STATE OF NEW YORK

9722

IN ASSEMBLY

April 3, 2024

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

AN ACT to amend the tax law and the parks, recreation and historic preservation law, in relation to authorizing the pass-through or transfer of the credits for rehabilitation of historic properties

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

Section 1. Subdivision 26 of section 210-B of the tax law is amended by adding two new paragraphs (g) and (h) to read as follows:

(g) (i) The allocation of the credit established by this subdivision may be made without regard to and in a separate manner from any federal rehabilitation credit that may be allocated with respect to a certified historic structure under section forty-seven of the internal revenue code by written agreement of the taxpayer otherwise entitled to claim such credit or by written agreement of a pass-through entity that may report such credit or otherwise elect to pass the federal rehabilitation tax credit through to a tenant taxpayer in accordance with applicable federal law.

(ii) With respect to certified historic structures that are subject to a lease arrangement whereby the landlord elects to pass the federal rehabilitation credit through to the tenant taxpayer, not only may the New York state rehabilitation credit be passed down to the tenant taxpayer and then allocated without regard to and in a separate manner from any federal rehabilitation credit that may be allocated, but the landlord may also opt to retain the New York state rehabilitation credit. For purposes of this section, a "landlord" means the owner of the certified historic structure for federal tax purposes.

(iii) The New York state rehabilitation credit may be transferred as provided for in article fourteen-A of the parks, recreation and historic preservation law.

(h) The commissioner shall report annually, on or before the first day of November, on the aggregate amount of credits claimed pursuant to this subdivision on returns filed during the preceding calendar year. Such report shall be provided to the governor, temporary president of the

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

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senate, speaker of the assembly, chairs of the senate committees on finance and on housing, construction and community development, and chairs of the assembly committees on ways and means and on housing and shall be made publicly available on the department's website.

§ 2. Subsection (oo) of section 606 of the tax law is amended by adding two new paragraphs 7 and 8 to read as follows:

(7) (A) The allocation of the credit established by this subsection may be made without regard to and in a separate manner from any federal rehabilitation credit that may be allocated with respect to a certified historic structure under section forty-seven of the internal revenue code by written agreement of the taxpayer otherwise entitled to claim such credit or by written agreement of a pass-through entity that may report such credit or otherwise elect to pass the federal rehabilitation tax credit through to a tenant taxpayer in accordance with applicable federal law.

(B) With respect to certified historic structures that are subject to a lease arrangement whereby the landlord elects to pass the federal rehabilitation credit through to the tenant taxpayer, not only may the New York state rehabilitation credit be passed down to the tenant taxpayer and then allocated without regard to and in a separate manner from any federal rehabilitation credit that may be allocated, but the landlord may also opt to retain the New York state rehabilitation credit. For purposes of this section, a "landlord" means the owner of the certified historic structure for federal tax purposes.

(C) The New York state rehabilitation credit may be transferred as provided for in article fourteen-A of the parks, recreation and historic preservation law.

(8) The commissioner shall report annually, on or before the first day of November, on the aggregate amount of credits claimed pursuant to this subsection on returns filed during the preceding calendar year. Such report shall be provided to the governor, temporary president of the senate, speaker of the assembly, chairs of the senate committees on finance and on housing, construction and community development, and chairs of the assembly committees on ways and means and on housing and shall be made publicly available on the department's website.

§ 3. Subdivision (y) of section 1511 of the tax law, as added by chapter 472 of the laws of 2010, is amended by adding two new paragraphs 7 and 8 to read as follows:

(7) (A) The allocation of the credit established by this subdivision may be made without regard to and in a separate manner from any federal rehabilitation credit that may be allocated with respect to a certified historic structure under section forty-seven of the internal revenue code by written agreement of the taxpayer otherwise entitled to claim such credit or by written agreement of a pass-through entity that may report such credit or otherwise elect to pass the federal rehabilitation tax credit through to a tenant taxpayer in accordance with applicable federal law.

(B) With respect to certified historic structures that are subject to a lease arrangement whereby the landlord elects to pass the federal rehabilitation credit through to the tenant taxpayer, not only may the New York state rehabilitation credit be passed down to the tenant taxpayer and then allocated without regard to and in a separate manner from any federal rehabilitation credit that may be allocated, but the landlord may also opt to retain the New York state rehabilitation credit. For purposes of this section, a "landlord" means the owner of the certified historic structure for federal tax purposes.

(C) The New York state rehabilitation credit may be transferred as provided for in article fourteen-A of the parks, recreation and historic preservation law.

(8) The commissioner shall report annually, on or before the first day of November, on the aggregate amount of credits claimed pursuant to this subdivision on returns filed during the preceding calendar year. Such report shall be provided to the governor, temporary president of the senate, speaker of the assembly, chairs of the senate committees on finance and on housing, construction and community development, and chairs of the assembly committees on ways and means and on housing and shall be made publicly available on the department's website.

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

ARTICLE 14-A

HISTORIC REHABILITATION TAX CREDIT TRANSFER PROGRAM

Section 14.15 Definitions.

14.16 Transfer of rehabilitation credit.

14.17 Reporting.

14.18 Regulations, coordination with federal rehabilitation credit provisions.

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

1. "Federal rehabilitation credit" means the federal credit that may be allocated with respect to a certified historic structure under section forty-seven of the internal revenue code. References in this article to section forty-seven of the internal revenue code shall mean such section as amended from time to time.

2. "Pass-through entity" means an entity that is not a taxpayer under federal or state tax law, such as a limited liability company, a partnership, an S Corporation, or any other entity as determined by the commissioner of taxation and finance which is deemed to be a reporting entity for income tax purposes and files annual information returns passing through items of income, loss, credits and certain other tax attributes to each partner, member or shareholder as applicable.

3. "Qualified rehabilitation expenditures" shall have the same meaning as in section forty-seven of the internal revenue code.

4. "Regulations" means regulations adopted by the commissioner, in consultation with the commissioner of the department of taxation and finance, pursuant to section 14.18 of this article.

5. "Rehabilitation credit" means the credit provided for under subdivision twenty-six of section two hundred ten-B, subsection (oo) of section six hundred six or subdivision (y) of section fifteen hundred eleven of the tax law.

6. "Transferee" means a taxpayer or a pass-through entity that receives a transfer of the rehabilitation credit. A transferee need not own an interest in the certified historic structure or in an entity with an ownership interest in the certified historic structure to receive a transfer of a rehabilitation credit.

7. "Non-profit transferee" means a non-profit entity that receives a transfer of the rehabilitation credit.

§ 14.16 Transfer of rehabilitation credit. Either a 1. taxpayer or pass-through entity that may report the rehabilitation credit or otherwise elect to pass the federal rehabilitation credit through to a tenant taxpayer in accordance with applicable federal law or 2. non-profit transferee may, with prior notice in accordance with the regulations, transfer the rehabilitation credit, in whole or in part, to any trans-

feree or non-profit transferee with the same effect as if the transferee or non-profit transferee had incurred the qualified rehabilitation expenditures itself; provided that no partial transfer of the rehabilitation credit may be for less than twenty-five percent of the full rehabilitation credit claimed by the taxpayer. A transferee shall use or report the rehabilitation credit in the year it is allowed and may not transfer the rehabilitation credit on to yet another transferee. A transfer of rehabilitation credit to a non-profit transferee, where the non-profit transferee is solely acting as a go-between to further transfer the rehabilitation credit to a transferee, shall not constitute a transfer for purposes of determining the single transfer limitation of this section.

§ 14.17 Reporting. If a taxpayer or a pass-through entity that may report the credit or otherwise elect to pass the federal rehabilitation credit through to a tenant taxpayer in accordance with applicable federal law elects to transfer the credit as provided for in section 14.16 of this article, prior to filing any tax returns claiming the rehabilitation credit, a taxpayer or a pass-through entity that may report the rehabilitation credit or otherwise elect to pass the federal rehabilitation credit through to a tenant taxpayer in accordance with applicable federal law shall provide an information statement to the commissioner in accordance with the department's regulations. Such information statement shall include, but may not be limited to, the identity and tax identification information of any non-profit transferee and the identity and tax identification information of any transferee that will claim the credit.

§ 14.18 Regulations, coordination with federal rehabilitation credit provisions. The commissioner, in consultation with the commissioner of the department of taxation and finance, shall promulgate rules and regulations necessary to administer the provisions of this article.

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