

STATE OF NEW YORK

4646

2023-2024 Regular Sessions

IN SENATE

February 13, 2023

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to a small business electric energy tax credit

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

1 Section 1. Section 210-B of the tax law is amended by adding a new
2 subdivision 59 to read as follows:

3 59. Small business electric energy tax credit. (a) A taxpayer that is
4 eligible under the limitations specified in paragraph (b) of this subdivi-
5 vision shall be allowed a credit against the tax imposed by this arti-
6 cle. The amount of the credit shall be equal to the product of two
7 cents per kilowatt hour for all business related electricity usage at
8 the taxpayer's primary business location.

9 (b) An eligible taxpayer shall (i) have no more than nineteen full
10 time equivalent employees in New York state, including any related
11 members or affiliates, (ii) not be a sole-proprietorship if such sole-
12 proprietor's primary business location is sited in or part of such sole-
13 proprietor's place of residence, (iii) not be certified pursuant to
14 article eighteen-B of the general municipal law, and (iv) not be receiv-
15 ing any allocation or award pursuant to any program authorized under
16 article six of the economic development law.

17 (c) (i) The term "business related electricity usage" shall refer to
18 electrical power usage used to further the economic activity of the
19 taxpayer at the primary business location that is clearly delimited from
20 any shared electrical power usage cost. (ii) The term "primary business
21 location" shall mean the physical site of the taxpayer within the state
22 of New York where the majority of the taxpayer's economic activity is
23 generated or coordinated through. (iii) The term "related members"
24 shall have the same meaning as set forth in clauses (A) and (B) of
25 subparagraph one of paragraph (o) of subdivision nine of section two

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

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1 hundred eight of this article, and the term "affiliates" shall mean
2 those corporations that are members of the same affiliated group (as
3 defined in section fifteen hundred four of the internal revenue code) as
4 the taxpayer.

5 (d) The eligible usage level shall be the total kilowatt hour usage of
6 the taxpayer for business related electricity usage during the taxpay-
7 er's taxable year as verified through bills or other form of usage chart
8 provided to the taxpayer by the taxpayer's electricity power service
9 provider.

10 (e) In no event shall the credit provided for in this subdivision be
11 allowed in an amount which will reduce the tax payable to less than the
12 fixed dollar minimum amount prescribed in paragraph (d) of subdivision
13 one of section two hundred ten of this article. However, if the amount
14 of credit allowed under this subdivision for any taxable year reduces
15 the tax to such amount, any amount of credit not deductible in such
16 taxable year shall be treated as an overpayment of tax to be credited or
17 refunded in accordance with the provisions of section one thousand
18 eighty-six of this chapter. Provided, however, the provisions of
19 subsection (c) of section one thousand eighty-eight of this chapter
20 notwithstanding, no interest shall be paid thereon.

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

23 (ooo) Small business electric energy tax credit. (1) A taxpayer that
24 is eligible under the limitations specified in paragraph two of this
25 subsection shall be allowed a credit against the tax imposed by this
26 article. The amount of the credit shall be equal to the product (or pro
27 rata share of the product in the case of a partnership) of two cents per
28 kilowatt hour for all business related electricity usage at the taxpay-
29 er's primary business location.

30 (2) An eligible taxpayer shall (i) have no more than nineteen full
31 time equivalent employees in New York state, including any related
32 members or affiliates, (ii) shall not be a sole-proprietorship if such
33 sole-proprietor's primary business location is sited in or part of such
34 sole-proprietor's place of residence, (iii) not be certified pursuant to
35 article eighteen-B of the general municipal law, and (iv) not be receiv-
36 ing any allocation or award pursuant to any program authorized under
37 article six of the economic development law.

38 (3) (i) The term "business related electricity usage" shall refer to
39 electrical power usage used to further the economic activity of the
40 taxpayer at the primary business location that is clearly delimited from
41 any shared electrical power usage cost. (ii) The term "primary business
42 location" shall mean the physical site of the taxpayer within the state
43 of New York where the majority of the taxpayer's economic activity is
44 generated or coordinated through. (iii) The term "related members" shall
45 have the same meaning as set forth in clauses (A) and (B) of subpara-
46 graph one of paragraph (o) of subdivision nine of section two hundred
47 eight of this chapter, and the term "affiliates" shall mean those corpo-
48 rations that are members of the same affiliated group (as defined in
49 section fifteen hundred four of the internal revenue code) as the
50 taxpayer.

51 (4) The eligible usage level shall be the total kilowatt hour usage of
52 the taxpayer for business related electricity usage during the taxpay-
53 er's taxable year as verified through bills or other form of usage chart
54 provided to the taxpayer by the taxpayer's electricity power service
55 provider.

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

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

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| 8 <u>(1) Small business electric</u> | <u>Qualifying electricity usage</u> |
| 9 <u>energy tax credit</u> | <u>under subdivision fifty-nine</u> |
| 10 <u>under subsection (ooo)</u> | <u>of section two hundred ten-B</u> |

11 § 4. This act shall take effect immediately and shall apply to taxable
12 years beginning on or after January 1, 2023.