

# STATE OF NEW YORK

2889

2023-2024 Regular Sessions

## IN ASSEMBLY

January 31, 2023

Introduced by M. of A. WOERNER, McDONALD, GANDOLFO, McDONOUGH, SEPTIMO, LUPARDO, FAHY, THIELE, BRABENEC -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

AN ACT to amend the tax law and the parks, recreation and historic preservation law, in relation to establishing the large projects historic rehabilitation tax credit and the "white elephant" housing historic rehabilitation projects tax credit program

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

1 Section 1. Subsection (oo) of section 606 of the tax law, as amended  
2 by chapter 239 of the laws of 2009, paragraph 1 as amended by chapter  
3 472 of the laws of 2010, subparagraph (A) of paragraph 1 as amended and  
4 paragraph 6 as added by section 1 of part CCC of chapter 59 of the laws  
5 of 2021, paragraph 3 as amended by section 1 of part RR of chapter 59 of  
6 the laws of 2018, paragraph 4 as amended by section 1 of part F of chap-  
7 ter 59 of the laws of 2013 and paragraph 5 as amended by section 2 of  
8 part U of chapter 59 of the laws of 2019, is amended to read as follows:  
9 (oo) Credit for rehabilitation of historic properties. (1) (A) For  
10 taxable years beginning on or after January first, two thousand ten and  
11 before January first, two thousand [~~twenty-five~~ thirty-five, a taxpayer  
12 shall be allowed a credit as hereinafter provided, against the tax  
13 imposed by this article, in an amount equal to:  
14 (i) one hundred percent of the amount of credit allowed the taxpayer  
15 with respect to a certified historic structure, and one hundred fifty  
16 percent of the amount of credit allowed the taxpayer with respect to a  
17 certified historic structure that is a small project, under internal  
18 revenue code section 47(c)(3), determined without regard to ratably  
19 allocating the credit over a five year period as required by subsection  
20 (a) of such section 47; and  
21 (ii) one hundred percent of the amount of credit allowed the taxpayer  
22 with respect to a certified historic structure that is a white

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

A

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1 elephant project, under internal revenue code section 47(c)(3), with  
2 respect to a certified historic structure located within the state.  
3 Provided, however, the credit shall not exceed five million dollars,  
4 unless such credit is allowed with respect to a certified historic  
5 structure that is a white elephant project, in which case, the credit  
6 shall not exceed fifteen million dollars. Provided, further, that when-  
7 ever the commissioner of parks, recreation and historic preservation  
8 receives an application for a white elephant project from an applicant  
9 for which such commissioner has previously certified credit for an  
10 eligible white elephant project, the commissioner of parks, recreation  
11 and historic preservation may deem such subsequent application to be  
12 phase II of the original eligible project if such commissioner deter-  
13 mines that the two projects are reasonably related, as determined by  
14 such commissioner; the previous project qualified as an eligible white  
15 elephant project with seventy-five million dollars or less of qualified  
16 rehabilitation expenditures; and the phase II application has been  
17 submitted within five years of such commissioner's previous certif-  
18 ication of credit for the previously eligible white elephant project.

19 (B) For taxable years beginning on or after January first, two thou-  
20 sand [~~twenty-five~~] thirty-five, a taxpayer shall be allowed a credit as  
21 hereinafter provided, against the tax imposed by this article, in an  
22 amount equal to thirty percent of the amount of credit allowed the  
23 taxpayer with respect to a certified historic structure under internal  
24 revenue code section 47(c)(3), determined without regard to ratably  
25 allocating the credit over a five year period as required by subsection  
26 (a) of such section 47, with respect to a certified historic structure  
27 located within the state; provided, however, the credit shall not exceed  
28 one hundred thousand dollars, unless such credit is allowed with respect  
29 to a certified historic structure that is a white elephant project, in  
30 which case, the credit shall not exceed three hundred thousand dollars.

31 [~~(B)~~] (C) If the taxpayer is a partner in a partnership or a share-  
32 holder of a New York S corporation, then the credit cap imposed in  
33 [~~subparagraph~~] subparagraphs (A) and (B) of this paragraph shall be  
34 applied at the entity level, so that the aggregate credit allowed to all  
35 the partners or shareholders of each such entity in the taxable year  
36 does not exceed the credit cap that is applicable in that taxable year.

37 (2) Tax credits allowed pursuant to this subsection shall be allowed  
38 in the taxable year that the qualified rehabilitation is placed in  
39 service under section 167 of the federal internal revenue code.

40 (3) If the taxpayer is allowed a credit pursuant to section 47 of the  
41 internal revenue code with respect to a qualified rehabilitation that is  
42 also the subject of the credit allowed by this subsection and that cred-  
43 it pursuant to such section 47 is recaptured pursuant to subsection (a)  
44 of section 50 of the internal revenue code, a portion of the credit  
45 allowed under this subsection must be added back in the same taxable  
46 year and in the same proportion as the federal recapture.

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

52 (5) Except in the case of (A) a qualified rehabilitation project  
53 undertaken within a state park, state historic site, or other land owned  
54 by the state, that is under the jurisdiction of the office of parks,  
55 recreation and historic preservation, or (B) a qualified white elephant  
56 rehabilitation project that is also a qualified low-income housing

1 project under article two-A of the public housing law, to be eligible  
2 for the credit allowable under this subsection the rehabilitation  
3 project shall be in whole or in part located within a census tract which  
4 is identified as being at or below one hundred percent of the state  
5 median family income as calculated as of April first of each year using  
6 the most recent five year estimate from the American community survey  
7 published by the United States Census bureau. If there is a change in  
8 the most recent five year estimate, a census tract that qualified for  
9 eligibility under this program before information about the change was  
10 released will remain eligible for a credit under this subsection for an  
11 additional two calendar years.

12 (6) [~~For purposes of this subsection the term~~] As used in this  
13 subsection, the following terms shall have the following meanings:

14 [~~small~~] (A) "Small project" means qualified rehabilitation expendi-  
15 tures totaling two million five hundred thousand dollars or less[.];

16 (B) "White elephant project" means qualified rehabilitation expendi-  
17 tures totaling fifty million dollars or more with respect to a certified  
18 historic structure that has been vacant, as determined by local code  
19 enforcement or other reasonable means, for at least ten of fifteen  
20 consecutive years preceding the date of the taxpayer's application for  
21 the rehabilitation credit; and

22 (C) "Phase II housing project" means a white elephant housing project  
23 which the commissioner determines (i) is reasonably related to a prior  
24 eligible white elephant project or eligible white elephant housing  
25 project by the same applicant, (ii) such prior project qualified as  
26 eligible with seventy-five million dollars or less of qualified rehabil-  
27 itation expenditures, and (iii) the phase II application has been  
28 submitted within five years of the commissioner's previous allowance of  
29 credit for the prior eligible white elephant project or eligible white  
30 elephant housing project.

31 (7) The allocation of the credit established by this subdivision may  
32 be made without regard to and in a separate manner from any federal  
33 rehabilitation credit that may be allocated with respect to a qual-  
34 ified white elephant project.

35 (8) The commissioner shall report annually, on or before the first day  
36 of November, on the aggregate amount of credits claimed and awarded  
37 pursuant to this subdivision on returns filed during the preceding  
38 calendar year. Such report shall be provided to the governor, temporary  
39 president of the senate, speaker of the assembly, chair of the senate  
40 finance committee and chair of the assembly ways and means committee and  
41 shall be made publicly available on the department's website.

42 § 2. Subdivision 26 of section 210-B of the tax law, as added by  
43 section 17 of part A of chapter 59 of the laws of 2014, paragraphs (a)  
44 and (c) as amended by section 2 of part RR of chapter 59 of the laws of  
45 2018, subparagraph (i) of paragraph (a) as amended and paragraph (f) as  
46 added by section 2 of part CCC of chapter 59 of the laws of 2021, and  
47 paragraph (e) as amended by section 1 of part U of chapter 59 of the  
48 laws of 2019, is amended to read as follows:

49 26. Credit for rehabilitation of historic properties. (a) Application  
50 of credit. (i) For taxable years beginning on or after January first,  
51 two thousand ten, and before January first, two thousand [~~twenty-five~~]  
52 thirty-five, a taxpayer shall be allowed a credit as hereinafter  
53 provided, against the tax imposed by this article, in an amount equal  
54 to:

55 (A) one hundred percent of the amount of credit allowed the taxpayer  
56 for the same taxable year with respect to a certified historic struc-

1 ture, and one hundred fifty percent of the amount of credit allowed the  
2 taxpayer with respect to a certified historic structure that is a small  
3 project, under internal revenue code section 47(c)(3), determined with-  
4 out regard to ratably allocating the credit over a five year period as  
5 required by subsection (a) of such section 47; and

6 (B) one hundred percent of the amount of credit allowed the taxpayer  
7 with respect to a certified historic structure that is a "white  
8 elephant project", under internal revenue code section 47(c)(3), with  
9 respect to a certified historic structure located within the state.  
10 Provided, however, the credit shall not exceed five million dollars,  
11 unless such credit is allowed with respect to a certified historic  
12 structure that is a white elephant project, in which case, the credit  
13 shall not exceed fifteen million dollars. Provided, further, that when-  
14 ever the commissioner of parks, recreation and historic preservation  
15 receives an application for a white elephant project from an applicant  
16 for which such commissioner has previously certified credit for an  
17 eligible white elephant project, the commissioner of parks, recreation  
18 and historic preservation may deem such subsequent application to be  
19 phase II of the original eligible project if such commissioner deter-  
20 mines that the two projects are reasonably related, as determined by  
21 such commissioner; the previous project qualified as an eligible white  
22 elephant project with seventy-five million dollars or less of qualified  
23 rehabilitation expenditures; and the phase II application has been  
24 submitted within five years of such commissioner's previous certif-  
25 ication of credit for the previously eligible white elephant project.

26 (ii) For taxable years beginning on or after January first, two thou-  
27 sand [~~twenty-five~~] thirty-five, a taxpayer shall be allowed a credit as  
28 hereinafter provided, against the tax imposed by this article, in an  
29 amount equal to thirty percent of the amount of credit allowed the  
30 taxpayer for the same taxable year determined without regard to ratably  
31 allocating the credit over a five year period as required by subsection  
32 (a) of section 47 of the internal revenue code, with respect to a certi-  
33 fied historic structure under subsection (c)(3) of section 47 of the  
34 internal revenue code with respect to a certified historic structure  
35 located within the state. Provided, however, the credit shall not exceed  
36 one hundred thousand dollars, unless such credit is allowed with respect  
37 to a certified historic structure that is a white elephant project, in  
38 which case, the credit shall not exceed three hundred thousand dollars.

39 [~~(B)~~] (iii) If the taxpayer is a partner in a partnership or a share-  
40 holder in a New York S corporation, then the credit caps imposed in  
41 [~~subparagraph (A)~~] subparagraphs (i) and (ii) of this paragraph shall be  
42 applied at the entity level, so that the aggregate credit allowed to all  
43 the partners or shareholders of each such entity in the taxable year  
44 does not exceed the credit cap that is applicable in that taxable year.

45 (b) Tax credits allowed pursuant to this subdivision shall be allowed  
46 in the taxable year that the qualified rehabilitation is placed in  
47 service under section 167 of the federal internal revenue code.

48 (c) If the taxpayer is allowed a credit pursuant to section 47 of the  
49 internal revenue code with respect to a qualified rehabilitation that is  
50 also the subject of the credit allowed by this subdivision and that  
51 credit pursuant to such section 47 is recaptured pursuant to subsection  
52 (a) of section 50 of the internal revenue code, a portion of the credit  
53 allowed under this subdivision must be added back in the same taxable  
54 year and in the same proportion as the federal credit.

55 (d) The credit allowed under this subdivision for any taxable year  
56 shall not reduce the tax due for such year to less than the amount

1 prescribed in paragraph (d) of subdivision one of section two hundred  
2 ten of this article. However, if the amount of the credit allowed under  
3 this subdivision for any taxable year reduces the tax to such amount or  
4 if the taxpayer otherwise pays tax based on the fixed dollar minimum  
5 amount, any amount of credit thus not deductible in such taxable year  
6 shall be treated as an overpayment of tax to be recredited or refunded  
7 in accordance with the provisions of section one thousand eighty-six of  
8 this chapter. Provided, however, the provisions of subsection (c) of  
9 section one thousand eighty-eight of this chapter notwithstanding, no  
10 interest shall be paid thereon.

11 (e) Except in the case of (A) a qualified rehabilitation project  
12 undertaken within a state park, state historic site, or other land owned  
13 by the state, that is under the jurisdiction of the office of parks,  
14 recreation and historic preservation, or (B) a qualified white elephant  
15 rehabilitation project that is also a qualified low-income housing  
16 project under article two-A of the public housing law, to be eligible  
17 for the credit allowable under this subdivision, the rehabilitation  
18 project shall be in whole or in part located within a census tract which  
19 is identified as being at or below one hundred percent of the state  
20 median family income as calculated as of April first of each year using  
21 the most recent five year estimate from the American community survey  
22 published by the United States Census bureau. If there is a change in  
23 the most recent five year estimate, a census tract that qualified for  
24 eligibility under this program before information about the change was  
25 released will remain eligible for a credit under this subdivision for an  
26 additional two calendar years.

27 (f) ~~[For purposes of this subdivision]~~ Definitions. As used in this  
28 subdivision, the following terms shall have the following meanings:

29 ~~["small"]~~ (A) "Small project" means qualified rehabilitation expendi-  
30 tures totaling two million five hundred thousand dollars or less[-];

31 (B) "White elephant project" means qualified rehabilitation expendi-  
32 tures totaling fifty million dollars or more with respect to a certified  
33 historic structure that has been vacant, as determined by local code  
34 enforcement or other reasonable means, for at least ten of fifteen  
35 consecutive years preceding the date of the taxpayer's application for  
36 the rehabilitation credit; and

37 (C) "Phase II housing project" means a white elephant housing project  
38 which the commissioner determines (i) is reasonably related to a prior  
39 eligible white elephant project or eligible white elephant housing  
40 project by the same applicant, (ii) such prior project qualified as  
41 eligible with seventy-five million dollars or less of qualified rehabil-  
42 itation expenditures, and (iii) the phase II application has been  
43 submitted within five years of the commissioner's previous allowance of  
44 credit for the prior eligible white elephant project or eligible white  
45 elephant housing project.

46 (g) The allocation of the credit established by this subdivision  
47 may be made without regard to and in a separate manner from any  
48 federal rehabilitation credit that may be allocated with respect to  
49 a qualified white elephant project.

50 (h) The commissioner shall report annually, on or before the first day  
51 of November, on the aggregate amount of credits claimed and awarded  
52 pursuant to this subdivision on returns filed during the preceding  
53 calendar year. Such report shall be provided to the governor, temporary  
54 president of the senate, speaker of the assembly, chair of the senate  
55 finance committee and chair of the assembly ways and means committee and  
56 shall be made publicly available on the department's website.

1 § 3. Subdivision (y) of section 1511 of the tax law, as added by chap-  
2 ter 472 of the laws of 2010, subparagraph (A) of paragraph 1 as amended  
3 and paragraph 6 as added by section 3 of part CCC of chapter 59 of the  
4 laws of 2021, paragraph 3 as amended by section 3 of part RR of chapter  
5 59 of the laws of 2018, paragraph 4 as amended by section 4 of part F of  
6 chapter 59 of the laws of 2013 and paragraph 5 as amended by section 3  
7 of part U of chapter 59 of the laws of 2019, is amended to read as  
8 follows:

9 (y) Credit for rehabilitation of historic properties. (1) (A) For  
10 taxable years beginning on or after January first, two thousand ten and  
11 before January first, two thousand [~~twenty-five~~] thirty-five, a taxpayer  
12 shall be allowed a credit as hereinafter provided, against the tax  
13 imposed by this article, in an amount equal to:

14 (i) one hundred percent of the amount of credit allowed the taxpayer  
15 with respect to a certified historic structure, and one hundred fifty  
16 percent of the amount of credit allowed the taxpayer with respect to a  
17 certified historic structure that is a small project, under internal  
18 revenue code section 47(c)(3), determined without regard to ratably  
19 allocating the credit over a five year period as required by subsection  
20 (a) of such section 47; and

21 (ii) one hundred percent of the amount of credit allowed the taxpayer  
22 with respect to a certified historic structure that is a "white  
23 elephant project", under internal revenue code section 47(c)(3), with  
24 respect to a certified historic structure located within the state.  
25 Provided, however, the credit shall not exceed five million dollars,  
26 unless such credit is allowed with respect to a certified historic  
27 structure that is a "white elephant project", in which case, the credit  
28 shall not exceed fifteen million dollars. Provided, further, that when-  
29 ever the commissioner of parks, recreation and historic preservation  
30 receives an application for a white elephant project from an applicant  
31 for which such commissioner has previously certified credit for an  
32 eligible white elephant project, the commissioner of parks, recreation  
33 and historic preservation may deem such subsequent application to be  
34 "phase II" of the original eligible project if such commissioner deter-  
35 mines that the two projects are reasonably related, as determined by  
36 such commissioner; the previous project qualified as an eligible white  
37 elephant project with seventy-five million dollars or less of qualified  
38 rehabilitation expenditures; and the "phase II" application has been  
39 submitted within five years of such commissioner's previous certif-  
40 ication of credit for the previously eligible white elephant project.

41 (B) For taxable years beginning on or after January first, two thou-  
42 sand [~~twenty-five~~] thirty-five, a taxpayer shall be allowed a credit as  
43 hereinafter provided, against the tax imposed by this article, in an  
44 amount equal to thirty percent of the amount of credit allowed the  
45 taxpayer with respect to a certified historic structure under internal  
46 revenue code section 47(c)(3), determined without regard to ratably  
47 allocating the credit over a five year period as required by subsection  
48 (a) of such section 47 with respect to a certified historic structure  
49 located within the state. Provided, however, the credit shall not  
50 exceed one hundred thousand dollars, unless such credit is allowed with  
51 respect to a certified historic structure that is a white elephant  
52 project, in which case, the credit shall not exceed three hundred thou-  
53 sand dollars.

54 [~~(B)~~] (C) If the taxpayer is a partner in a partnership, then the cap  
55 imposed in [~~subparagraph~~] subparagraphs (A) and (B) of this paragraph  
56 shall be applied at the entity level, so that the aggregate credit

1 allowed to all the partners of such partnership in the taxable year does  
2 not exceed the credit cap that is applicable in that taxable year.

3 (2) Tax credits allowed pursuant to this subsection shall be allowed  
4 in the taxable year that the qualified rehabilitation is placed in  
5 service under section 167 of the federal internal revenue code.

6 (3) If the taxpayer is allowed a credit pursuant to section 47 of the  
7 internal revenue code with respect to a qualified rehabilitation that is  
8 also the subject of the credit allowed by this subdivision and that  
9 credit pursuant to such section 47 is recaptured pursuant to subsection  
10 (a) of section 50 of the internal revenue code, a portion of the credit  
11 allowed under this subdivision in the taxable year the credit was  
12 claimed must be added back in the same taxable year and in the same  
13 proportion as the federal recapture.

14 (4) The credit allowed under this subdivision for any taxable year  
15 shall not reduce the tax due for such year to less than the minimum  
16 fixed by paragraph four of subdivision (a) of section fifteen hundred  
17 two or section fifteen hundred two-a of this article, whichever is  
18 applicable. However, if the amount of credits allowed under this subdivi-  
19 sion for any taxable year reduces the tax to such amount, any amount  
20 of credit thus not deductible in such taxable year shall be treated as  
21 an overpayment of tax to be credited or refunded in accordance with the  
22 provisions of section one thousand eighty-six of this chapter. Provided,  
23 however, the provisions of subsection (c) of section one thousand eight-  
24 y-eight of this chapter notwithstanding, no interest shall be paid ther-  
25 eon.

26 (5) Except in the case of a (A) qualified rehabilitation project  
27 undertaken within a state park, state historic site, or other land owned  
28 by the state, that is under the jurisdiction of the office of parks,  
29 recreation and historic preservation, or (B) a qualified white elephant  
30 rehabilitation project that is also a qualified low-income housing  
31 project under article two-A of the public housing law, to be eligible  
32 for the credit allowable under this subdivision, the rehabilitation  
33 project shall be in whole or in part located within a census tract which  
34 is identified as being at or below one hundred percent of the state  
35 median family income as calculated as of April first of each year using  
36 the most recent five year estimate from the American community survey  
37 published by the United States Census bureau. If there is a change in  
38 the most recent five year estimate, a census tract that qualified for  
39 eligibility under this program before information about the change was  
40 released will remain eligible for a credit under this subdivision for an  
41 additional two calendar years.

42 (6) [~~For purposes of this subdivision~~] As used in this subdivision,  
43 the following terms shall have the following meanings:

44 [~~small~~] (A) "Small project" means qualified rehabilitation expendi-  
45 tures totaling two million five hundred thousand dollars or less[~~+~~];

46 (B) "White elephant project" means qualified rehabilitation expendi-  
47 tures totaling fifty million dollars or more with respect to a certified  
48 historic structure that has been vacant, as determined by local code  
49 enforcement or other reasonable means, for at least ten of fifteen  
50 consecutive years preceding the date of the taxpayer's application for  
51 the rehabilitation credit; and

52 (C) "Phase II housing project" means a white elephant housing project  
53 which the commissioner determines (1) is reasonably related to a prior  
54 eligible white elephant project or eligible white elephant housing  
55 project by the same applicant, (2) such prior project qualified as  
56 eligible with seventy-five million dollars or less of qualified rehabil-

1 itation expenditures, and (3) the phase II application has been submit-  
2 ted within five years of the commissioner's previous allowance of credit  
3 for the prior eligible white elephant project or eligible white elephant  
4 housing project.

5 (7) The allocation of the credit established by this subdivision  
6 may be made without regard to and in a separate manner from any  
7 federal rehabilitation credit that may be allocated with respect to  
8 a qualified white elephant project.

9 (8) The commissioner shall report annually, on or before the first day  
10 of November, on the aggregate amount of credits claimed and awarded  
11 pursuant to this subdivision on returns filed during the preceding  
12 calendar year. Such report shall be provided to the governor, temporary  
13 president of the senate, speaker of the assembly, chair of the senate  
14 finance committee and chair of the assembly ways and means committee and  
15 shall be made publicly available on the department's website.

16 § 4. The parks, recreation and historic preservation law is amended by  
17 adding a new article 14-A to read as follows:

18 ARTICLE 14-A

19 WHITE ELEPHANT HOUSING HISTORIC REHABILITATION PROJECTS TAX

20 CREDIT PROGRAM

21 Section 14.15 Definitions.

22 14.16 Allowance of credit, amount and limitations.

23 14.17 Project monitoring.

24 14.18 Regulations, coordination with federal rehabilitation  
25 credit provisions.

26 § 14.15 Definitions. As used in this article, the following terms  
27 shall have the following meanings:

28 1. "Eligibility statement" means a statement issued by the commission-  
29 er, in consultation with the commissioner of the division of community  
30 housing and renewal, certifying that a white elephant housing project is  
31 eligible for white elephant housing project historic rehabilitation  
32 credits under this article and low income housing tax credits under  
33 article two-A of the public housing law. Such statement shall set forth  
34 the taxable year in which the building is placed in service, the dollar  
35 amount of rehabilitation credit certified by the commissioner to such  
36 building as provided in section 14.16 of this article, the dollar amount  
37 of low income housing tax credit allocated by the commissioner of commu-  
38 nity housing and renewal to such building as provided in section twen-  
39 ty-two of the public housing law, sufficient information to identify  
40 each such building and the taxpayer or taxpayers with respect to each  
41 such building, whether the project is a phase II housing project, and  
42 such other information as the commissioner, in consultation with the  
43 commissioner of taxation and finance and commissioner of community hous-  
44 ing and renewal, shall prescribe. Such eligibility statement shall be  
45 first issued following the close of the first taxable year, and there-  
46 after, to the extent required by the commissioner of taxation and  
47 finance, following the close of each of the following four taxable  
48 years.

49 2. "Eligible white elephant project" means a white elephant project as  
50 defined in section two hundred ten-B, six hundred six or one thousand  
51 five hundred eleven of the tax law that qualifies for historic rehabili-  
52 tation tax credit.

53 3. "Eligible white elephant housing project" means an eligible white  
54 elephant project as defined in this section that also qualifies for low  
55 income housing tax credit under article two-A of the public housing law.

1 4. "Phase II housing project" means a white elephant housing project  
2 which the commissioner determines (a) is reasonably related to a prior  
3 eligible white elephant project or eligible white elephant housing  
4 project by the same applicant, (b) such prior project qualified as  
5 eligible with less than seventy-five million dollars of qualified reha-  
6 bilitation expenditures, and (c) the phase II application has been  
7 submitted within five years of the commissioner's previous allowance of  
8 credit for the prior eligible white elephant project or eligible white  
9 elephant housing project.

10 5. "Qualified rehabilitation expenditures" shall have the same meaning  
11 as in section 47 of the internal revenue code.

12 6. "White elephant project" means a project as defined in section two  
13 hundred ten-B, six hundred six or one thousand five hundred eleven of  
14 the tax law.

15 7. "White elephant housing project" means a "white elephant project"  
16 as defined in section two hundred ten-B, six hundred six or one thousand  
17 five hundred eleven of the tax law that is also a housing project.

18 8. References in this article to section 47 of the internal revenue  
19 code shall mean such section as amended from time to time.

20 § 14.16 Allowance of credit, amount and limitations. 1. A taxpayer  
21 subject to tax under article nine-A, twenty-two, or thirty-three of the  
22 tax law which owns an interest in one or more eligible white elephant  
23 housing projects, or a transferee of such a taxpayer as described in  
24 subdivision two of this section, shall be allowed a credit against such  
25 tax for the amount of white elephant housing project historic rehabili-  
26 tation credit certified by the commissioner to each such structure.

27 2. (a) A taxpayer allowed a credit pursuant to this article may trans-  
28 fer the credit, in whole or in part, to another person or entity, who  
29 shall be referred to as the transferee, notwithstanding that such other  
30 person or entity owns no interest in the eligible white elephant housing  
31 project or in an entity with an ownership interest in the eligible white  
32 elephant housing project. Transferees shall be entitled to apply trans-  
33 ferred credit to a tax imposed under article nine-A, twenty-two or thir-  
34 ty-three of the tax law, provided all requirements for claiming the  
35 credit are met. A transferee may not transfer any credit, or portion  
36 thereof, acquired by transfer.

37 (b) A taxpayer allowed a credit pursuant to this article must enter  
38 into a transfer contract with the transferee. The transfer contract must  
39 specify:

40 (i) the building identification numbers for all buildings in the white  
41 elephant housing project;

42 (ii) the date each building was placed into service;

43 (iii) the five year ownership period for the project;

44 (iv) the schedule of years for which the transfer credit may be  
45 claimed and the amount of credit previously claimed;

46 (v) the amount of consideration received by the taxpayer for the  
47 transfer credit; and

48 (vi) the amount of credit being transferred.

49 (c) No transfer shall be effective unless the taxpayer allowed a cred-  
50 it pursuant to this article and seeking to transfer the credit files a  
51 transfer statement with the commissioner prior to the transfer and the  
52 commissioner approves such transfer. The transfer statement shall  
53 provide the name and federal identification numbers of the filing  
54 transferor and the taxpayer to whom the filing transferor transferred  
55 the credit, and the amount of credit transferred to each such person or  
56 entity. A copy of the transfer contract shall be attached to the trans-

1 fer statement. The statement shall also contain such other information  
2 as the commissioner may require. After reviewing the transfer contract  
3 and the transfer statement, the commissioner shall approve or deny the  
4 transfer as provided in this subdivision. If the commissioner approves  
5 the transfer, the commissioner shall issue an approval statement that  
6 provides the name of the transferor and transferee, the amount of credit  
7 being transferred and such other information as the commissioner and the  
8 commissioner of taxation and finance deem necessary. A copy of the  
9 commissioner's approval statement must be attached to the transferee's  
10 tax return. If the commissioner denies the transfer, the commissioner  
11 shall provide the taxpayer a written determination for such denial. The  
12 commissioner, in consultation with the commissioner of taxation and  
13 finance, may establish such other procedures and standards deemed neces-  
14 sary for the transferability of the white elephant housing project  
15 historic rehabilitation credit.

16 (d) The commissioner shall forward copies of all transfer statements  
17 and attachments thereto and approval statements to the department of  
18 taxation and finance within thirty days after the transfer is approved  
19 by the commissioner.

20 § 14.17 Project monitoring. The commissioner shall establish such  
21 procedures deemed necessary for monitoring compliance of an eligible  
22 white elephant housing project with the provisions of this article, and  
23 for notifying the commissioner of taxation and finance of any such  
24 noncompliance.

25 § 14.18 Regulations, coordination with federal rehabilitation credit  
26 provisions. 1. The commissioner shall promulgate rules and regulations  
27 necessary to administer the provisions of this article.

28 2. The provisions of section 47 of the internal revenue code shall  
29 apply to the credit under this article, provided however, to the extent  
30 such provisions are inconsistent with this article, the provisions of  
31 this article shall control.

32 3. The allocation of the credit established by this article may be  
33 made without regard to and in a separate manner from any federal reha-  
34 ilitation credit that may be allocated with respect to an eligible  
35 white elephant housing project.

36 § 5. Paragraph 2 of subsection (pp) of section 606 of the tax law, as  
37 amended by section 4 of part RR of chapter 59 of the laws of 2018, is  
38 amended and a new paragraph 13 is added to read as follows:

39 (2) (A) With respect to any particular residence of a taxpayer, the  
40 credit allowed under paragraph one of this subsection shall not exceed  
41 fifty thousand dollars for taxable years beginning on or after January  
42 first, two thousand ten and before January first, two thousand [~~twenty-~~  
43 ~~five~~] thirty-five and twenty-five thousand dollars for taxable years  
44 beginning on or after January first, two thousand [~~twenty-five~~] thirty-  
45 five. In the case of a husband and wife, the amount of the credit shall  
46 be divided between them equally or in such other manner as they may both  
47 elect. If a taxpayer incurs qualified rehabilitation expenditures in  
48 relation to more than one residence in the same year, the total amount  
49 of credit allowed under paragraph one of this subsection for all such  
50 expenditures shall not exceed fifty thousand dollars for taxable years  
51 beginning on or after January first, two thousand ten and before January  
52 first, two thousand [~~twenty-five~~] thirty-five and twenty-five thousand  
53 dollars for taxable years beginning on or after January first, two thou-  
54 sand [~~twenty-five~~] thirty-five.

55 (B) For taxable years beginning on or after January first, two thou-  
56 sand ten and before January first, two thousand [~~twenty-five~~] thirty-

1 five, if the amount of credit allowable under this subsection shall  
2 exceed the taxpayer's tax for such year, and the taxpayer's New York  
3 adjusted gross income for such year does not exceed sixty thousand  
4 dollars, the excess shall be treated as an overpayment of tax to be  
5 credited or refunded in accordance with the provisions of section six  
6 hundred eighty-six of this article, provided, however, that no interest  
7 shall be paid thereon. If the taxpayer's New York adjusted gross income  
8 for such year exceeds sixty thousand dollars, the excess credit that may  
9 be carried over to the following year or years and may be deducted from  
10 the taxpayer's tax for such year or years. For taxable years beginning  
11 on or after January first, two thousand [~~twenty-five~~] thirty-five, if  
12 the amount of credit allowable under this subsection shall exceed the  
13 taxpayer's tax for such year, the excess may be carried over to the  
14 following year or years and may be deducted from the taxpayer's tax for  
15 such year or years.

16 (13) The commissioner shall report annually, on or before the first  
17 day of November, on the aggregate amount of credits claimed and awarded  
18 pursuant to this subdivision on returns filed during the preceding  
19 calendar year. Such report shall be provided to the governor, temporary  
20 president of the senate, speaker of the assembly, chair of the senate  
21 finance committee and chair of the assembly ways and means committee,  
22 shall be made publicly available on the department's website.

23 § 6. Section 14.05 of the parks, recreation and historic preservation  
24 law is amended by adding a new subdivision 5 to read as follows:

25 5. (a) The commissioner shall report annually, on or before the first  
26 day of November, on the tax credit projects applied for in accordance  
27 with subdivision twenty-six of section two hundred ten-B, subsection  
28 (oo) of section six hundred six, and subdivision (y) of section fifteen  
29 hundred eleven of the tax law on returns filed during the preceding  
30 calendar year. Such report shall be provided to the governor, temporary  
31 president of the senate, speaker of the assembly, chair of the senate  
32 finance committee and chair of the assembly ways and means committee,  
33 shall be made publicly available on the department's website and shall  
34 include the following information:

35 (i) the number and value of tax credit projects applied for during the  
36 state fiscal year, organized by municipality and county, and project  
37 size;

38 (ii) the number and value of tax credit projects certified by the  
39 national park service during the state fiscal year, organized by munici-  
40 pality and county, and project size;

41 (iii) the total value of credits certified annually for each of the  
42 taxable years beginning on or after January first, two thousand seven to  
43 the present, by municipality and county;

44 (iv) the number of housing units before and after rehabilitation;

45 (v) the number of low-moderate housing units before and after rehabil-  
46 itation; and

47 (vi) the number of projects certified for both federal and state cred-  
48 its, and the number of projects certified for federal credits only.

49 (b) The commissioner shall report annually, on or before the first day  
50 of November, on the tax credit projects applied for pursuant to subdivi-  
51 sion (pp) of section six hundred six of the tax law on returns filed  
52 during the preceding calendar year. Such report shall be provided to the  
53 governor, temporary president of the senate, speaker of the assembly,  
54 chair of the senate finance committee and chair of the assembly ways and  
55 means committee, shall be made publicly available on the office's  
56 website and shall include the following information:

1 (i) the number and value of tax credit projects applied for during the  
2 state fiscal year, organized by municipality and county, and project  
3 size;

4 (ii) the number and value of tax credit projects certified by the  
5 office during the state fiscal year, organized by municipality and coun-  
6 ty, and project size;

7 (iii) the total value of credits certified annually for each of the  
8 taxable years beginning on or after January first, two thousand seven to  
9 the present, by municipality and county;

10 (iv) the number of housing units before and after rehabilitation; and

11 (v) the number of projects certified for state credits by the office.

12 § 7. This act shall take effect immediately and shall apply to taxable  
13 years beginning on or after January 1, 2024.