

# STATE OF NEW YORK

5142

2021-2022 Regular Sessions

## IN SENATE

February 25, 2021

Introduced by Sen. RATH -- 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 establishing a credit against income tax for the rehabilitation of distressed commercial properties

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

1 Section 1. Section 606 of the tax law is amended by adding a new  
2 subsection (kkk) to read as follows:

3 (kkk) Credit for rehabilitation of distressed commercial properties.

4 (1) For taxable years beginning on or after January first, two thousand  
5 twenty-one, a taxpayer shall be allowed a credit as hereinafter  
6 provided, against the tax imposed by this article, in an amount equal to  
7 thirty percent of the qualified rehabilitation expenditures made by the  
8 taxpayer with respect to a qualified distressed commercial property.  
9 Provided, however, the credit shall not exceed one hundred thousand  
10 dollars.

11 (2) Tax credits allowed pursuant to this subsection shall be allowed  
12 in the taxable year in which the property is deemed a certified rehabil-  
13 itation.

14 (3) If the amount of the credit allowable under this subsection for  
15 any taxable year shall exceed the taxpayer's tax for such year, the  
16 excess may be carried over to the following year or years, and may be  
17 applied against the taxpayer's tax for such year or years provided that  
18 the total amount of the credit applied against the taxpayer's tax for a  
19 given year shall not exceed twenty-five thousand dollars.

20 (4) (A) The term "qualified rehabilitation expenditure" means, for  
21 purposes of this subsection, any amount properly chargeable to a capital  
22 account:

23 (i) in connection with the certified rehabilitation of a qualified  
24 distressed commercial property, and

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

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(ii) for property for which depreciation would be allowable under section 168 of the internal revenue code.

(B) Such term shall not include (i) the cost of acquiring any building or interest therein, (ii) any expenditure attributable to the enlargement of an existing building, or (iii) any expenditure made prior to January first, two thousand twenty-one or after December thirty-first, two thousand twenty-six.

(5) The term "certified rehabilitation" means, for purposes of this subsection, any rehabilitation of a certified distressed commercial property which has been approved and certified by a local government as being completed, with a certificate of occupancy issued, and that the costs are consistent with the work completed. Such certification shall be acceptable as proof that the expenditures related to such rehabilitation qualify as qualified rehabilitation expenditures for purposes of the credit allowed under paragraph one of this subsection.

(6) (A) The term "qualified distressed commercial property" means, for purposes of this subsection, a distressed commercial property located within New York state:

(i) which has been substantially rehabilitated,

(ii) which is owned by the taxpayer, and

(iii) which is located within a distressed commercial area, as identified by each locality through local law, that is deemed an area in need of community renewal due to dilapidation and vacancies.

(B) If the distressed commercial property is rental property, such property shall have been more than thirty percent vacant for twelve months while actively marketed for lease.

(C) A building shall be treated as having been "substantially rehabilitated" if the qualified rehabilitation expenditures in relation to such building total ten thousand dollars or more.

(7) (A) If the taxpayer disposes of such taxpayer's interest in the qualified distressed commercial property, or such property ceases to be used as a commercial property of the taxpayer within five years of receiving the credit under this subsection, the taxpayer's tax imposed by this article for the taxable year in which such disposition or cessation 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 multiplied by a ratio, the numerator of which is equal to sixty less the number of months the building is owned or used as commercial property by the taxpayer and the denominator of which is sixty.

(8) Any expenditure for which a credit is claimed under this subsection shall not be eligible for any other credit under this chapter.

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

(xlvi) Credit for rehabilitation of distressed commercial properties under subsection (kkk)	Amount of credit under subdivision fifty-five of section two hundred ten-B
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§ 3. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

**55. Credit for rehabilitation of distressed commercial properties. (1)** For taxable years beginning on or after January first, two thousand twenty-one, a taxpayer shall be allowed a credit as hereinafter

1 provided, against the tax imposed by this article, in an amount equal to  
2 thirty percent of the qualified rehabilitation expenditures made by the  
3 taxpayer with respect to a qualified distressed commercial property.  
4 Provided, however, the credit shall not exceed one hundred thousand  
5 dollars.

6 (2) Tax credits allowed pursuant to this subdivision shall be allowed  
7 in the taxable year in which the property is deemed a certified rehabil-  
8 itation.

9 (3) If the amount of the credit allowable under this subdivision for  
10 any taxable year shall exceed the taxpayer's tax for such year, the  
11 excess may be carried over to the following year or years, and may be  
12 applied against the taxpayer's tax for such year or years, provided that  
13 the total amount of the credit applied against the taxpayer's tax for a  
14 given year shall not exceed twenty-five thousand dollars.

15 (4) (A) The term "qualified rehabilitation expenditure" means, for  
16 purposes of this subdivision, any amount properly chargeable to a capi-  
17 tal account:

18 (i) in connection with the certified rehabilitation of a qualified  
19 commercial property, and

20 (ii) for property for which depreciation would be allowable under  
21 section 168 of the internal revenue code.

22 (B) Such term shall not include (i) the cost of acquiring any building  
23 or interest therein, (ii) any expenditure attributable to the enlarge-  
24 ment of an existing building, or (iii) any expenditure made prior to  
25 January first, two thousand twenty-one or after December thirty-first,  
26 two thousand twenty-six.

27 (5) The term "certified rehabilitation" means, for purposes of this  
28 subdivision, any rehabilitation of a certified distressed commercial  
29 property which has been approved and certified by a local government as  
30 being completed, with a certificate of occupancy issued, and that the  
31 costs are consistent with the work completed. Such certification shall  
32 be acceptable as proof that the expenditures related to such rehabili-  
33 tation qualify as qualified rehabilitation expenditures for purposes of  
34 the credit allowed under paragraph one of this subdivision.

35 (6) (A) The term "qualified distressed commercial property" means, for  
36 purposes of this subdivision, a distressed commercial property located  
37 within New York state:

38 (i) which has been substantially rehabilitated,

39 (ii) which is owned by the taxpayer, and

40 (iii) which is located within a distressed commercial area, as identi-  
41 fied by each locality through local law, that is deemed an area in need  
42 of community renewal due to dilapidation and vacancies.

43 (B) If the distressed commercial property is rental property, such  
44 property shall have been more than thirty percent vacant for twelve  
45 months while actively marketed for lease.

46 (C) A building shall be treated as having been "substantially rehabil-  
47 itated" if the qualified rehabilitation expenditures in relation to such  
48 building total ten thousand dollars or more.

49 (7) (A) If the taxpayer disposes of such taxpayer's interest in the  
50 qualified distressed commercial property, or such property ceases to be  
51 used as a commercial property of the taxpayer within five years of  
52 receiving the credit under this subdivision, the taxpayer's tax imposed  
53 by this article for the taxable year in which such disposition or cessa-  
54 tion occurs shall be increased by the recapture portion of the credit  
55 allowed under this subdivision for all prior taxable years with respect  
56 to such rehabilitation.

1     (B) For purposes of subparagraph (A) of this paragraph, the recapture  
2     portion shall be the product of the amount of credit claimed by the  
3     taxpayer multiplied by a ratio, the numerator of which is equal to sixty  
4     less the number of months the building is owned or used as commercial  
5     property by the taxpayer and the denominator of which is sixty.

6     (8) Any expenditure for which a credit is claimed under this subdivi-  
7     sion shall not be eligible for any other credit under this chapter.

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