

# STATE OF NEW YORK

3437

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

Introduced by M. of A. SANTABARBARA -- read once and referred to the Committee on Ways and Means

AN ACT to amend the economic development law and the tax law, in relation to tax credits for upstate reinvestment zones

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

1 Section 1. The economic development law is amended by adding a new  
2 article 23 to read as follows:

### ARTICLE 23

#### UPSTATE REINVESTMENT ZONES

3 Section 460. Power to administer the upstate reinvestment zones tax  
4 credit.

5 § 460. Power to administer the upstate reinvestment zones tax credit.

6 (a) The commissioner is authorized to administer the upstate reinvest-  
7 ment zones tax credit program to provide tax incentives to businesses  
8 for the qualified purchase of a building or buildings or qualified reha-  
9 ilitation expenditures in such zone. The commissioner is authorized to  
10 allocate up to ten million dollars of tax credits under this program per  
11 year. The amount of credit shall be twenty percent of the qualified  
12 purchase and qualified rehabilitation expenditures of buildings and  
13 rehabilitations, as such amount is computed pursuant to section forty-  
14 eight of the tax law.

15 (b) Definitions. (1) The term "upstate reinvestment zone" shall mean  
16 an area: (i) that, according to the most recent American community  
17 survey by the United States census bureau, lies within a census tract  
18 with a poverty rate equal to or greater than twenty percent or an unem-  
19 ployment rate that is equal to or greater than one and one-half percent  
20 times the national average unemployment rate and (ii) is within the  
21 incorporated boundaries of a village, town or city having a population  
22 of less than one million.

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

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1 (2) The term "qualified purchase" shall mean the cost or other basis  
2 for federal income tax purposes of acquisition cost of building for  
3 which depreciation is allowed under section one hundred sixty-eight of  
4 the internal revenue code and which is (i) nonresidential property, (ii)  
5 residential property, or (iii) an addition or improvement to property  
6 described in subparagraph (i) or (ii) of this paragraph.

7 (3) The term "qualified rehabilitation expenditures" shall mean quali-  
8 fied expenditures as defined in paragraph (2) of subsection (c) of  
9 section forty-seven of the internal revenue code other than the quali-  
10 fied purchase made in paragraph two of this subdivision.

11 (c) Allocation of credits. (1) The aggregate amount of tax credits  
12 allowed under this subdivision in any taxable year shall be ten million  
13 dollars. Such aggregate amount of credits shall be allocated by the  
14 commissioner among taxpayers in the order in which applications are  
15 received. If the total amount of allocated credits applied for in any  
16 particular year exceeds the aggregate amount of tax credits allowed for  
17 such year under this section, such excess shall be treated as having  
18 been applied for on the first day of the subsequent year.

19 (2) The commissioner shall promulgate regulations by December thirty-  
20 first, two thousand twenty-four to establish procedures for the allo-  
21 cation of tax credits as required. Such rules and regulations shall  
22 include provisions describing the application process, the due dates for  
23 such applications, the standards which shall be used to evaluate the  
24 applications, the documentation that will be provided to taxpayers to  
25 substantiate to the commissioner the amount of tax credits allocated to  
26 such taxpayers, and such other provisions as deemed necessary and appro-  
27 priate. Notwithstanding any other provisions to the contrary in the  
28 state administrative procedure act, such rules and regulations may be  
29 adopted on an emergency basis if necessary to meet such December thir-  
30 ty-first, two thousand twenty-four deadline.

31 (d) In order to be eligible for the tax credits, a taxpayer must  
32 submit an application (in a form prescribed by the commissioner) to the  
33 commissioner. The commissioner shall establish guidelines and criteria  
34 for a designation of upstate reinvestment zones.

35 (e) If, after reviewing the application submitted by the taxpayer, the  
36 commissioner determines that such qualified purchase of the building or  
37 qualified rehabilitation expenditures were made in an upstate reinvest-  
38 ment zone, then the commissioner shall issue the taxpayer a certificate  
39 of eligibility that establishes the taxpayer as a qualified taxpayer.

40 § 2. The tax law is amended by adding a new section 48 to read as  
41 follows:

42 § 48. Upstate reinvestment zones tax credit. (a) A taxpayer shall be  
43 allowed a credit, to be computed as hereinafter provided, against the  
44 tax imposed by articles nine-A and twenty-two of this chapter for the  
45 development to upstate reinvestment zones including, but not limited to,  
46 the qualified purchase of buildings and qualified rehabilitation expend-  
47 itures of buildings in such zones where at least fifty percent of the  
48 square footage of such buildings, at the time of purchase or rehabili-  
49 tation, is vacant or otherwise unused. The amount of the credit shall be  
50 twenty percent of the qualified purchase and qualified rehabilitation  
51 expenditures of buildings and rehabilitations in such zones with such  
52 credit subject to restrictions set forth in subdivision (d) of this  
53 section. This credit will not be allowed if the qualified purchase of  
54 buildings and qualified rehabilitation expenditures of buildings that  
55 are the basis for this credit are included in the calculation of another  
56 credit claimed by the taxpayer under this chapter.

1 (b) For the purpose of this section, the term "qualified purchase"  
2 shall mean the cost or other basis for federal income tax purposes of  
3 acquisition cost of building for which depreciation is allowed under  
4 section one hundred sixty-eight of the internal revenue code and which  
5 is (1) nonresidential property, (2) residential property, or (3) an  
6 addition or improvement to property described in paragraph (1) or (2) of  
7 this subdivision. The term "qualified rehabilitation expenditures"  
8 shall mean qualified expenditures as defined in paragraph (2) of  
9 subsection (c) of section forty-seven of the internal revenue code.

10 (c) For the purpose of this section, the term "upstate reinvestment  
11 zones" shall mean an area: (i) that, according to the most recent Amer-  
12 ican community survey by the United States census bureau, lies within a  
13 census tract with a poverty rate equal to or greater than twenty percent  
14 or an unemployment rate that is equal to or greater than one and one-  
15 half percent times the national average unemployment rate and (ii) is  
16 within the incorporated boundaries of a village, town or city having a  
17 population of less than one million.

18 (d) The sum of all tax credits granted pursuant to the provisions of  
19 this section shall not exceed five hundred thousand dollars for any one  
20 taxpayer including such party's affiliates and related entities for a  
21 taxable year. If the taxpayer is a partner in a partnership, member of  
22 a limited liability company or shareholder of a New York S corporation,  
23 then the annual limit by the preceding sentence shall be applied at the  
24 entity level, so that the aggregate credit allowed to all the partners,  
25 members or shareholders of each such entity in the taxable year does not  
26 exceed the five hundred thousand dollar annual limit.

27 (e) (1) The aggregate amount of tax credits allowed under this  
28 section, in any taxable year shall be ten million dollars. Such aggre-  
29 gate amount of credits shall be allocated by the commissioner of econom-  
30 ic development among taxpayers in the order in which applications are  
31 received. If the total amount of allocated credits applied for in any  
32 particular year exceeds the aggregate amount of tax credits allowed for  
33 such year under this section, such excess shall be treated as having  
34 been applied for on the first day of the subsequent year.

35 (2) The commissioner of the department of economic development shall  
36 promulgate regulations by December thirty-first, two thousand twenty-  
37 four to establish procedures for the allocation of tax credits as  
38 required pursuant to section four hundred sixty of the economic develop-  
39 ment law. Such rules and regulations shall include provisions describing  
40 the application process, the due dates for such applications, the stand-  
41 ards which shall be used to evaluate the applications, the documentation  
42 that will be provided to taxpayers to substantiate to the department the  
43 amount of tax credits allocated to such taxpayers, and such other  
44 provisions as deemed necessary and appropriate.

45 (f) The credit allowed under this section for any taxable year shall  
46 not reduce the tax due for such year to less than the amount prescribed  
47 in paragraph (d) of subdivision one of section two hundred ten of this  
48 chapter. Provided, however, that if the amount of the credit allowable  
49 under this section for any taxable year reduces the tax to such amount,  
50 the excess shall be treated as an overpayment of tax to be credited or  
51 refunded in accordance with the provisions of section one thousand  
52 eighty-six of this chapter. Provided further, the provisions of  
53 subsection (c) of section one thousand eighty-eight of this chapter  
54 notwithstanding, no interest shall be paid thereon.

55 (g) The taxpayer may be required to attach to its tax return its  
56 certificate of eligibility issued by the commissioner of economic devel-

opment pursuant to section four hundred sixty of the economic development law.

(h) Where the building which was the basis for the allowance of the credit provided for under this section is sold before the close of the recapture period, the taxpayer shall add back, in the taxable year in which such building was sold, the credit recapture amount. The credit recapture amount is the product of the credit amount claimed and the recapture percentage in accordance with the following table.

<u>If the building is sold within</u>	<u>The recapture percentage</u>
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<u>(i) One full year after placed in service</u>	<u>100</u>
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<u>(ii) One full year after the close of the period described in paragraph (i)</u>	<u>80</u>
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<u>(iii) One full year after the close of the period described in paragraph (ii)</u>	<u>60</u>
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<u>(iv) One full year after the close of the period described in paragraph (iii)</u>	<u>40</u>
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<u>(v) One full year after the close of the period described in paragraph (iv)</u>	<u>20</u>
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(i) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9A: section 210-B, subdivision 59.

(2) Article 22: section 606, subsection (i), paragraph (1), subparagraph (B), clause (1).

(3) Article 22: section 606, subsection (ooo).

§ 3. Section 210-B of the tax law is amended by adding a new subdivision 59 to read as follows:

59. Upstate reinvestment zones tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-eight of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-six of this chapter notwithstanding, no interest will be paid thereon.

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

(ooo) Upstate reinvestment zones tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-eight of this chapter, against the tax imposed by this article.

(b) Application of credit. If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article. Provided, however, no interest will be paid thereon.

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

3 (1) Upstate reinvestment Amount of the credit under  
4 zones credit under subdivision fifty-nine of section  
5 subsection (ooo) two hundred ten-B

6 § 6. This act shall take effect immediately and apply to taxable years  
7 beginning on or after January 1, 2025.