

# STATE OF NEW YORK

1203

2021-2022 Regular Sessions

## IN SENATE

January 8, 2021

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the public housing law and the tax law, in relation to enacting the COVID-19 housing tax credit act

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "COVID-19 housing tax credit act".

3 § 2. The public housing law is amended by adding a new article 2-B to  
4 read as follows:

### ARTICLE 2-B

#### TAX CREDITS FOR RENTAL LOSSES DURING THE COVID-19 PANDEMIC

##### Section 26. Definitions.

8 27. Allowance of credit, application for credit, amount and  
9 limitations.

10 28. Credit monitoring.

11 29. Regulations.

12 § 26. Definitions. As used in this article, the following terms shall  
13 have the following definitions:

14 1. "Fair market rent" shall mean the fair market rent for each rental  
15 area as promulgated annually by the United States department of housing  
16 and urban development's office of policy development and research pursu-  
17 ant to 42 USC 1437f, as amended from time to time.

18 2. "Lease" shall mean a written agreement between an owner and a  
19 tenant for the leasing of a dwelling unit to the tenant. The lease  
20 establishes the conditions for occupancy of the dwelling unit by an  
21 individual or family.

22 3. "Owner" shall mean any private person or any entity, including a  
23 cooperative, having the legal right to lease or sublease dwelling units.

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

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1 4. "Tenant" means a person occupying or entitled to occupy a residen-  
2 tial rental premises who is either a party to the lease or rental agree-  
3 ment for such premises or is a statutory tenant pursuant to the emergen-  
4 cy housing rent control law or the New York city rent and rehabilitation  
5 law or article seven-C of the multiple dwelling law.

6 5. "Eligibility statement" means a statement issued by the commission-  
7 er certifying that a building is an eligible building.

8 6. "Eligible building" means a building approved by the commissioner  
9 as eligible to receive credits under this article.

10 7. "State of emergency" shall mean the state disaster emergency for  
11 the entire state of New York declared in executive order two hundred  
12 two, beginning on March seventh, two thousand twenty and extending  
13 through September seventh, two thousand twenty, as well as any addi-  
14 tional time during which such state disaster emergency is in effect,  
15 should the governor extend it beyond September seventh, two thousand  
16 twenty.

17 8. "Adjusted income" shall mean income minus any deductions allowable  
18 at the discretion of the commissioner pursuant to this article. The  
19 calculation of income performed at the time of application shall consid-  
20 er only income that the household is currently receiving at such time  
21 and any income recently terminated shall not be included. The calcu-  
22 lation of income performed with respect to households receiving assist-  
23 ance for arrearages shall consider only the income that the household  
24 was receiving at the time such arrearages were incurred.

25 9. (a) "Family" shall mean a group of persons living in the same  
26 household who:

27 (i) are related by birth, marriage or adoption. This group includes,  
28 but is not limited to a family with or without children (a child who is  
29 temporarily away from the home because of placement in foster care is  
30 considered a member of the family), an elderly family, a near-elderly  
31 family, a disabled family, a displaced family, or the remaining member  
32 of a tenant family; or

33 (ii) are two or more individuals who are not related by blood,  
34 marriage, adoption, or other operation of law, but who can demonstrate  
35 that they have lived together previously and certify that each individ-  
36 ual's income and other resources will be available to meet the needs of  
37 the family.

38 (b) The commissioner shall have the discretion to determine if any  
39 other group of persons qualifies as a family.

40 10. "Manufactured home" shall have the same meaning as defined in  
41 section two hundred thirty-three of the real property law.

42 11. "Manufactured home tenant" shall have the same meaning as defined  
43 in section two hundred thirty-three of the real property law.

44 § 27. Allowance of credit, application for credit, amount and limita-  
45 tions. 1. Allowance of credit. A taxpayer subject to tax under article  
46 nine-A, twenty-two, or thirty-three of the tax law which owns an inter-  
47 est in one or more potential eligible buildings, or a transferee of such  
48 a taxpayer as described in subdivision six of this section, shall be  
49 allowed a credit against such tax for the amount of credit allocated by  
50 the commissioner to each such potential eligible building. Except as  
51 provided in subdivision two of this section, the credit amount so allo-  
52 cated shall be allowed as a credit against the tax for the ten taxable  
53 years in the credit period beginning in and after tax year two thousand  
54 twenty-five.

55 2. Amount of credit. (a) Except as provided in subdivisions three and  
56 four of this section, the amount of credit shall be the difference

1 between the cumulative amount of rents owed on a monthly basis pursuant  
2 to the leases covering each occupied dwelling unit minus the tenant's  
3 rental obligation, for those months during the state of emergency.  
4 Credits shall be reduced by any amount of rent payments made by a tenant  
5 above their rental obligation under this article.

6 (b) Notwithstanding paragraph (a) of this subdivision, if a lease has  
7 as its rent an amount that exceeds two hundred fifty percent of fair  
8 market rent for the rental area, the collectible rent for the dwelling  
9 unit subject to the lease shall be deemed to be two hundred fifty  
10 percent of the fair market rent for the rental area.

11 (c) (i) The commissioner shall receive applications for credit. The  
12 application for credit by the owner or owners of the rental property  
13 shall include the amount of the credit requested, which shall be based  
14 upon the cumulative monthly rent owed by tenants pursuant to the leases  
15 covering each occupied dwelling during each month of the state of emer-  
16 gency, and the actual monthly rent collected during each respective  
17 month of the state of emergency, to be allocated by the commissioner to  
18 the potential eligible building. The application shall also include the  
19 tenant's name and mailing address for each unit for which credit is  
20 sought. The applicant has the burden of providing sufficient proof to  
21 the commissioner for review and determination. The application shall  
22 contain sufficient information to identify each such building and the  
23 taxpayer or taxpayers with respect to each such building, and such other  
24 information as the commissioner, in consultation with the commissioner  
25 of taxation and finance, shall prescribe. The commissioner shall devel-  
26 op procedures for verifying the tenant's income and determining the  
27 tenant's rental obligation for the tax credit benefit period.

28 (ii) While the application is pending, the applicant may not commence  
29 a proceeding to recover possession of the property for the non-payment  
30 of rent which is the subject of the application.

31 (iii) Subject to the availability of credits, the amount of the credit  
32 available to the potential eligible building shall be the actual differ-  
33 ence between the monthly lease amounts for occupied units minus the  
34 tenant's rental obligation and the actual amount of monthly rent  
35 collected, as determined by the commissioner. Upon approval of the cred-  
36 it to an owner, the owner shall release the occupants of the unit or  
37 building from any liability for the non-payment of rent that is the  
38 subject of the credit.

39 (iv) Owners shall not be eligible for credit (1) if such owner has  
40 received property tax relief, rental voucher assistance, or any other  
41 federal, state or locally funded benefit intended to pay, abate or  
42 compensate the owner for eligible unpaid rent, (2) if the owner has  
43 commenced a proceeding to recover possession of the property for the  
44 non-payment of rent which is the subject of the application, or (3)  
45 another owner, co-owner or applicant has applied for tax credits for the  
46 unpaid rent of the same units.

47 3. Tenant rental obligation. (a) The monthly rental obligation of each  
48 tenant for which credit is sought shall be thirty percent of the monthly  
49 adjusted income of such tenant.

50 (b) If a tenant shares a dwelling or manufactured home with one or  
51 more individuals who are not part of their family or household, the  
52 monthly rental obligation of the tenant shall be calculated using the  
53 portion of the tenant's rent for which they are responsible rather than  
54 the entire rent for the shared dwelling unit or manufactured home.

1 (c) Each family shall identify the individuals to be included in the  
2 family at the time of application, and shall update such information if  
3 the family's composition changes.

4 4. Verification of income and assets. (a) The commissioner shall  
5 establish procedures that are appropriate and necessary to assure that  
6 data regarding income, and assets to the extent necessary to determine  
7 eligibility, provided by tenants under this article is complete and  
8 accurate. Acceptable methods of verification shall include, but are not  
9 limited to, paycheck stubs, earning statements, tax records, W-2 forms,  
10 written statements from a former or current employer, telephone or  
11 in-person contact with a former or current employer, notarized state-  
12 ments or affidavits signed by the applicant, or other methods approved  
13 by the commissioner.

14 5. Statewide limitation. (a) The aggregate dollar amount of credit  
15 which the commissioner may allocate to eligible buildings under this  
16 article shall be one billion dollars.

17 (b) An eligible building shall be limited to a credit amount equal to  
18 the difference between the cumulative monthly rent amount pursuant to  
19 the leases in effect on March first, two thousand twenty minus the  
20 tenant's rental obligation and the actual monthly rent amount collected  
21 for the months during the state of emergency. The taxpayer shall prove,  
22 to the satisfaction of the commissioner, the amount of rent due.

23 (c) The amount of the tax credit payment with respect to any dwelling  
24 unit or manufactured home tenant shall be the difference between the  
25 monthly contractual or statutory rent the owner is to receive for the  
26 unit or home and thirty percent of the tenant's monthly adjusted income.

27 (d) Notwithstanding paragraph (b) of this subdivision, the maximum  
28 monthly tax credit for each tenant shall be the difference between the  
29 rental obligation established in this section and two hundred fifty  
30 percent of the fair market rent for the rental area.

31 6. Building Prioritization. The commissioner shall prioritize applica-  
32 tions for buildings based on the amount of credit requested in compar-  
33 ison to the cumulative amount of rents owed on a monthly basis pursuant  
34 to the leases covering all occupied dwelling units during the respective  
35 months of the state of emergency. Buildings in which the amount of cred-  
36 it requested exceeds seventy-five percent of the cumulative amount of  
37 rents owed shall be highest priority, followed by buildings in which the  
38 amount exceeds fifty percent but is below seventy-five percent, followed  
39 by buildings in which the amount exceeds twenty-five percent but does  
40 not exceed fifty percent, and then any other applications. The commis-  
41 sioner shall also prioritize applications for buildings with low-income  
42 housing regulatory agreements or where fifty percent of the units are at  
43 or below the fair market rent.

44 7. Transfer of credit. (a) A taxpayer allowed a credit pursuant to  
45 this article may transfer the credit, in whole or in part, to another  
46 person or entity, who shall be referred to as the transferee. Transfer-  
47 ees shall be entitled to apply transferred credit to a tax imposed under  
48 article nine-A, twenty-two or thirty-three of the tax law, provided all  
49 requirements for claiming the credit are met. A transferee may not  
50 transfer any credit, or portion thereof, acquired by transfer.

51 (b) A taxpayer allowed a credit pursuant to this article must enter  
52 into a transfer contract with the transferee. The transfer contract must  
53 specify (i) the building address and any other location identification  
54 information; (ii) the schedule of years for which the transfer credit  
55 may be claimed and the amount of credit previously claimed; (iii) the

1 amount of consideration received by the taxpayer for the transfer cred-  
2 it; and (iv) the amount of credit being transferred.

3 (c) No transfer shall be effective unless the taxpayer allowed a cred-  
4 it pursuant to this article and seeking to transfer the credit files a  
5 transfer statement with the commissioner prior to the transfer and the  
6 commissioner approves such transfer. The transfer statement shall  
7 provide the name and federal identification numbers of the filing  
8 transferor and the taxpayer to whom the filing transferor transferred  
9 the credit, and the amount of credit transferred to each such person or  
10 entity. A copy of the transfer contract shall be attached to the trans-  
11 fer statement. The statement shall also contain such other information  
12 as the commissioner may require. After reviewing the transfer contract  
13 and the transfer statement, the commissioner shall approve or deny the  
14 transfer as provided in this subdivision. If the commissioner approves  
15 the transfer, the commissioner shall issue an approval statement that  
16 provides the name of the transferor and transferee, the amount of credit  
17 being transferred and such other information as the commissioner and the  
18 commissioner of taxation and finance deem necessary. A copy of the  
19 commissioner's approval statement must be attached to the transferee's  
20 tax return. If the commissioner denies the transfer, the commissioner  
21 shall provide the taxpayer a written determination for such denial. The  
22 commissioner, in consultation with the commissioner of taxation and  
23 finance, may establish such other procedures and standards deemed neces-  
24 sary for the transferability of the rental losses credit.

25 (d) The commissioner shall forward copies of all transfer statements  
26 and attachments thereto and approval statements to the department of  
27 taxation and finance within thirty days after the transfer is approved  
28 by the commissioner.

29 § 28. Credit monitoring. The commissioner shall establish such proce-  
30 dures deemed necessary for monitoring compliance of an eligible building  
31 with the provisions of this article, and for notifying the commissioner  
32 of taxation and finance of any such noncompliance.

33 § 29. Regulations. The commissioner shall promulgate any rules and  
34 regulations necessary to administer the provisions of this article.

35 § 3. The tax law is amended by adding a new section 45 to read as  
36 follows:

37 § 45. COVID-19 housing tax credit. (a) Allowance of credit. A taxpayer  
38 subject to tax under article nine-A, twenty-two or thirty-three of this  
39 chapter shall be allowed a credit against such tax, pursuant to the  
40 provisions referenced in subdivision (b) of this section, with respect  
41 to rental losses during the COVID-19 pandemic for which an eligibility  
42 statement has been issued by the commissioner of the division of housing  
43 and community renewal. The amount of such credit shall be the credit  
44 amount allocated by such commissioner as provided in article two-B of  
45 the public housing law. The credit amount shall be allowed for each of  
46 the ten taxable years in the credit period beginning in and after tax  
47 year two thousand twenty-five.

48 (b) Cross-references. For application of the credit provided for in  
49 this section, see the following provisions of this chapter:

50 (1) Article 9-A: Section 210-B: subdivision 55,

51 (2) Article 22: Section 606: subsection (kkk),

52 (3) Article 33: Section 1511: subdivision (ee).

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

55 55. COVID-19 housing tax credit. (a) Allowance of credit. A taxpayer  
56 shall be allowed a credit against the tax imposed by this article with

1 respect to rental losses during the COVID-19 pandemic, computed as  
2 provided in section forty-five of this chapter.

3 (b) Application of credit. The credit allowed under this subdivision  
4 for any taxable year shall not reduce the tax due for such year to less  
5 than the fixed dollar minimum amount prescribed in paragraph (d) of  
6 subdivision one of section two hundred ten of this article. Provided,  
7 however, if the amount of credit allowed under this subdivision for any  
8 taxable year reduces the tax to such amount or if the taxpayer otherwise  
9 pays tax based on the fixed dollar minimum amount, any amount of credit  
10 thus not deductible in such taxable year shall be treated as an overpay-  
11 ment of tax to be credited or refunded in accordance with the provisions  
12 of section one thousand eighty-six of this chapter. Provided, further,  
13 the provisions of subsection (c) of section one thousand eighty-eight of  
14 this chapter notwithstanding, no interest shall be paid thereon.

15 § 5. Section 606 of the tax law is amended by adding a new subsection  
16 (kkk) to read as follows:

17 (kkk) COVID-19 housing tax credit. (1) Allowance of credit. A taxpayer  
18 shall be allowed a credit against the tax imposed by this article with  
19 respect to the rental losses during the COVID-19 pandemic, computed as  
20 provided in section forty-five of this chapter.

21 (2) Application of credit. If the amount of the credit allowed under  
22 this subsection for any taxable year shall exceed the taxpayer's tax for  
23 such year, the excess shall be treated as an overpayment of tax to be  
24 credited or refunded in accordance with the provisions of section six  
25 hundred eighty-six of this article, provided, however, that no interest  
26 shall be paid thereon.

27 § 6. Section 1511 of the tax law is amended by adding a new subdivi-  
28 sion (ee) to read as follows:

29 (ee) COVID-19 housing tax credit. (1) Allowance of credit. A taxpayer  
30 shall be allowed a credit against the tax imposed by this article with  
31 respect to rental losses during the COVID-19 pandemic, computed as  
32 provided in section forty-five of this chapter.

33 (2) Application of credit. The credit allowed under this subdivision  
34 for any taxable year shall not reduce the tax due for such year to less  
35 than the minimum tax fixed by paragraph four of subdivision (a) of  
36 section fifteen hundred two of this article or by section fifteen  
37 hundred two-a of this article, whichever is applicable. Provided,  
38 however, if the amount of credit allowed under this subdivision for any  
39 taxable year reduces the tax to such amount, then any amount of credit  
40 thus not deductible in such taxable year shall be treated as an overpay-  
41 ment of tax to be credited or refunded in accordance with the provisions  
42 of section ten hundred eighty-six of this chapter. Provided, further,  
43 the provisions of subsection (c) of section ten hundred eighty-eight of  
44 this chapter notwithstanding, no interest shall be paid thereon.

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

48 <u>(xlvi) COVID-19 housing tax</u>	<u>Amount of credit for the sum of</u>
49 <u>credit under subsection (kkk)</u>	<u>the COVID-19 housing tax</u>
50	<u>credit under subdivision fifty-five</u>
51	<u>of section two hundred ten-B</u>

52 § 8. This act shall take effect immediately; provided that sections  
53 two, three, four and five of this act shall apply to taxable years  
54 beginning on or after January 1, 2021.