STATE OF NEW YORK

5450

2023-2024 Regular Sessions

IN SENATE

March 6, 2023

Introduced by Sens. JACKSON, CLEARE, COMRIE, HOYLMAN-SIGAL, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1

AN ACT to amend the real property tax law, in relation to providing a tax abatement for facility-integrated carbon-to-value equipment

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

Section 1. Article 4 of the real property tax law is amended by adding a new title 3-A to read as follows:

TITLE 3-A

CARBON-TO-VALUE TAX ABATEMENT FOR CERTAIN PROPERTIES IN A CITY OF ONE MILLION OR MORE PERSONS

Section 498. Definitions.

498-a. Tax abatement terms and amounts.

498-b. Tax abatement application guidelines and rules.

498-c. Tax abatement continuing requirements.

498-d. Tax abatement revocation rules.

498-e. Tax abatement enforcement and administration.

498-f. Tax lien and interest rules.

§ 498. Definitions. When used in this title:

1. "Anthropogenic carbon dioxide emissions" shall refer to the release of heat-trapping carbon dioxide pollution into the atmosphere as a result of human activities.

2. "Application for tax abatement" shall mean an application for a facility-integrated carbon-to-value equipment tax abatement pursuant to section four hundred ninety-eight-b of this title.

3. "Carbon dioxide beneficial use" shall refer to a practice that involves the utilization of carbon dioxide in a process to manufacture a product or operate equipment that: (a) results in a net reduction in operational and/or embodied carbon dioxide at a facility or property;

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

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and (b) is verified by a life cycle assessment in compliance with International Standard ISO 14040.

4. "Carbon dioxide capture" shall refer to the process of capturing carbon dioxide at emissions point sources located at facilities and buildings.

5. "Carbon dioxide removal" shall refer to the process of removing carbon dioxide from the atmosphere.

6. "Carbon dioxide storage" shall refer to the process of chemically and/or physically sequestering carbon dioxide emissions from post-industrial or atmospheric sources in materials, products or geological formations for periods of time equal to or greater than one hundred years.

7. "Compliance period" shall mean the tax year in which a tax abatement commences and the three tax years immediately thereafter. For eligible carbon-to-value applications placed in service at eligible buildings for which annual property tax liability for the eligible building is less than one hundred thousand dollars, and for which five percent of the eligible carbon-to-value equipment expenditures exceeds one hundred thousand dollars, the compliance period shall be extended to a maximum of eight tax years to allow eligible building owners to avail a tax abatement equal to the lesser of twenty percent of eligible carbon-to-value equipment expenditures, or eight hundred thousand dollars.

8. "Designated agency" shall mean one or more agencies or departments of a city having a population of one million or more persons that are designated by the mayor of such city to exercise the functions, powers and duties of a designated agency pursuant to this title, including certification of eligible carbon-to-value equipment, applications and buildings.

9. "Eligible carbon-to-value application" shall mean the application of carbon-to-value equipment at facilities for the purposes of mitigating carbon dioxide emissions that are: (a) generated as a result of the operation of that facility; and/or (b) the manufacture of materials that are prepared or produced at that facility, by technologies that remove, capture and/or beneficially use carbon dioxide, resulting in a net reduction of carbon dioxide emissions.

10. "Eligible building" shall mean class four real property located within a city having a population of one million or more persons. Designated agencies shall be empowered to exclude property tax abatement eligibility of certain building types on the basis of carbon dioxide emissions reduction and/or environmental justice considerations if the latter are determined to contradict the intent of existing local laws that have been established to reduce the carbon dioxide emissions of such buildings. No building shall be eligible for the property tax abatement, under this provision, if the designated agencies empowered to administer such abatement, deem that such building has not exhausted other viable methods to reduce the building's carbon emissions in alignment with rules, objectives and programs established pursuant to existing local laws. No building shall be eligible for more than one tax abatement pursuant to this title.

11. "Eligible carbon-to-value equipment expenditures" shall mean reasonable expenditures for materials, labor costs properly allocable to on-site preparation, assembly and original installation, architectural and engineering services, and designs and plans directly related to the construction or installation of carbon-to-value equipment installed in connection with an eligible building. Such eligible expenditures shall

not include interest or other finance charges, or any expenditures incurred using a federal, state or local grant.

12. "Environmental justice areas" shall mean low-income communities or minority communities located in a city of one million or more persons that have been designated and defined pursuant to local law based on United States census data.

13. "Facility-integrated carbon-to-value equipment" refers to technologies placed in service at buildings within a city of one million or more persons that remove carbon dioxide from the ambient air, capture carbon dioxide from emissions point sources located at the property, and/or utilize carbon dioxide in the production of goods and materials. Qualified carbon-to-value equipment must perform functions that result either in verifiable carbon dioxide removal and storage or constitute a verifiable carbon dioxide beneficial use that results in reduced or avoided carbon dioxide emissions.

§ 498-a. Tax abatement terms and amounts. 1. If the facility-integrated carbon-to-value equipment is placed in service on or after January first, two thousand twenty-three, and not after December thirty-first, two thousand twenty-eight, for each year of the compliance period such tax abatement shall be the lesser of: (a) five percent of eligible facility-integrated carbon-to-value equipment expenditures; (b) the amount of taxes payable in such tax year; or (c) one hundred thousand dollars.

2. For facility-integrated carbon-to-value equipment that captures carbon dioxide from boiler systems that combust fossil-based hydrocarbon fuels eligibility for the property tax abatement shall be restricted to properties that meet the following conditions:

(a) Boiler systems that are located at the property were placed in service between January first, two thousand fifteen and April twenty-second, two thousand twenty.

(b) The carbon dioxide captured at the property by the proposed carbon-to-value application shall:

(i) be utilized subsequent to capture within the physical jurisdiction of the city with a population of one million or more people; and

(ii) result in the storage of carbon dioxide in materials for periods of no less than one hundred years in duration.

(c) The carbon-to-value application at the property shall demonstrate net carbon dioxide reductions as verified by a life cycle assessment in compliance with International Standard ISO 14040.

(d) The equipment shall not be located at buildings located within designated environmental justice areas as defined by a city of one million or more persons pursuant to local law.

§ 498-b. Tax abatement application guidelines and rules. 1. To obtain a tax abatement pursuant to this title, an applicant must file an application for tax abatement, which may be filed on or after January first, two thousand twenty-four, and on or before March fifteenth, two thousand twenty-nine.

2. Such an application shall contain the following:

(a) The name and address of the applicant and the location of the facility-integrated carbon-to-value equipment.

(b) The type of facility-integrated carbon-to-value equipment.

(c) A description of the specific utilization or utilizations of the carbon dioxide that will be removed or captured by the facility-integrated carbon-to-value equipment.

(d) Proof that the applicant received all required certifications, permits and other approvals to construct the facility-integrated carbon-to-value equipment.

(e) Certifications in a form prescribed by a designated agency, from an architect, engineer or other certified or licensed professional whom a designated agency designates by rule, that: (i) a facility-integrated carbon-to-value equipment has been placed in service in connection with an eligible building in accordance with this title, the rules promulgated hereunder, and local construction and fire codes; and (ii) if deemed applicable by a designated agency, the facility-integrated carbon-to-value equipment has been placed on the roof of a building or other structure, that a structural analysis has been performed establishing that such building or structure can sustain the load of such facility-integrated carbon-to-value equipment. All certifications required by this title or the rules promulgated hereunder shall set forth the specific findings upon which the certification is based, and shall include information sufficient to identify the eligible building, the certifying engineer, architect or other professional, and such other information as may be prescribed by a designated agency.

(f) If deemed applicable, an agreement to permit a designated agency or its designee to inspect the facility-integrated carbon-to-value equipment and any related structures and equipment upon reasonable notice.

(g) Any other information or certifications required by a designated agency pursuant to this title and the rules promulgated hereunder.

§ 498-c. Tax abatement continuing requirements. The tax abatement shall be conditioned upon:

1. continuing compliance during the compliance period with all applicable provisions of law, including without limitation the local construction and fire codes, maintaining the facility-integrated carbon-to-value equipment in such a manner that it continuously constitutes a facility-integrated carbon-to-value equipment within the meaning of this title and the rules promulgated hereunder, and permitting a designated agency or its designee to inspect the facility-integrated carbon-to-value equipment and any related structures and equipment upon reasonable notice; and

2. property taxes, water and sewer charges, payments in lieu of taxes or other municipal charges with respect to an eligible building not having been due and owing during the compliance period for a period of six months or more.

§ 498-d. Tax abatement revocation rules. 1. The department of taxation and finance shall revoke, in whole or in part, any tax abatement granted pursuant to this title whenever a designated agency has determined and notified the department of taxation and finance that:

(a) an applicant has failed to comply with a requirement of this title or any rule promulgated hereunder at any time during the compliance period including, but not limited to, any of the continuing requirements set forth in subdivision one of section four hundred ninety-nine-c of this title;

(b) an eligible building has not been in compliance at any time during the compliance period with a requirement of this title or any rule promulgated hereunder;

(c) the facility-integrated carbon-to-value equipment for which a tax abatement was granted has at any time during the compliance period failed to meet any requirement for a facility-integrated carbon-to-value equipment pursuant to this title or any rule promulgated hereunder;

(d) facility-integrated carbon-to-value equipment has become a fire or safety hazard at any time during the compliance period; or

(e) an application, certification, report or other document submitted by the applicant contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statement therein not false or misleading.

2. The department of taxation and finance may revoke, in whole or in part, any tax abatement granted pursuant to this title whenever it has determined that an applicant has failed to comply with the continuing requirements set forth in section four hundred ninety-nine-c of this title.

3. Where it has been determined by a designated agency, after notice and an opportunity to be heard, that any of the provisions of subdivision one of this section have not been complied with, such designated agency shall notify the department of taxation and finance no later than the ninetieth day after the last day of the compliance period.

4. An applicant shall pay, with interest, such part of any tax abatement received pursuant to this title that represents the period of non-compliance as determined by the designated agency or the department of taxation and finance. In addition, a designated agency may declare any applicant ineligible for future tax abatement pursuant to this title if any application, certification, report or other document submitted by the applicant contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statement therein not false or misleading.

§ 498-e. Tax abatement enforcement and administration. 1. The department of taxation and finance shall have, in addition to any other functions, powers and duties that have been or may be conferred on it by law, the following functions, powers and duties to be exercised in accordance with this title:

(a) to apply a tax abatement;

(b) to revoke all or part of any such tax abatement;

(c) to make and promulgate rules to carry out the purposes of this title; and

(d) any other function, power or duty necessarily implied by this title.

2. A designated agency shall have, in addition to any other functions, powers and duties that have been or may be conferred on it by law, the following functions, powers and duties to be exercised in accordance with this title:

(a) to receive, review, approve and deny applications for tax abatement;

(b) to inspect facility-integrated carbon-to-value equipment and any related structures and equipment;

(c) to establish permit or certification requirements to determine when the facility-integrated carbon-to-value equipment has been placed in service, such as certification by an architect, engineer or other certified or licensed professional whom a designated agency designates by rule;

(d) to establish guidance and procedures for determining or certifying eligible facility-integrated carbon-to-value equipment expenditures;

(e) to prescribe forms and make and promulgate rules to carry out the purposes of this title;

(f) to make the determinations provided for in this title and to notify the department of taxation and finance of such determinations; and

(g) any other function, power or duty necessarily implied by this title.

3. If a designated agency determines that an architect or engineer or other certified or licensed professional whom a designated agency designates by rule, in making any certification under this title or any rule promulgated hereunder, engaged in professional misconduct, then such agency shall so inform the education department or other appropriate certifying or licensing authority.

4. A designated agency may provide for reasonable administrative charges or fees necessary to defray expenses of administering the tax abatement program established by this title.

5. A designated agency and the department of taxation and finance shall establish procedures that are necessary or appropriate for: (a) the timely notification to the department of taxation and finance by a designated agency of an approval of an application for tax abatement or of any noncompliance pursuant to section four hundred ninety-nine-d of this title; and (b) any other interagency coordination to facilitate the purposes of this title.

§ 498-f. Tax lien and interest rules. All taxes, with interest, required to be paid retroactively pursuant to this title shall constitute a tax lien as of the date it is determined such taxes and interest are owed. All interest shall be calculated from the date the taxes would have been due but for the tax abatement granted pursuant to this title at the applicable rate or rates of interest imposed generally for nonpayment of real property tax with respect to the eligible building for the period in question.

§ 2. This act shall take effect immediately.