

# STATE OF NEW YORK

7702

## IN SENATE

February 10, 2020

Introduced by Sens. KENNEDY, KAPLAN -- read twice and ordered printed,  
and when printed to be committed to the Committee on Budget and Revenue

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 55 to read as follows:

3 55. 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.

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

17 (c) (i) The term "business related electricity usage" shall refer to  
18 electrical power usage used to further the economic activity of the  
19 taxpayer at the primary business location that is clearly delimited from  
20 any shared electrical power usage cost. (ii) The term "primary business  
21 location" shall mean the physical site of the taxpayer within the state  
22 of New York where the majority of the taxpayer's economic activity is  
23 generated or coordinated through. (iii) The term "related members"  
24 shall have the same meaning as set forth in clauses (A) and (B) of  
25 subparagraph one of paragraph (o) of subdivision nine of section two  
26 hundred eight of this article, and the term "affiliates" shall mean  
27 those corporations that are members of the same affiliated group (as

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

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

3 (d) 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 (e) In no event shall the credit provided for in this subdivision be  
9 allowed in an amount which will reduce the tax payable to less than the  
10 fixed dollar minimum amount prescribed in paragraph (d) of subdivision  
11 one of section two hundred ten of this article. However, if the amount  
12 of credit allowed under this subdivision for any taxable year reduces  
13 the tax to such amount, any amount of credit not deductible in such  
14 taxable year shall be treated as an overpayment of tax to be credited or  
15 refunded in accordance with the provisions of section ten hundred eight-  
16 y-six of this chapter. Provided, however, the provisions of subsection  
17 (c) of section ten hundred eighty-eight of this chapter notwithstanding,  
18 no interest shall be paid thereon.

19 § 2. Section 606 of the tax law is amended by adding a new subsection  
20 (kkk) to read as follows:

21 (kkk) Small business electric energy tax credit. (1) A taxpayer that  
22 is eligible under the limitations specified in paragraph two of this  
23 subsection shall be allowed a credit against the tax imposed by this  
24 article. The amount of the credit shall be equal to the product (or pro  
25 rata share of the product in the case of a partnership) of two cents per  
26 kilowatt hour for all business related electricity usage at the taxpay-  
27 er's primary business location.

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

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

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

54 (5) If the amount of credit allowed under this subsection for any  
55 taxable year shall exceed the taxpayer's tax for such year, the excess  
56 shall be treated as an overpayment of tax to be credited or refunded in

1 accordance with the provisions of section six hundred eighty-six of this  
2 article, provided, however, that no interest shall be paid thereon.

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

6 <u>(xlvi) Small business electric</u>	<u>Qualifying electricity usage</u>
7 <u>energy tax credit</u>	<u>under subdivision fifty-five</u>
8 <u>under subsection (kkk)</u>	<u>of section two hundred ten-B</u>

9 § 4. This act shall take effect immediately and shall apply to taxable  
10 years beginning on or after January 1, 2019.