

# STATE OF NEW YORK

5250

2021-2022 Regular Sessions

## IN ASSEMBLY

February 12, 2021

Introduced by M. of A. GUNTHER, LUPARDO, COLTON, CUSICK, ZEBROWSKI, PEOPLES-STOKES, AUBRY, PERRY, BRABENEC -- Multi-Sponsored by -- M. of A. COOK, DAVILA, GOODELL, J. RIVERA -- read once and referred to the Committee on Ways and Means

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"

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

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1 shall have the same meaning as set forth in clauses (A) and (B) of  
2 subparagraph one of paragraph (o) of subdivision nine of section two  
3 hundred eight of this article, and the term "affiliates" shall mean  
4 those corporations that are members of the same affiliated group (as  
5 defined in section fifteen hundred four of the internal revenue code) as  
6 the taxpayer.

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

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

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

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

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

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

53 (4) The eligible usage level shall be the total kilowatt hour usage of  
54 the taxpayer for business related electricity usage during the taxpay-  
55 er's taxable year as verified through bills or other form of usage chart

1 provided to the taxpayer by the taxpayer's electricity power service  
2 provider.

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

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

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

14 § 4. This act shall take effect immediately and shall apply to taxable  
15 years beginning on or after January 1, 2021.