

STATE OF NEW YORK

5625

2021-2022 Regular Sessions

IN SENATE

March 12, 2021

Introduced by Sen. MARTUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

AN ACT to amend the state technology law and the tax law, in relation to a refundable tax credit provided to broadband deployment to residences and small businesses located in rural, unserved areas

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

1 Section 1. This act shall be known and may be cited as the "credit for
2 rural broadband act of 2021".

3 § 2. Section 104 of the state technology law is amended by adding a
4 new subdivision 3 to read as follows:

5 3. The office of information technology services, in conjunction with
6 input from the advisory council, is hereby authorized and directed to
7 promulgate rules and regulations necessary for verifying an "unserved"
8 area under the credit for rural broadband act of two thousand twenty-
9 one, using broadband mapping data at the time a project is proposed.

10 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
11 sion 55 to read as follows:

12 55. Credit for rural broadband deployment. (a) Allowance of credit.
13 A qualified taxpayer shall be allowed a credit against the tax imposed
14 by this article equal to any qualified customer contribution in aid of
15 construction resulting from new network construction to deliver broad-
16 band service to the individual's residence or place of business located
17 in an unserved area. The credit allowed by this subdivision shall be
18 claimed annually over a five-year period equal to one-fifth of the cred-
19 it amount. If the credit allowed under this subdivision is greater than
20 the tax due in any taxable year, the amount by which such credit exceeds
21 such tax due is treated as an overpayment of tax to be refunded in
22 accordance with the provisions of section one thousand eighty-six of
23 this chapter.

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

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1 (b) For purposes of this subdivision, the following definitions shall
2 apply:

3 (1) "Qualified construction expenses" equal the total cost of
4 construction of new networks in the proposed unserved service area, as
5 certified by the broadband service provider, but not to exceed a reason-
6 able cost based upon the average cost per mile of broadband network
7 construction as determined by the commissioner in consultation with the
8 public service commission and broadband service providers.

9 (2) "Qualified customer contribution in aid of construction" is deter-
10 mined in accordance with the following formula: $(QCE/TC) - (ACM/35) =$
11 QC, where QCE equals the qualified construction expenses; ACM equals the
12 average cost of construction per mile in the proposed unserved service
13 area, as certified by the broadband service provider, but not to exceed
14 a reasonable cost based upon the average cost per mile of broadband
15 network construction as determined by the commissioner in consultation
16 with the public service commission and broadband service providers; TC
17 equals the number of residents and small business customers in the
18 proposed unserved service area making a qualified customer contribution
19 in aid to construction and contracting for services over the network;
20 and QC equals the qualified customer contribution in aid of
21 construction.

22 (3) "Required provider contribution in aid to construction" shall
23 equal the qualified construction expenses, less the sum of all the qual-
24 ified customer contributions in aid to construction in the proposed
25 unserved service area.

26 (4) "Broadband service" means Internet access service with trans-
27 mission speeds that are equal to or greater than combined advertised
28 download speeds of at least 4 Megabits per second (Mbps) and upload
29 speeds of at least 1 Mbps per second over the provider's network.

30 (5) "Unserved area" means an area composed of one or more contiguous
31 census blocks where at least ninety percent of households lack access to
32 facilities-based terrestrial broadband service. A household has access
33 to a broadband service if the household can readily subscribe to that
34 service upon request.

35 (6) "Qualified taxpayer" means a taxpayer which is a small business
36 corporation as defined in paragraph three of subsection (c) of section
37 twelve hundred forty-four of the internal revenue code (without regard
38 to the second sentence of subparagraph (A) thereof) as of the last day
39 of the taxable year.

40 § 4. Section 606 of the tax law is amended by adding a new subsection
41 (kkk) to read as follows:

42 (kkk) Credit for rural broadband deployment. (A) Allowance of credit.
43 A qualified taxpayer shall be allowed a credit against the tax imposed
44 by this article equal to any qualified customer contribution in aid of
45 construction resulting from new network construction to deliver broad-
46 band service to the individual's residence or place of business located
47 in an unserved area. The credit allowed by this subsection shall be
48 claimed annually over a five-year period equal to one-fifth of the cred-
49 it amount. If the credit allowed under this subsection is greater than
50 the tax due in any taxable year, the amount by which such credit exceeds
51 such tax due is treated as an overpayment of tax to be refunded in
52 accordance with the provisions of section one thousand eighty-six of
53 this chapter.

54 (B) For purposes of this subsection, the following definitions shall
55 apply:

1 (1) "Qualified construction expenses" equal the total cost of
2 construction of new networks in the proposed unserved service area, as
3 certified by the broadband service provider, but not to exceed a reason-
4 able cost based upon the average cost per mile of broadband network
5 construction as determined by the commissioner in consultation with the
6 public service commission and broadband service providers.

7 (2) "Qualified customer contribution in aid of construction" is deter-
8 mined in accordance with the following formula: $(QCE/TC) - (ACM/35) =$
9 QC, where QCE equals the qualified construction expenses; ACM equals the
10 average cost of construction per mile in the proposed unserved service
11 area, as certified by the broadband service provider, but not to exceed
12 a reasonable cost based upon the average cost per mile of broadband
13 network construction as determined by the commissioner in consultation
14 with the public service commission and broadband service providers; TC
15 equals the number of residents and small business customers in the
16 proposed unserved service area making a qualified customer contribution
17 in aid to construction and contracting for services over the network;
18 and QC equals the qualified customer contribution in aid of
19 construction.

20 (3) "Required provider contribution in aid to construction" shall
21 equal the qualified construction expenses, less the sum of all the qual-
22 ified customer contributions in aid to construction in the proposed
23 unserved service area.

24 (4) "Broadband service" means Internet access service with trans-
25 mission speeds that are equal to or greater than combined advertised
26 download speeds of at least 4 Megabits per second (Mbps) and upload
27 speeds of at least 1 Mbps per second over the provider's network.

28 (5) "Unserved area" means an area composed of one or more contiguous
29 census blocks where at least ninety percent of households lack access to
30 facilities-based terrestrial broadband service. A household has access
31 to a broadband service if the household can readily subscribe to that
32 service upon request.

33 (6) "Qualified taxpayer" means any individual with New York adjusted
34 gross income of two hundred fifty thousand dollars or less.

35 § 5. This act shall take effect immediately and shall apply to tax
36 years beginning on or after January 1, 2022.