

STATE OF NEW YORK

8804

IN SENATE

March 13, 2024

Introduced by Sens. TEDISCO, BORRELLO -- 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 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 chapter
3 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 buildings
6 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, horticulture,
13 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 regulated
25 investment company as defined in section eight hundred fifty-one
26 of the Internal Revenue Code, or lending, loan arrangement or loan orig-

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

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

ees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of clause (A) of this subparagraph, tangible personal property and other tangible property shall not include property principally used by the taxpayer in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains. For purposes of the credit allowed by clause (A) of this subparagraph, for a taxpayer that is an eligible farmer as provided in paragraph (a-1) of this subdivision, the eligible cost of goods shall include the cost of standard construction materials and labor used in the construction of residential housing occupied farm workers employed by the taxpayer to provide labor in the production of the qualifying product produced by the taxpayer, provided such costs satisfy the other requirements of this subparagraph.

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

(A) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (i) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (ii) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section 475(e) of the Internal Revenue Code, (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or (vi) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, where the taxpayer is providing three or more services to any qualified film production company using the facility, including such services as a studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial

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

55 § 3. This act shall take effect on the first of January next succeed-
56 ing the date upon which it shall have become a law and shall apply to

1 tax years commencing on and after such effective date. Effective imme-
2 diately, the addition, amendment and/or repeal of any rule or regulation
3 necessary for the implementation of this act on its effective date are
4 authorized to be made and completed on or before such effective date.