

# STATE OF NEW YORK

3511--A

2017-2018 Regular Sessions

## IN SENATE

January 23, 2017

Introduced by Sens. RANZENHOFER, DeFRANCISCO, FELDER, FUNKE, GOLDEN, LARKIN, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- 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:

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

3 53. Small business electric energy tax credit. (a) A taxpayer that is  
4 eligible under the limitations specified in paragraph (b) of this subdivi-  
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 up to a one thousand dollar  
9 limit during the taxable year.

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

18 (c) (i) The term "business related electricity usage" shall refer to  
19 electrical power usage used to further the economic activity of the  
20 taxpayer at the primary business location that is clearly delimited from

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

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1 any shared electrical power usage cost. (ii) The term "primary business  
2 location" shall mean the physical site of the taxpayer within the state  
3 of New York where the majority of the taxpayer's economic activity is  
4 generated or coordinated through. (iii) The term "related members"  
5 shall have the same meaning as set forth in clauses (A) and (B) of  
6 subparagraph one of paragraph (o) of subdivision nine of section two  
7 hundred eight of this article, and the term "affiliates" shall mean  
8 those corporations that are members of the same affiliated group (as  
9 defined in section fifteen hundred four of the internal revenue code) as  
10 the taxpayer.

11 (d) The eligible usage level shall be the total kilowatt hour usage of  
12 the taxpayer for business related electricity usage during the taxpay-  
13 er's taxable year as verified through bills or other form of usage chart  
14 provided to the taxpayer by the taxpayer's electricity power service  
15 provider.

16 (e) The credit allowed under this subdivision for any taxable year  
17 shall not reduce the tax due for such year to less than the higher of  
18 the amounts prescribed in paragraph (d) of subdivision one of section  
19 two hundred ten of this article. However, if the amount of credit  
20 allowed under this subdivision for any taxable year reduces the tax to  
21 such amount, any amount of credit not deductible in such taxable year  
22 shall be treated as an overpayment of tax to be credited or refunded in  
23 accordance with the provisions of section one thousand eighty-six of  
24 this chapter. Provided, however, the provisions of subsection (c) of  
25 section one thousand eighty-eight of this chapter notwithstanding, no  
26 interest shall be paid thereon.

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

29 (ccc) Small business electric energy tax credit. (1) A taxpayer that  
30 is eligible under the limitations specified in paragraph two of this  
31 subsection shall be allowed a credit against the tax imposed by this  
32 article. The amount of the credit shall be equal to the product (or pro  
33 rata share of the product in the case of a partnership) of two cents per  
34 kilowatt hour for all business related electricity usage at the taxpay-  
35 er's primary business location up to a one thousand dollar limit during  
36 the taxable year.

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

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

1 section fifteen hundred four of the internal revenue code) as the  
2 taxpayer.

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

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

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

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

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