

# STATE OF NEW YORK

4397--C

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, 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 -- recommitted to the Committee on Ways and Means in accord-  
ance with Assembly Rule 3, sec. 2 -- committee discharged, bill  
amended, ordered reprinted as amended and recommitted to said commit-  
tee -- again reported from said committee with amendments, 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 (jjj) to read as follows:

3 (jjj) Credit for rehabilitation of distressed commercial properties.  
4 (1) For taxable years beginning on or after January first, two thousand  
5 eighteen, 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 provided that

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

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1 the total amount of the credit applied against the taxpayer's tax for a  
2 given year shall not exceed twenty-five thousand dollars.

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

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

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

10 (B) Such term shall not include (i) the cost of acquiring any building  
11 or interest therein, (ii) any expenditure attributable to the enlarge-  
12 ment of an existing building, or (iii) any expenditure made prior to  
13 January first, two thousand eighteen or after December thirty-first, two  
14 thousand twenty-three.

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

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

26 (i) which has been substantially rehabilitated,

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

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

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

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

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

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

50 (8) Any expenditure for which a credit is claimed under this  
51 subsection shall not be eligible for any other credit under this chap-  
52 ter.

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

(xliv) Credit for rehabilitation      Amount of credit under  
of distressed commercial properties      subdivision fifty-three  
under subsection (jjj)      of section two hundred ten-B

§ 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  
eighteen, a taxpayer shall be allowed a credit as hereinafter provided,  
against the tax imposed by this article, in an amount equal to thirty  
percent of the qualified rehabilitation expenditures made by the taxpayer  
with respect to a qualified distressed commercial property. Provided,  
however, the credit shall not exceed one hundred thousand dollars.

(2) Tax credits allowed pursuant to this subdivision shall be allowed  
in the taxable year in which the property is deemed a certified rehabilitation.

(3) If the amount of the credit allowable under this subdivision for  
any taxable year shall exceed the taxpayer's tax for such year, the  
excess may be carried over to the following year or years, and may be  
applied against the taxpayer's tax for such year or years, provided that  
the total amount of the credit applied against the taxpayer's tax for a  
given year shall not exceed twenty-five thousand dollars.

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

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

(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 eighteen or after December thirty-first, two  
thousand twenty-three.

(5) The term "certified rehabilitation" means, for purposes of this  
subdivision, 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 subdivision.

(6) (A) The term "qualified distressed commercial property" means, for  
purposes of this subdivision, 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.

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

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

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

16     § 4. This act shall take effect immediately and shall apply to taxable  
17 years beginning on or after January 1, 2018.