapter.

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

|  |                                     |
|--|-------------------------------------|
| <u>(xliv) Credit for rehabilitation</u>    | <u>Amount of credit under</u>       |
| <u>of distressed commercial properties</u> | <u>subdivision fifty-three</u>      |
| <u>under subsection (ccc)</u>              | <u>of section two hundred ten-B</u> |

§ 3. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Credit for rehabilitation of distressed commercial properties. (1)  
For taxable years beginning on or after January first, two thousand  
seventeen, a taxpayer shall be allowed a credit as hereinafter provided,

1 against the tax imposed by this article, in an amount equal to thirty  
2 percent of the qualified rehabilitation expenditures made by the taxpayer  
3 with respect to a qualified distressed commercial property. Provided,  
4 however, the credit shall not exceed one hundred thousand dollars.

5 (2) Tax credits allowed pursuant to this subdivision shall be allowed  
6 in the taxable year in which the property is deemed a certified rehabil-  
7 itation.

8 (3) If the amount of the credit allowable under this subdivision for  
9 any taxable year shall exceed the taxpayer's tax for such year, the  
10 excess may be carried over to the following year or years, and may be  
11 applied against the taxpayer's tax for such year or years, but shall not  
12 exceed twenty-five thousand dollars.

13 (4) (A) The term "qualified rehabilitation expenditure" means, for  
14 purposes of this subdivision, any amount properly chargeable to a capi-  
15 tal account:

16 (i) in connection with the certified rehabilitation of a qualified  
17 commercial property, and

18 (ii) for property for which depreciation would be allowable under  
19 section 168 of the internal revenue code.

20 (B) Such term shall not include (i) the cost of acquiring any building  
21 or interest therein, (ii) any expenditure attributable to the enlarge-  
22 ment of an existing building, or (iii) any expenditure made prior to  
23 January first, two thousand seventeen or after December thirty-first,  
24 two thousand twenty-two.

25 (5) The term "certified rehabilitation" means, for purposes of this  
26 subdivision, any rehabilitation of a certified distressed commercial  
27 property which has been approved and certified by a local government as  
28 being completed, with a certificate of occupancy issued, and that the  
29 costs are consistent with the work completed. Such certification shall  
30 be acceptable as proof that the expenditures related to such rehabili-  
31 tation qualify as qualified rehabilitation expenditures for purposes of  
32 the credit allowed under paragraph one of this subdivision.

33 (6) (A) The term "qualified distressed commercial property" means, for  
34 purposes of this subdivision, a distressed commercial property located  
35 within New York state:

36 (i) which has been substantially rehabilitated,

37 (ii) which is owned by the taxpayer, and

38 (iii) which is located within a distressed commercial area, as identi-  
39 fied by each locality through local law, that is deemed an area in need  
40 of community renewal due to dilapidation and vacancies.

41 (B) If the distressed commercial property is rental property, such  
42 property shall have been more than thirty percent vacant for twelve  
43 months while actively marketed for lease.

44 (C) A building shall be treated as having been "substantially rehabil-  
45 itated" if the qualified rehabilitation expenditures in relation to such  
46 building total ten thousand dollars or more.

47 (7) (A) If the taxpayer disposes of such taxpayer's interest in the  
48 qualified distressed commercial property, or such property ceases to be  
49 used as a commercial property of the taxpayer within five years of  
50 receiving the credit under this subdivision, the taxpayer's tax imposed  
51 by this article for the taxable year in which such disposition or cessa-  
52 tion occurs shall be increased by the recapture portion of the credit  
53 allowed under this subdivision for all prior taxable years with respect  
54 to such rehabilitation.

55 (B) For purposes of subparagraph (A) of this paragraph, the recapture  
56 portion shall be the product of the amount of credit claimed by the

1 taxpayer multiplied by a ratio, the numerator of which is equal to sixty  
2 less the number of months the building is owned or used as commercial  
3 property by the taxpayer and the denominator of which is sixty.

4 (8) Any expenditure for which a credit is claimed under this subdivi-  
5 sion shall not be eligible for any other credit under this chapter.

6 § 4. This act shall take effect immediately and shall apply to taxable  
7 years beginning on or after January 1, 2017.