STATE OF NEW YORK

9842

IN ASSEMBLY

February 14, 2018

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the parks, recreation and historic preservation law, in relation to the tax credit for rehabilitation of historic properties

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

Section 1. Subsection (oo) of section 606 of the tax law, as amended by chapter 239 of the laws of 2009, paragraph 1 as amended by chapter 472 of the laws of 2010, subparagraph (A) of paragraph 1 and paragraphs 4 and 5 as amended by section 1 of part F of chapter 59 of the laws of 2013, is amended to read as follows:

(oo) Credit for rehabilitation of historic properties. (1) (A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [~~twenty~~] twenty-five, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to [~~one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a) (2) of section 47 of the federal internal revenue code~~] twenty percent of the qualified rehabilitation expenditures with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed [~~five~~] seven million dollars in state fiscal year two thousand nineteen--two thousand twenty, nine million dollars in state fiscal year two thousand twenty--two thousand twenty-one and twelve million dollars in state fiscal year two thousand twenty-one--two thousand twenty-two. For taxable years beginning on or after January first, two thousand [~~twenty~~] twenty-five, 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 [~~amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code~~] qualified rehabilitation expenditures with respect to a certified historic structure located within the state; provided, however, the credit shall not exceed

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

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one hundred thousand dollars. For purposes of this subsection the term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account in connection with the certified rehabilitation of a qualified historic structure, and for property for which depreciation would be allowable under section 168 of the internal revenue code and which is (i) nonresidential real property, (ii) residential rental property, or (iii) an addition or improvement to nonresidential real property or residential rental property.

(B) If the taxpayer is a partner in a partnership or a shareholder of a New York S corporation, then the credit cap imposed in subparagraph (A) of this paragraph shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed the credit cap that is applicable in that taxable year.

(2) (A) Tax credits allowed pursuant to this subsection shall be allowed in the taxable year [~~that the qualified rehabilitation is placed in service under section 167 of the federal internal revenue code~~] in which the final certification step of the certified rehabilitation is completed as provided in subparagraph (C) of this paragraph.

(B) For purposes of this subsection the term "certified rehabilitation" means any rehabilitation of a certified historic structure which has been approved and certified as being consistent with the standards established by the commissioner of parks, recreation and historic preservation for rehabilitation by the office of parks, recreation and historic preservation, a local government certified pursuant to section 101(c)(1) of the national historic preservation act or a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law.

(C) A certified rehabilitation shall require:

(i) an initial certification that the structure meets the definition of the term "certified historic structure";

(ii) a second certification, to be issued prior to construction, certifying that the proposed rehabilitation work is consistent with standards established by the commissioner of parks, recreation and historic preservation for rehabilitation; and

(iii) a final certification issued when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed. Such final certification shall be acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures for purposes of the credit allowed under either subparagraph (A) or (B) of paragraph one of this subsection.

(D) For purposes of this subsection the term "qualified historic structure" means a certified historic structure located within New York state which has been substantially rehabilitated. A certified historic structure shall be considered substantially rehabilitated if the qualified rehabilitation expenditures in relation to such structure total five thousand dollars or more.

(E) For purposes of this subsection the term "certified historic structure" means any building and its structural components which:

(i) is listed in the state or national register of historic places, or

(ii) is located in a state or national registered historic district and is certified as being of historic significance in the district.

(3) [~~If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the internal~~

~~revenue code, a portion of the credit allowed under this subsection must be added back in the same taxable year and in the same proportion as the federal recapture~~] (A) If, before the end of the two-year period beginning on the date of the final certification referred to in subparagraph (C) of paragraph two of this subsection, the taxpayer disposes of such taxpayer's interest in a certified historic structure, or such certified historic structure otherwise ceases to be eligible for the credit allowed under this subsection, the taxpayer's tax imposed by this article for the taxable year in which such disposition 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 fraction, the numerator of which is equal to twenty-four less the number of months before the disposition or cessation of the structure occurred.

(4) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the [~~excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon~~] taxpayer may carry over and apply such excess to the tax imposed by this article in any of the succeeding five taxable years, the portion, as reduced from year to year, of the credit which exceeds such tax for the taxable year. The carryover period, for any taxpayer, shall not exceed five taxable years after the close of the taxable year in which the final certification step of the certified rehabilitation is completed as provided in subparagraph (C) of paragraph two of this subsection.

(5) To be eligible for the credit allowable under this subsection the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of [~~January~~] April first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau. If there is a change in the most recent five year estimate, a census tract that qualified for eligibility under this program before information about the change was released shall remain eligible for a credit under this subsection for an additional eighteen months.

(6) Nothing contained in this subsection shall be construed to impose a duty on a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law or a local government certified pursuant to section 101(c)(1) of the national historic preservation act to undertake any review or approval of an application for the certification of the rehabilitation of historic structures and of rehabilitation expenditures provided for in this subsection.

(7)(A)(i) Any taxpayer, eligible for the credit allowed pursuant to this subsection may transfer such credit, in whole or in part, to any individual or entity, without the requirement of transferring any ownership interest in the certified historic structure or any interest in the entity which owns the certified historic structure. Transferees are entitled to apply the credits against the tax with the same effect as if the transferee had incurred the qualified rehabilitation expenditures. Such credit may be transferred only on or after the final certification

step of the certified rehabilitation is completed as provided in subparagraph (C) of paragraph two of this subsection.

(ii) A transferee shall use such credit in the year it is transferred. If the credit allowable for any tax year exceeds the transferee's tax liability for that year, the transferee may carry forward and apply in a subsequent taxable year, the portion, as reduced from year to year, of the credit which exceeds such tax for the taxable year; provided, however, that the carryover period cannot exceed five taxable years after the close of the taxable year in which the final certification step of the certified rehabilitation is completed as provided in subparagraph (C) of paragraph two of this subsection.

(iii) The provisions of paragraph three of this subsection relating to the recapture of the credit allowed pursuant to this subsection shall also apply to the transfer of such credit as provided for in this paragraph.

(B) The commission, in consultation with the department, shall promulgate a form of transfer statement to be filed by the transferor of the credit allowed pursuant to this subsection. The transfer statement shall be in addition to the transfer contract provided in subparagraph (C) of this paragraph. Transfer statement forms may be obtained from the commission. The transferor shall file a transfer statement and a copy of the proposed transfer contract with the department prior to the transfer and shall further file with the department the executed transfer contract within thirty days after the completed transfer. The transfer statement shall provide the name and federal taxpayer identification number of each transferor and transferee. Further, such statement shall indicate the amount of the credit transferred to each transferee. The statement shall also contain such other information as the department or the commission may from time to time require.

(C) Any taxpayer transferring his or her credit allowed pursuant to this subsection shall enter into a transfer contract with the transferee. The transfer contract shall specify the following:

(i) a description and address for the certified historic structure or structures which qualified the taxpayer for such credit;

(ii) the date in which the final certification step of the certified rehabilitation is completed as provided in subparagraph (C) of paragraph two of this subsection;

(iii) the schedule of years during which the credit may be taken and the amount of credit previously taken for the certified historic structure including all previous transferees; and

(iv) the amount of credit being transferred.

(D) Any taxpayer who is a transferee of the credit allowed pursuant to this subsection may, provided all transfer and other requirements or limitations are met, apply such credit to the tax imposed under this article.

§ 2. Paragraph 2 of subsection (pp) of section 606 of the tax law, as added by chapter 547 of the laws of 2006, subparagraphs (A) and (B) as amended by section 1 of part V of chapter 59 of the laws of 2013, is amended to read as follows:

(2) (A) With respect to any particular residence of a taxpayer, the credit allowed under paragraph one of this subsection shall not exceed fifty thousand dollars for taxable years beginning on or after January first, two thousand ten and before January first, two thousand [~~twenty~~] twenty-five and twenty-five thousand dollars for taxable years beginning on or after January first, two thousand [~~twenty~~] twenty-five. In the case of a husband and wife, the amount of the credit shall be divided

between them equally or in such other manner as they may both elect. If a taxpayer incurs qualified rehabilitation expenditures in relation to more than one residence in the same year, the total amount of credit allowed under paragraph one of this subsection for all such expenditures shall not exceed fifty thousand dollars for taxable years beginning on or after January first, two thousand ten and before January first, two thousand [~~twenty~~] twenty-five and twenty-five thousand dollars for taxable years beginning on or after January first, two thousand [~~twenty~~] twenty-five.

(B) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [~~twenty~~] twenty-five, if the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, and the taxpayer's New York adjusted gross income for such year does not exceed sixty thousand dollars, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. If the taxpayer's New York adjusted gross income for such year exceeds sixty thousand dollars, the excess credit that may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. For taxable years beginning on or after January first, two thousand [~~twenty~~] twenty-five, if the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 3. Subdivision 26 of section 210-B of the tax law, as added by section 17 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

26. Credit for rehabilitation of historic properties. (a) Application of credit. (i) For taxable years beginning on or after January first, two thousand ten, and before January first, two thousand [~~twenty~~] twenty-five, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to [~~one hundred percent of the amount of credit allowed the taxpayer for the same taxable year with respect to a certified historic structure under subsection (c)(2) of section 47 of the internal revenue code~~] twenty percent of the qualified rehabilitation expenditures with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed [~~five~~] seven million dollars in state fiscal year two thousand nineteen--two thousand twenty, nine million dollars in state fiscal year two thousand twenty--two thousand twenty-one and twelve million dollars in state fiscal year two thousand twenty-one--two thousand twenty-two.

(ii) For taxable years beginning on or after January first, two thousand [~~twenty~~] twenty-five, 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 [~~amount of credit allowed the taxpayer for the same taxable year with respect to a certified historic structure under subsection (c)(3) of section 47 of the internal revenue code~~] qualified rehabilitation expenditures with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

[~~(B)~~] (b) If the taxpayer is a partner in a partnership or a shareholder in a New York S corporation, then the credit caps imposed in [~~subparagraph (A)~~] paragraph (a) of this [~~paragraph~~] subdivision shall be applied at the entity level, so that the aggregate credit allowed to

all the partners or shareholders of each such entity in the taxable year does not exceed the credit cap that is applicable in that taxable year.

[~~(b)~~] (c) Tax credits allowed pursuant to this subdivision shall be allowed in the taxable year [~~that the qualified rehabilitation is placed in service under section 167 of the federal internal revenue code~~] in which the final certification step of the certified rehabilitation is completed pursuant to subparagraph (C) of paragraph two of subsection (oo) of section six hundred six of this chapter.

[~~(c) If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection must be added back in the same taxable year and in the same proportion as the federal credit~~] (d)(i) If, before the end of the two-year period beginning on the date of the final certification referred to in paragraph (b) of this subdivision, the taxpayer disposes of such taxpayer's interest in a certified structure, or such certified historic structure otherwise ceases to be eligible for the credit allowed under this subdivision, the taxpayer's tax imposed by this article for the taxable year in which such disposition occurs shall be increased by the recapture portion of the credit allowed under this paragraph for all prior taxable years with respect to such rehabilitation.

(ii) For purposes of subparagraph (i) of this paragraph, the recapture portion shall be the product of the amount of credit claimed by the taxpayer multiplied by a fraction, the numerator of which is equal to twenty-four less the number of months before the disposition or cessation of the structure occurred.

[~~(d)~~] (e) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed 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, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be recredited 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.

[~~(e)~~] (f) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of January first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau.

§ 4. Paragraphs 1, 2 and 3 of subdivision (y) of section 1511 of the tax law, as added by chapter 472 of the laws of 2010, subparagraph (A) of paragraph 1 as amended by section 4 of part F of chapter 59 of the laws of 2013, are amended to read as follows:

(1) (A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [~~twenty~~] twenty-five, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to [~~one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of~~

~~section 47 of the federal internal revenue code~~] twenty percent of the qualified rehabilitation expenditures with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed [~~five~~] seven million dollars in state fiscal year two thousand nineteen--two thousand twenty, nine million dollars in state fiscal year two thousand twenty--two thousand twenty-one and twelve million dollars in state fiscal year two thousand twenty-one--two thousand twenty-two. For taxable years beginning on or after January first, two thousand [~~twenty~~] twenty-five, 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 [~~amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code~~] qualified rehabilitation expenditure with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(B) If the taxpayer is a partner in a partnership, then the cap imposed in subparagraph (A) of this paragraph shall be applied at the entity level, so that the aggregate credit allowed to all the partners of such partnership in the taxable year does not exceed the credit cap that is applicable in that taxable year.

(2) Tax credits allowed pursuant to this subsection shall be allowed in the taxable year [~~that the qualified rehabilitation is placed in service under section 167 of the federal internal revenue code~~] in which the final certification step of the certified rehabilitation is completed pursuant to subparagraph (C) of paragraph two of subsection (oo) of section six hundred six of this chapter.

(3) [~~If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection in the taxable year the credit was claimed must be added back in the same taxable year and in the same proportion as the federal recapture~~] (A) If, before the end of the two-year period beginning on the date of the final certification referred to in paragraph two of this subdivision, the taxpayer disposes of such taxpayer's interest in a certified structure, or such certified historic structure otherwise ceases to be eligible for the credit allowed under this subdivision, the taxpayer's tax imposed by this article for the taxable year in which such disposition occurs shall be increased by the recapture portion of the credit allowed under this paragraph 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 fraction, the numerator of which is equal to twenty-four less the number of months before the disposition or cessation of the structure occurred.

§ 5. Subdivision 6 of section 13.15 of the parks, recreation and historic preservation law, as added by chapter 547 of the laws of 2006, is amended to read as follows:

6. The office may establish a fee or fees for its processing and review of applications for the certification of the rehabilitation of historic buildings and the approval of rehabilitation expenditures and related work pursuant to [~~subsection~~] subsections (oo) and (pp) of section six hundred six of the tax law. All revenues from these fees shall be deposited by the comptroller in the miscellaneous special

revenue fund to be credited to the agency's patron services account and shall be used to support the office's historic preservation program. Nothing in this subdivision shall be construed to limit the ability of a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law or a local government certified pursuant to section 101(c)(1) of the national historic preservation act to establish and charge fees for its processing and review of applications for the certification of the rehabilitation of historic buildings and the approval of rehabilitation expenditures.

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