

# STATE OF NEW YORK

6679--A

2017-2018 Regular Sessions

## IN ASSEMBLY

March 15, 2017

Introduced by M. of A. CRESPO -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Small business electric energy tax credit. (a) A taxpayer that is eligible under the limitations specified in paragraph (b) of this subdivision shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to the product of two cents per kilowatt hour for all business related electricity usage at the taxpayer's primary business location up to a one thousand dollar limit during the taxable year.

(b) An eligible taxpayer shall (i) have no more than nineteen full time equivalent employees in New York state, including any related members or affiliates, (ii) not be a sole-proprietorship if such sole-proprietor's primary business location is sited in or part of such sole-proprietor's place of residence, (iii) not be certified pursuant to article eighteen-B of the general municipal law, and (iv) not be receiving any allocation or award pursuant to any program authorized under article six of the economic development law.

(c) (i) The term "business related electricity usage" shall refer to electrical power usage used to further the economic activity of the taxpayer at the primary business location that is clearly delimited from any shared electrical power usage cost. (ii) The term "primary business 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) The credit allowed under this subdivision for any taxable year  
15 shall not reduce the tax due for such year to less than the higher of  
16 the amounts prescribed in paragraph (d) of subdivision one of section  
17 two hundred ten of this article. However, if the amount of credit  
18 allowed under this subdivision for any taxable year reduces the tax to  
19 such amount, any amount of credit not deductible in such taxable year  
20 shall be treated as an overpayment of tax to be credited or refunded in  
21 accordance with the provisions of section one thousand eighty-six of  
22 this chapter. Provided, however, the provisions of subsection (c) of  
23 section one thousand eighty-eight of this chapter notwithstanding, no  
24 interest shall be paid thereon.

25 § 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 up to a one thousand dollar limit during  
34 the taxable year.

35 (2) An eligible taxpayer shall (i) have no more than nineteen full  
36 time equivalent employees in New York state, including any related  
37 members or affiliates, (ii) shall not be a sole-proprietorship if such  
38 sole-proprietor's primary business location is sited in or part of such  
39 sole-proprietor's place of residence, (iii) not be certified pursuant to  
40 article eighteen-B of the general municipal law, and (iv) not be receiv-  
41 ing any allocation or award pursuant to any program authorized under  
42 article six of the economic development law.

43 (3) (i) The term "business related electricity usage" shall refer to  
44 electrical power usage used to further the economic activity of the  
45 taxpayer at the primary business location that is clearly delimited from  
46 any shared electrical power usage cost. (ii) The term "primary business  
47 location" shall mean the physical site of the taxpayer within the state  
48 of New York where the majority of the taxpayer's economic activity is  
49 generated or coordinated through. (iii) The term "related members" shall  
50 have the same meaning as set forth in clauses (A) and (B) of subpara-  
51 graph one of paragraph (o) of subdivision nine of section two hundred  
52 eight of this chapter, and the term "affiliates" shall mean those corpo-  
53 rations that are members of the same affiliated group (as defined in  
54 section fifteen hundred four of the internal revenue code) as the  
55 taxpayer.

1     (4) The eligible usage level shall be the total kilowatt hour usage of  
2     the taxpayer for business related electricity usage during the taxpay-  
3     er's taxable year as verified through bills or other form of usage chart  
4     provided to the taxpayer by the taxpayer's electricity power service  
5     provider.

6     (5) If the amount of credit allowed under this subsection for any  
7     taxable year shall exceed the taxpayer's tax for such year, the excess  
8     shall be treated as an overpayment of tax to be credited or refunded in  
9     accordance with the provisions of section six hundred eighty-six of this  
10    article, provided, however, that no interest shall be paid thereon.

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

14 <u>(xliv) Small business electric</u>	<u>Qualifying electricity usage</u>
15 <u>energy tax credit</u>	<u>under subdivision fifty-three</u>
16 <u>under subsection (ccc)</u>	<u>of section two hundred ten-B</u>

17    § 4. This act shall take effect on the first of January next succeed-  
18    ing the date on which it shall have become a law.