

# STATE OF NEW YORK

4554

2023-2024 Regular Sessions

## IN SENATE

February 10, 2023

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

AN ACT to amend the state technology law and the tax law, in relation to a refundable tax credit provided to broadband deployment to residences and small businesses located in rural, unserved areas

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

1 Section 1. This act shall be known and may be cited as the "credit for  
2 rural broadband act".

3 § 2. Section 104 of the state technology law is amended by adding a  
4 new subdivision 3 to read as follows:

5 3. The office of information technology services, in conjunction with  
6 input from the advisory council, is hereby authorized and directed to  
7 promulgate rules and regulations necessary for verifying an "unserved"  
8 area under the credit for rural broadband act, using broadband mapping  
9 data at the time a project is proposed.

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

12 59. Credit for rural broadband deployment. (a) Allowance of credit.  
13 A qualified taxpayer shall be allowed a credit against the tax imposed  
14 by this article equal to any qualified customer contribution in aid of  
15 construction resulting from new network construction to deliver broad-  
16 band service to the individual's residence or place of business located  
17 in an unserved area. The credit allowed by this subdivision shall be  
18 claimed annually over a five-year period equal to one-fifth of the cred-  
19 it amount. If the credit allowed under this subdivision is greater than  
20 the tax due in any taxable year, the amount by which such credit exceeds  
21 such tax due is treated as an overpayment of tax to be refunded in  
22 accordance with the provisions of section one thousand eighty-six of  
23 this chapter.

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

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1 (b) For purposes of this subdivision, the following definitions shall  
2 apply:

3 (1) "Qualified construction expenses" equal the total cost of  
4 construction of new networks in the proposed unserved service area, as  
5 certified by the broadband service provider, but not to exceed a reason-  
6 able cost based upon the average cost per mile of broadband network  
7 construction as determined by the commissioner in consultation with the  
8 public service commission and broadband service providers.

9 (2) "Qualified customer contribution in aid of construction" is deter-  
10 mined in accordance with the following formula: (QCE/TC) - (ACM/35) =  
11 QC, where QCE equals the qualified construction expenses; ACM equals the  
12 average cost of construction per mile in the proposed unserved service  
13 area, as certified by the broadband service provider, but not to exceed  
14 a reasonable cost based upon the average cost per mile of broadband  
15 network construction as determined by the commissioner in consultation  
16 with the public service commission and broadband service providers; TC  
17 equals the number of residents and small business customers in the  
18 proposed unserved service area making a qualified customer contribution  
19 in aid to construction and contracting for services over the network;  
20 and QC equals the qualified customer contribution in aid of  
21 construction.

22 (3) "Required provider contribution in aid to construction" shall  
23 equal the qualified construction expenses, less the sum of all the qual-  
24 ified customer contributions in aid to construction in the proposed  
25 unserved service area.

26 (4) "Broadband service" means Internet access service with trans-  
27 mission speeds that are equal to or greater than combined advertised  
28 download speeds of at least 4 Megabits per second (Mbps) and upload  
29 speeds of at least 1 Mbps over the provider's network.

30 (5) "Unserved area" means an area composed of one or more contiguous  
31 census blocks where at least ninety percent of households lack access to  
32 facilities-based terrestrial broadband service. A household has access  
33 to a broadband service if the household can readily subscribe to that  
34 service upon request.

35 (6) "Qualified taxpayer" means a taxpayer which is a small business  
36 corporation as defined in paragraph three of subsection (c) of section  
37 twelve hundred forty-four of the internal revenue code (without regard  
38 to the second sentence of subparagraph (A) thereof) as of the last day  
39 of the taxable year.

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

42 (bbb) Credit for rural broadband deployment. (A) Allowance of credit.  
43 A qualified taxpayer shall be allowed a credit against the tax imposed  
44 by this article equal to any qualified customer contribution in aid of  
45 construction resulting from new network construction to deliver broad-  
46 band service to the individual's residence or place of business located  
47 in an unserved area. The credit allowed by this subsection shall be  
48 claimed annually over a five-year period equal to one-fifth of the cred-  
49 it amount. If the credit allowed under this subsection is greater than  
50 the tax due in any taxable year, the amount by which such credit exceeds  
51 such tax due is treated as an overpayment of tax to be refunded in  
52 accordance with the provisions of section one thousand eighty-six of  
53 this chapter.

54 (B) For purposes of this subsection, the following definitions shall  
55 apply:

1 (1) "Qualified construction expenses" equal the total cost of  
2 construction of new networks in the proposed unserved service area, as  
3 certified by the broadband service provider, but not to exceed a reason-  
4 able cost based upon the average cost per mile of broadband network  
5 construction as determined by the commissioner in consultation with the  
6 public service commission and broadband service providers.

7 (2) "Qualified customer contribution in aid of construction" is deter-  
8 mined in accordance with the following formula:  $(QCE/TC) - (ACM/35) =$   
9 QC, where QCE equals the qualified construction expenses; ACM equals the  
10 average cost of construction per mile in the proposed unserved service  
11 area, as certified by the broadband service provider, but not to exceed  
12 a reasonable cost based upon the average cost per mile of broadband  
13 network construction as determined by the commissioner in consultation  
14 with the public service commission and broadband service providers; TC  
15 equals the number of residents and small business customers in the  
16 proposed unserved service area making a qualified customer contribution  
17 in aid to construction and contracting for services over the network;  
18 and QC equals the qualified customer contribution in aid of  
19 construction.

20 (3) "Required provider contribution in aid to construction" shall  
21 equal the qualified construction expenses, less the sum of all the qual-  
22 ified customer contributions in aid to construction in the proposed  
23 unserved service area.

24 (4) "Broadband service" means Internet access service with trans-  
25 mission speeds that are equal to or greater than combined advertised  
26 download speeds of at least 4 Megabits per second (Mbps) and upload  
27 speeds of at least 1 Mbps over the provider's network.

28 (5) "Unserved area" means an area composed of one or more contiguous  
29 census blocks where at least ninety percent of households lack access to  
30 facilities-based terrestrial broadband service. A household has access  
31 to a broadband service if the household can readily subscribe to that  
32 service upon request.

33 (6) "Qualified taxpayer" means any individual with New York adjusted  
34 gross income of two hundred fifty thousand dollars or less.

35 § 5. This act shall take effect immediately and shall apply to tax  
36 years beginning on or after January 1, 2024.