

STATE OF NEW YORK

7648--A

IN SENATE

February 2, 2018

Introduced by Sens. VALESKY, KENNEDY, O'MARA, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 3 and 5 as amended by section 1 of part RR of chapter 59 of the laws of 2018, paragraph 4 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-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 internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47,~~ 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 million dollars. For taxable years beginning on or after January first, two thousand 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 internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five year~~

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

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~~period as required by subsection (a) of such section 47,~~ 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. 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, as added by chapter five hundred thirteen of the laws of nineteen hundred sixty-eight, 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 taxpayer is allowed a credit pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subsection and that credit pursuant to such section 47 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 or transferee 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. Only the taxpayer that initially received the credit, and no subsequent good faith transferee, shall be responsible in the event of a recapture, reduction, disallowance, or other failure related to such credit.

(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.

(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 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~~ subsection before information about the change was released ~~will~~ shall remain eligible for a credit under this subsection for an additional ~~[two calendar years]~~ 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, as added by chapter five hundred thirteen of the laws of nineteen hundred sixty-eight, 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

1 entitled to apply the credits against the tax with the same effect as if
2 the transferee had incurred the qualified rehabilitation expenditures.
3 Such credit may be transferred only on or after the final certification
4 step of the certified rehabilitation is completed as provided in subpar-
5 agraph (C) of paragraph two of this subsection.

6 (ii) A transferee shall use such credit in the year it is transferred.
7 A transferee may subsequently transfer such credit, however, in no case,
8 may a credit be transferred more than one time after the initial trans-
9 fer. A secondary transferee shall use such credit in the year it is
10 transferred to the secondary transferee. If the credit allowable for any
11 tax year exceeds the transferee's tax liability for that year, the
12 transferee may carry forward and apply in a subsequent taxable year, the
13 portion, as reduced from year to year, of the credit which exceeds such
14 tax for the taxable year; provided, however, that the carryover period
15 cannot exceed five taxable years after the close of the taxable year in
16 which the final certification step of the certified rehabilitation is
17 completed as provided in subparagraph (C) of paragraph two of this
18 subsection.

19 (iii) The provisions of paragraph three of this subsection relating to
20 the recapture of the credit allowed pursuant to this subsection shall
21 not apply to the transfer of such credit as provided for in this para-
22 graph.

23 (B) The commissioner of parks, recreation and historic preservation,
24 in consultation with the department, shall promulgate a form of transfer
25 statement to be filed by the transferor of the credit allowed pursuant
26 to this subsection. The transfer statement shall be in addition to the
27 transfer contract provided in subparagraph (C) of this paragraph. Trans-
28 fer statement forms may be obtained from the commissioner. The transfe-
29 ror shall file a transfer statement and a copy of the proposed transfer
30 contract with the department prior to the transfer and shall further
31 file with the department the executed transfer contract within thirty
32 days after the completed transfer. The transfer statement shall provide
33 the name and federal taxpayer identification number of each transferor
34 and transferee. Further, such statement shall indicate the amount of the
35 credit transferred to each transferee. The statement shall also contain
36 such other information as the department or the commission may from time
37 to time require.

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

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

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

46 (iii) the schedule of years during which the credit may be taken and
47 the amount of credit previously taken for the certified historic struc-
48 ture including all previous transferees; and

49 (iv) the amount of credit being transferred.

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

54 § 2. Subdivision 26 of section 210-B of the tax law, as added by
55 section 17 of part A of chapter 59 of the laws of 2014, paragraphs (a),

(c) and (e) as amended by section 2 of part RR of chapter 59 of the laws of 2018, 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-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 internal revenue code section 47(e)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47,~~ 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 million dollars.

(ii) For taxable years beginning on or after January first, two thousand 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 determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of section 47 of the internal revenue code,~~ qualified rehabilitation expenditures with respect to a certified historic structure under subsection (c)(3) of section 47 of the internal revenue code 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 taxpayer is allowed a credit pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subdivision and that credit pursuant to such section 47 is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subdivision 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 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 will remain eligible for a credit under this subdivision for an additional two calendar years.

§ 3. 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 and paragraph 3 as amended by section 3 of part RR of chapter 59 of the laws of 2018, 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-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 internal revenue code section 47(e)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47]~~ 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 million dollars. For taxable years beginning on or after January first, two thousand 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 internal revenue code section 47(e)(3), determined without regard to ratably allocating the credit over a five year period as required by subsection (a) of such section 47]~~ 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 taxpayer is allowed a credit pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation that is also the subject of the credit allowed by this subdivision and that credit pursuant to such section 47 is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subdivision 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.

§ 4. 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, as added by chapter five hundred thirteen of the laws of nineteen hundred sixty-eight, 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.

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