

# STATE OF NEW YORK

9651

## IN ASSEMBLY

March 27, 2024

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

AN ACT to amend the tax law, in relation to expanding a certain tax credit for farmers to include the cost of construction housing for farm workers

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

1 Section 1. Subparagraph (i) of paragraph (b) of subdivision 1 of  
2 section 210-B of the tax law, as amended by section 2 of part P of chap-  
3 ter 59 of the laws of 2017, is amended to read as follows:

4 (i) A credit shall be allowed under this subdivision with respect to  
5 tangible personal property and other tangible property, including build-  
6 ings and structural components of buildings, which are: depreciable  
7 pursuant to section one hundred sixty-seven of the internal revenue  
8 code, have a useful life of four years or more, are acquired by purchase  
9 as defined in section one hundred seventy-nine (d) of the internal  
10 revenue code, have a situs in this state and are (A) principally used by  
11 the taxpayer in the production of goods by manufacturing, processing,  
12 assembling, refining, mining, extracting, farming, agriculture, horti-  
13 culture, floriculture, viticulture or commercial fishing, (B) industrial  
14 waste treatment facilities or air pollution control facilities, used in  
15 the taxpayer's trade or business, (C) research and development property,  
16 or (D) principally used in the ordinary course of the taxpayer's trade  
17 or business as a broker or dealer in connection with the purchase or  
18 sale (which shall include but not be limited to the issuance, entering  
19 into, assumption, offset, assignment, termination, or transfer) of  
20 stocks, bonds or other securities as defined in section four hundred  
21 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as  
22 defined in section four hundred seventy-five (e) of the Internal Revenue  
23 Code, (E) principally used in the ordinary course of the taxpayer's  
24 trade or business of providing investment advisory services for a regu-  
25 lated investment company as defined in section eight hundred fifty-one  
26 of the Internal Revenue Code, or lending, loan arrangement or loan orig-  
27 ination services to customers in connection with the purchase or sale  
28 (which shall include but not be limited to the issuance, entering into,  
29 assumption, offset, assignment, termination, or transfer) of securities  
30 as defined in section four hundred seventy-five (c)(2) of the Internal

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

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1 Revenue Code, (F) principally used in the ordinary course of the taxpay-  
2 er's business as an exchange registered as a national securities  
3 exchange within the meaning of sections 3(a)(1) and 6(a) of the Securi-  
4 ties Exchange Act of 1934 or a board of trade as defined in subparagraph  
5 one of paragraph (a) of section fourteen hundred ten of the not-for-pro-  
6 fit corporation law or as an entity that is wholly owned by one or more  
7 such national securities exchanges or boards of trade and that provides  
8 automation or technical services thereto, or (G) principally used as a  
9 qualified film production facility including qualified film production  
10 facilities having a situs in an empire zone designated as such pursuant  
11 to article eighteen-B of the general municipal law, where the taxpayer  
12 is providing three or more services to any qualified film production  
13 company using the facility, including such services as a studio lighting  
14 grid, lighting and grip equipment, multi-line phone service, broadband  
15 information technology access, industrial scale electrical capacity,  
16 food services, security services, and heating, ventilation and air  
17 conditioning. For purposes of clauses (D), (E) and (F) of this subpara-  
18 graph, property purchased by a taxpayer affiliated with a regulated  
19 broker, dealer, registered investment advisor, national securities  
20 exchange or board of trade, is allowed a credit under this subdivision  
21 if the property is used by its affiliated regulated broker, dealer,  
22 registered investment advisor, national securities exchange or board of  
23 trade in accordance with this subdivision. For purposes of determining  
24 if the property is principally used in qualifying uses, the uses by the  
25 taxpayer described in clauses (D) and (E) of this subparagraph may be  
26 aggregated. In addition, the uses by the taxpayer, its affiliated regu-  
27 lated broker, dealer and registered investment advisor under either or  
28 both of those clauses may be aggregated. Provided, however, a taxpayer  
29 shall not be allowed the credit provided by clauses (D), (E) and (F) of  
30 this subparagraph unless the property is first placed in service before  
31 October first, two thousand fifteen and (i) eighty percent or more of  
32 the employees performing the administrative and support functions  
33 resulting from or related to the qualifying uses of such equipment are  
34 located in this state or (ii) the average number of employees that  
35 perform the administrative and support functions resulting from or  
36 related to the qualifying uses of such equipment and are located in this  
37 state during the taxable year for which the credit is claimed is equal  
38 to or greater than ninety-five percent of the average number of employ-  
39 ees that perform these functions and are located in this state during  
40 the thirty-six months immediately preceding the year for which the cred-  
41 it is claimed, or (iii) the number of employees located in this state  
42 during the taxable year for which the credit is claimed is equal to or  
43 greater than ninety percent of the number of employees located in this  
44 state on December thirty-first, nineteen hundred ninety-eight or, if the  
45 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-  
46 eight, the last day of its first taxable year ending after December  
47 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes  
48 subject to tax in this state after the taxable year beginning in nine-  
49 teen hundred ninety-eight, then the taxpayer is not required to satisfy  
50 the employment test provided in the preceding sentence of this subpara-  
51 graph for its first taxable year. For purposes of clause (iii) of this  
52 subparagraph the employment test will be based on the number of employ-  
53 ees located in this state on the last day of the first taxable year the  
54 taxpayer is subject to tax in this state. If the uses of the property  
55 must be aggregated to determine whether the property is principally used  
56 in qualifying uses, then either each affiliate using the property must

1 satisfy this employment test or this employment test must be satisfied  
2 through the aggregation of the employees of the taxpayer, its affiliated  
3 regulated broker, dealer, and registered investment adviser using the  
4 property. For purposes of clause (A) of this subparagraph, tangible  
5 personal property and other tangible property shall not include property  
6 principally used by the taxpayer in the production or distribution of  
7 electricity, natural gas after extraction from wells, steam, or water  
8 delivered through pipes and mains. For purposes of the credit allowed by  
9 clause (A) of this subparagraph, for a taxpayer that is an eligible  
10 farmer as provided in paragraph (a-1) of this subdivision, the eligible  
11 cost of goods shall include the cost of standard construction materials  
12 and labor used in the construction of residential housing occupied farm  
13 workers employed by the taxpayer to provide labor in the production of  
14 the qualifying product produced by the taxpayer, provided such costs  
15 satisfy the other requirements of this subparagraph.

16 § 2. Subparagraph (A) of paragraph 2 of subsection (a) of section 606  
17 of the tax law, as amended by section 3 of part P of chapter 59 of the  
18 laws of 2017, is amended to read as follows:

19 (A) A credit shall be allowed under this subsection with respect to  
20 tangible personal property and other tangible property, including build-  
21 ings and structural components of buildings, which are: depreciable  
22 pursuant to section one hundred sixty-seven of the internal revenue  
23 code, have a useful life of four years or more, are acquired by purchase  
24 as defined in section one hundred seventy-nine (d) of the internal  
25 revenue code, have a situs in this state and are (i) principally used by  
26 the taxpayer in the production of goods by manufacturing, processing,  
27 assembling, refining, mining, extracting, farming, agriculture, horti-  
28 culture, floriculture, viticulture or commercial fishing, (ii) indus-  
29 trial waste treatment facilities or air pollution control facilities,  
30 used in the taxpayer's trade or business, (iii) research and development  
31 property, (iv) principally used in the ordinary course of the taxpayer's  
32 trade or business as a broker or dealer in connection with the purchase  
33 or sale (which shall include but not be limited to the issuance, enter-  
34 ing into, assumption, offset, assignment, termination, or transfer) of  
35 stocks, bonds or other securities as defined in section four hundred  
36 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as  
37 defined in section 475(e) of the Internal Revenue Code, (v) principally  
38 used in the ordinary course of the taxpayer's trade or business of  
39 providing investment advisory services for a regulated investment compa-  
40 ny as defined in section eight hundred fifty-one of the Internal Revenue  
41 Code, or lending, loan arrangement or loan origination services to  
42 customers in connection with the purchase or sale (which shall include  
43 but not be limited to the issuance, entering into, assumption, offset,  
44 assignment, termination, or transfer) of securities as defined in  
45 section four hundred seventy-five (c)(2) of the Internal Revenue Code,  
46 or (vi) principally used as a qualified film production facility includ-  
47 ing qualified film production facilities having a situs in an empire  
48 zone designated as such pursuant to article eighteen-B of the general  
49 municipal law, where the taxpayer is providing three or more services to  
50 any qualified film production company using the facility, including such  
51 services as a studio lighting grid, lighting and grip equipment, multi-  
52 line phone service, broadband information technology access, industrial  
53 scale electrical capacity, food services, security services, and heat-  
54 ing, ventilation and air conditioning. For purposes of clauses (iv) and  
55 (v) of this subparagraph, property purchased by a taxpayer affiliated  
56 with a regulated broker, dealer, or registered investment adviser is

1 allowed a credit under this subsection if the property is used by its  
2 affiliated regulated broker, dealer or registered investment adviser in  
3 accordance with this subsection. For purposes of determining if the  
4 property is principally used in qualifying uses, the uses by the taxpay-  
5 er described in clauses (iv) and (v) of this subparagraph may be aggre-  
6 gated. In addition, the uses by the taxpayer, its affiliated regulated  
7 broker, dealer and registered investment adviser under either or both of  
8 those clauses may be aggregated. Provided, however, a taxpayer shall not  
9 be allowed the credit provided by clauses (iv) and (v) of this subpara-  
10 graph unless (I) eighty percent or more of the employees performing the  
11 administrative and support functions resulting from or related to the  
12 qualifying uses of such equipment are located in this state, or (II) the  
13 average number of employees that perform the administrative and support  
14 functions resulting from or related to the qualifying uses of such  
15 equipment and are located in this state during the taxable year for  
16 which the credit is claimed is equal to or greater than ninety-five  
17 percent of the average number of employees that perform these functions  
18 and are located in this state during the thirty-six months immediately  
19 preceding the year for which the credit is claimed, or (III) the number  
20 of employees located in this state during the taxable year for which the  
21 credit is claimed is equal to or greater than ninety percent of the  
22 number of employees located in this state on December thirty-first,  
23 nineteen hundred ninety-eight or, if the taxpayer was not a calendar  
24 year taxpayer in nineteen hundred ninety-eight, the last day of its  
25 first taxable year ending after December thirty-first, nineteen hundred  
26 ninety-eight. If the taxpayer becomes subject to tax in this state after  
27 the taxable year beginning in nineteen hundred ninety-eight, then the  
28 taxpayer is not required to satisfy the employment test provided in the  
29 preceding sentence of this subparagraph for its first taxable year. For  
30 the purposes of clause (III) of this subparagraph the employment test  
31 will be based on the number of employees located in this state on the  
32 last day of the first taxable year the taxpayer is subject to tax in  
33 this state. If the uses of the property must be aggregated to determine  
34 whether the property is principally used in qualifying uses, then either  
35 each affiliate using the property must satisfy this employment test or  
36 this employment test must be satisfied through the aggregation of the  
37 employees of the taxpayer, its affiliated regulated broker, dealer, and  
38 registered investment adviser using the property. For purposes of clause  
39 (i) of this subparagraph, tangible personal property and other tangible  
40 property shall not include property principally used by the taxpayer in  
41 the production or distribution of electricity, natural gas after  
42 extraction from wells, steam, or water delivered through pipes and  
43 mains. For purposes of the credit allowed by clause (i) of this subpara-  
44 graph, for a taxpayer that is an eligible farmer as provided in para-  
45 graph one-a of this subsection, the eligible cost of goods shall include  
46 the cost of standard construction materials and labor used in the  
47 construction of residential housing occupied farm workers employed by  
48 the taxpayer to provide labor in the production of the qualifying prod-  
49 uct produced by the taxpayer, provided such costs satisfy the other  
50 requirements of this subparagraph.

51 § 3. This act shall take effect on the first of January next succeed-  
52 ing the date upon which it shall have become a law and shall apply to  
53 tax years commencing on and after such effective date. Effective imme-  
54 diately, the addition, amendment and/or repeal of any rule or regulation  
55 necessary for the implementation of this act on its effective date are  
56 authorized to be made and completed on or before such effective date.