

STATE OF NEW YORK

S. 8392

A. 11987

SENATE - ASSEMBLY

June 19, 2006

IN SENATE -- Introduced by Sens. PAVAN, LEIBELL, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Canestrari, Hoyt, Farrell, Tokasz, Grannis, Abbate, Alessi, Aubertine, Benjamin, Bing, Boyland, Bradley, Brennan, Cahill, Carrozza, Clark, Cook, Cusick, DelMonte, Destito, DiNapoli, Eddington, Englebright, Espaillat, Galef, Gantt, Glick, Gunther, Hikind, John, Koon, Lafayette, Lavelle, Lupardo, Magee, Magnarelli, McEneny, Millman, Morelle, Nolan, Ortiz, Peoples, Pheffer, Reilly, J. Rivera, P. Rivera, Robinson, Schimming, Schroeder, Sweeney, Tonko, Weinstein, Weisenberg, Wright) -- 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 establishing a credit against income tax for the rehabilitation of historic properties

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

1 Section 1. Section 606 of the tax law is amended by adding two new
2 subsections (oo) and (pp) to read as follows:
3 (oo) Credit for rehabilitation of historic properties. (1) For taxable
4 years beginning on or after January first, two thousand seven, a taxpay-
5 er shall be allowed a credit as hereinafter provided, against the tax
6 imposed by this article, in an amount equal to thirty percent of the
7 amount of credit allowed the taxpayer for the same taxable year with
8 respect to a certified historic structure under subsection (c)(3) of
9 section 47 of the federal internal revenue code with respect to a certi-
10 fied historic structure located within the state. Provided, however,
11 the credit shall not exceed one hundred thousand dollars.
12 (2) If the credit allowed the taxpayer pursuant to subsection (c)(3)
13 of section 47 of the internal revenue code is recaptured pursuant to
14 subsection (a) of section 50 of the internal revenue code, a portion of
15 the credit allowed under this subsection must be added back in the same

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

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1 taxable year as such recapture equal to thirty percent times the amount
2 of the federal recapture.

3 (3) If the amount of the credit allowable under this subsection for
4 any taxable year shall exceed the taxpayer's tax for such year, the
5 excess may be carried over to the following year or years, and may be
6 deducted from the taxpayer's tax for such year or years.

7 (pp) Historic homeownership rehabilitation credit. (1) For taxable
8 years beginning on or after January first, two thousand seven, a taxpay-
9 er shall be allowed a credit, to be computed as hereinafter provided,
10 against the tax imposed by this article. The amount of the credit shall
11 be equal to twenty percent of the qualified rehabilitation expenditures
12 made by the taxpayer with respect to a qualified historic home and may
13 be allowed in the taxable year in which the final certification step of
14 the certified rehabilitation is completed.

15 (A) If such expenditures relate only to exterior work, the credit
16 shall be allowed for qualified rehabilitation expenditures if the exte-
17 rior work has been approved by a local landmark commission established
18 pursuant to section ninety-six-a or one hundred nineteen-dd of the
19 general municipal law or by the office of parks, recreation and historic
20 preservation.

21 (B) If such expenditures relate to both exterior and interior work,
22 the credit shall be allowed for qualified rehabilitation expenditures
23 that have been approved by the office of parks, recreation and historic
24 preservation or by a local government certified pursuant to section
25 101(c)(1) of the national historic preservation act. Under this subpara-
26 graph, approval is necessary for the qualified rehabilitation expendi-
27 tures related to both the exterior work on the qualified historic home
28 and interior work affecting primary significant historic spaces of the
29 qualified historic home.

30 (2) (A) With respect to any particular residence of a taxpayer, the
31 credit allowed under paragraph one of this subsection shall not exceed
32 twenty-five thousand dollars. In the case of a husband and wife, the
33 amount of the credit shall be divided between them equally or in such
34 other manner as they may both elect. If a taxpayer incurs qualified
35 rehabilitation expenditures in relation to more than one residence in
36 the same year, the total amount of credit allowed under paragraph one of
37 this subsection for all such expenditures shall not exceed twenty-five
38 thousand dollars.

39 (B) If the amount of credit allowable under this subsection shall
40 exceed the taxpayer's tax for such year, the excess may be carried over
41 to the following year or years and may be deducted from the taxpayer's
42 tax for such year or years.

43 (3)(A) The term "qualified rehabilitation expenditure" means, for
44 purposes of this subsection, any amount properly chargeable to a capital
45 account:

46 (i) in connection with the certified rehabilitation of a qualified
47 historic home, and

48 (ii) for property for which depreciation would be allowable under
49 section 168 of the internal revenue code if the qualified historic home
50 were used in a trade or business.

51 (B) Such term shall not include (i) the cost of acquiring any building
52 or interest therein, (ii) any expenditure attributable to the enlarge-
53 ment of an existing building, or (iii) any expenditure made prior to
54 January first, two thousand seven.

55 (C) Such term shall not include any expenditure in connection with the
56 rehabilitation of a qualified historic home unless at least five percent

1 of the total expenditures made in the rehabilitation process are alloca-

2 ble to the rehabilitation of the exterior of such building.

3 (D) If only a portion of a building is used as a residence of the
4 taxpayer, only qualified rehabilitation expenditures which are properly
5 allocable to such residential portion shall be taken into account under
6 this subsection.

7 (4)(A) The term "certified rehabilitation" means, for purposes of this
8 subsection, any rehabilitation of a certified historic structure which
9 has been approved and certified as being consistent with the standards
10 established by the commissioner of parks, recreation and historic pres-
11 ervation for rehabilitation by the office of parks, recreation and
12 historic preservation, a local government certified pursuant to section
13 101(c)(1) of the national historic preservation act or a local landmark
14 commission established pursuant to section ninety-six-a or one hundred
15 nineteen-dd of the general municipal law.

16 (B) A certified rehabilitation shall require:

17 (i) an initial certification that the structure meets the definition
18 of the term "certified historic structure";

19 (ii) a second certification, to be issued prior to construction,
20 certifying that the proposed rehabilitation work is consistent with
21 standards established by the commissioner of parks, recreation and
22 historic preservation for rehabilitation; and

23 (iii) a final certification issued when construction is completed,
24 certifying that the work was completed as proposed and that the costs
25 are consistent with the work completed. Such final certification shall
26 be acceptable as proof that the expenditures related to such
27 construction qualify as qualified rehabilitation expenditures for
28 purposes of the credit allowed under either subparagraph (A) or (B) of
29 paragraph one of this subsection.

30 (5)(A) The term "qualified historic home" means, for purposes of this
31 subsection, a certified historic structure located within New York
32 state:

33 (i) which has been substantially rehabilitated,

34 (ii) which, or any portion of which, is owned, in whole or part, by
35 the taxpayer,

36 (iii) in which the taxpayer resides during the taxable year in which
37 the taxpayer is allowed a credit under this subsection, and

38 (iv) which is in whole or in part a targeted area residence within the
39 meaning of section 143(j) of the internal revenue code and located with-
40 in an area of a city, town or village whose governing body has identi-
41 fied by resolution that such area is in need of community renewal
42 because of deteriorated and/or vacant buildings and, by local law, has
43 adopted a historic preservation and community renewal program to
44 preserve and/or revitalize such area. A historic preservation and
45 community renewal program is a program that coordinates all applicable
46 governmental benefits and programs with the aims of preserving and/or
47 revitalizing neighborhoods, encouraging property owners to complete
48 substantial rehabilitation projects and promoting smart growth economic
49 development. Such local laws shall be filed with the office of parks,
50 recreation and historic preservation. The office of parks, recreation
51 and historic preservation shall assist local governments in developing
52 historic preservation and community renewal programs.

53 (B) A building shall be treated as having been "substantially rehabil-
54 itated" if the qualified rehabilitation expenditures in relation to such
55 building total five thousand dollars or more.

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1 (6) The term "certified historic structure" means, for purposes of

2 this subsection, any building (and its structural components) which:

3 (i) is listed in the state or national register of historic places, or

4 (ii) is located in a state or national registered historic district
5 and is certified as being of historic significance to the district.

6 (7) If the taxpayer holds stock as a tenant-shareholder in a cooper-
7 ative housing corporation, such taxpayer shall be treated as owning the
8 house or apartment which the taxpayer is entitled to occupy as such
9 shareholder.

10 (8)(A) A percentage of the total expenditures made in the rehabili-
11 tation of the exterior of a building containing cooperative or condomin-
12 ium dwelling units shall be attributed to each such unit within the
13 building based on the percentage of space each such unit occupies within
14 the building.

15 (B) In the case of a building where less than the entire building is
16 used as a residence of the taxpayer, only the portion of the total
17 expenditures made in the rehabilitation of the building that is attrib-
18 utable to the residence of the taxpayer shall be treated as qualified
19 rehabilitation expenditures for the purposes of this subsection.

20 (C) In the case of a building that is owned by and is a residence of
21 two or more persons, other than a husband and wife, the portion of the
22 total expenditures made in the rehabilitation of the building that is
23 attributable to each taxpayer shall be equal to the taxpayer's share of
24 ownership in such building.

25 (9) In the case of a building other than a building to which paragraph
26 ten of this subsection applies, qualified rehabilitation expenditures
27 shall be treated for purposes of this subsection as made on the date of
28 the final certification referred to in clause (iii) of subparagraph (B)
29 of paragraph four of this subsection.

30 (10)(A) In the case of a purchased qualified historic home, the
31 taxpayer shall be treated as having made, on the date of purchase, the
32 qualified rehabilitation expenditures made by the seller of such home.
33 For purposes of this subsection, expenditures made by the seller shall
34 be deemed qualified rehabilitation expenditures if such expenditures, if
35 made by the purchaser, would have so qualified.

36 (B) The term "purchased qualified historic home" means any qualified
37 historic home purchased by the taxpayer if:

38 (i) the taxpayer is the first purchaser of such home after the date of
39 the final certification referred to in clause (iii) of subparagraph (B)
40 of paragraph four of this subsection, and the purchase occurs within
41 five years after such date,

42 (ii) the taxpayer, during the taxable year in which the taxpayer is
43 allowed a credit under this subsection, resides in such home,

44 (iii) no credit was allowed to the seller under this subsection with
45 respect to such rehabilitation, and

46 (iv) the taxpayer is furnished with such information as the commis-
47 sioner determines is necessary to determine any credit under this
48 subsection.

49 (11)(A) If, before the end of the two-year period beginning either on
50 the date of the final certification referred to in clause (iii) of
51 subparagraph (B) of paragraph four of this subsection or, if paragraph
52 ten of this subsection applies, on the date of purchase of such building
53 by the taxpayer, the taxpayer disposes of such taxpayer's interest in
54 such building, or such building ceases to be used as a residence of the
55 taxpayer, the taxpayer's tax imposed by this article for the taxable
56 year in which such disposition or cessation occurs shall be increased by

1 the recapture portion of the credit allowed under this subsection for
2 all prior taxable years with respect to such rehabilitation.

3 (B) For purposes of subparagraph (A) of this paragraph, the recapture
4 portion shall be the product of the amount of credit claimed by the
5 taxpayer multiplied by a ratio, the numerator of which is equal to twen-
6 ty-four less the number of months the building is used as the taxpayer's
7 residence and the denominator of which is twenty-four.

8 (12) Nothing contained in this subsection shall be construed to impose
9 a duty upon a local landmark commission established pursuant to section
10 ninety-six-a or one hundred nineteen-dd of the general municipal law or
11 a local government certified pursuant to section 101(c)(1) of the
12 national historic preservation act to undertake any review or approval
13 of an application for the certification of the rehabilitation of histor-
14 ic structures and of rehabilitation expenditures provided for in this
15 subsection.

16 § 2. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
17 of the tax law, as amended by section 3 of part D of chapter 35 of the
18 laws of 2006, is amended to read as follows:

19 (B) shall be treated as the owner of a new business with respect to
20 such share if the corporation qualifies as a new business pursuant to
21 paragraph (j) of subdivision twelve of section two hundred ten of this
22 chapter.

23		The corporation's
24	With respect to the	credit base under
25	following credit	section two hundred ten
26	under this section:	or section fourteen
27		hundred fifty-six of this
28		chapter is:
29	Investment tax credit	Investment credit base
30	under subsection (a)	or qualified
31		rehabilitation
32		expenditures under
33		subdivision twelve of
34		section two hundred ten
35	Empire zone	Cost or other basis
36	investment tax credit	under subdivision
37	under subsection (j)	twelve-B
38		of section two hundred
39		ten
40	Empire zone	Eligible wages under
41	wage tax credit	subdivision nineteen of
42	under subsection (k)	section two hundred ten
43		or subsection (e) of
44		section fourteen hundred
45		fifty-six
46	Empire zone	Qualified investments
47	capital tax credit	and contributions under
48	under subsection (l)	subdivision twenty of
49		section two hundred ten
50		or subsection (d) of
51		section fourteen hundred

1		fifty-six
2	Agricultural property tax	Allowable school
3	credit under subsection (n)	district property taxes under
4		subdivision twenty-two of
5		section two hundred ten
6	Credit for employment	Qualified first-year wages or
7	of persons with dis-	qualified second-year wages
8	abilities under	under subdivision
9	subsection (o)	twenty-three of section
10		two hundred ten
11		or subsection (f)
12		of section fourteen
13		hundred fifty-six
14	Employment incentive	Applicable investment credit
15	credit under subsec-	base under subdivision
16	tion (a-1)	twelve-D of section two
17		hundred ten
18	Empire zone	Applicable investment
19	employment	credit under sub-
20	incentive credit under	division twelve-C
21	subsection (j-1)	of section two hundred ten
22	Alternative fuels credit	Cost under subdivision
23	under subsection (p)	twenty-four of section two
24		hundred ten
25	Qualified emerging	Applicable credit base
26	technology company	under subdivision twelve-E
27	employment credit	of section two hundred ten
28	under subsection (q)	
29	Qualified emerging	Qualified investments under
30	technology company	subdivision twelve-F of
31	capital tax credit	section two hundred ten
32	under subsection (r)	
33	Credit for purchase of an	Cost of an automated
34	automated external defibrillator	external defibrillator under
35	under subsection (s)	subdivision twenty-five of
36		section two hundred ten
37		or subsection (j) of section
38		fourteen hundred fifty-six
39	Low-income housing	Credit amount under
40	credit under subsection (x)	subdivision thirty
41		of section two hundred ten or
42		subsection (l) of section
43		fourteen hundred fifty-six
44	Credit for transportation	Amount of credit under sub-
45	improvement contributions	division thirty-two of section
46	under subsection (z)	two hundred ten or subsection

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[MB] IMB credit for energy
taxes under sub-
section (t-1)

QEZE credit for real property
taxes under subsection (bb)

QEZE tax reduction credit
under subsection (cc)

Green building credit
under subsection (y)

Credit for long-term
care insurance premiums
under subsection (aa)

Brownfield redevelopment
credit under subsection
(dd)

Remediated brownfield
credit for real property
taxes for qualified
sites under subsection
(ee)

Environmental

(n) of section fourteen
hundred fifty-six

Amount of credit
under subdivision
twenty-six-a of
section two hundred ten

Amount of credit under
subdivision twenty-seven of
section two hundred ten or
subsection (o) of section
fourteen hundred fifty-six

Amount of benefit period
factor, employment increase factor
and zone allocation
factor (without regard
to pro ration) under
subdivision twenty-eight of
section two hundred ten or
subsection (p) of section
fourteen hundred fifty-six
and amount of tax factor
as determined under
subdivision (f) of section sixteen

Amount of green building credit
under subdivision thirty-one
of section two hundred ten
or subsection (m) of section
fourteen hundred fifty-six

Qualified costs under
subdivision twenty-five-a of
section two hundred ten
or subsection (k) of section
fourteen hundred fifty-six

Amount of credit
under subdivision
thirty-three of section
two hundred ten
or subsection (q) of
section fourteen hundred
fifty-six

Amount of credit under
subdivision thirty-four
of section two hundred
ten or subsection (r) of
section fourteen hundred
fifty-six

Amount of credit under

48	remediation S. 8392	8	subdivision thirty-five of A. 11987
1	insurance credit under		section two hundred
2	subsection (ff)		ten or subsection
3			(s) of section
4			fourteen hundred
5			fifty-six
6	Empire state film production		Amount of credit for qualified
7	credit under subsection (gg)		production costs in production
8			of a qualified film under
9			subdivision thirty-six of
10			section two hundred ten
11	Qualified emerging		Qualifying expenditures and
12	technology company facilities,		development activities under
13	operations and training credit		subdivision twelve-G of section
14	under subsection (nn)		two hundred ten
15	Security training tax		Amount of credit
16	credit under		under subdivision thirty-seven
17	subsection (ii)		of section two hundred ten or
18			under subsection (t) of
19			section fourteen hundred fifty-six
20	Credit for qualified fuel		Amount of credit under
21	cell electric generating equipment		subdivision thirty-seven
22	expenditures under subsection (g-2)		of section two hundred ten
23			or subsection (t) of
24			section fourteen hundred
25			fifty-six
26	Empire state commercial production		Amount of credit for qualified
27	credit under subsection (jj)		production costs in production
28			of a qualified commercial under
29			subdivision thirty-eight of sec-
30			tion two hundred ten
31	Biofuel production		Amount of credit
32	tax credit under		under subdivision
33	subsection (jj)		thirty-eight of
34			section two hundred ten
35	Clean heating fuel credit		Amount of credit under
36	under subsection (mm)		subdivision thirty-nine of
37			section two hundred ten
38	<u>Credit for rehabilitation</u>		<u>Amount of credit under</u>
39	<u>of historic properties</u>		<u>subdivision forty of</u>
40	<u>under subsection (oo)</u>		<u>subsection two hundred ten</u>
41	§ 3. Section 210 of the tax law is amended by adding a new subdivision		
42	40 to read as follows:		
43	<u>40. Credit for rehabilitation of historic properties. (1) For taxable</u>		
44	<u>years beginning on or after January first, two thousand seven, a taxpay-</u>		
45	<u>er shall be allowed a credit as hereinafter provided, against the tax</u>		
46	<u>imposed by this article, in an amount equal to thirty percent of the</u>		

47 amount of credit allowed the taxpayer for the same taxable year with
48 respect to a certified historic structure under subsection (c)(3) of
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1 section 47 of the federal internal revenue code with respect to a certi-
2 fied historic structure located within the state. Provided, however,
3 the credit shall not exceed one hundred thousand dollars.

4 (2) If the credit allowed the taxpayer pursuant to subsection (c)(3)
5 of section 47 of the internal revenue code is recaptured pursuant to
6 subsection (a) of section 50 of the internal revenue code, a portion of
7 the credit allowed under this subsection must be added back in the same
8 taxable year as such recapture equal to thirty percent times such cred-
9 it.

10 (3) If the amount of the credit allowable under this subdivision for
11 any taxable year shall exceed the taxpayer's tax for such year, the
12 excess may be carried over to the following year or years, and may be
13 deducted from the taxpayer's tax for such year or years.

14 § 4. Section 13.15 of the parks, recreation and historic preservation
15 law is amended by adding a new subdivision 6 to read as follows:

16 6. The office may establish a fee or fees for its processing and
17 review of applications for the certification of the rehabilitation of
18 historic buildings and the approval of rehabilitation expenditures and
19 related work pursuant to subsection (pp) of section six hundred six of
20 the tax law. All revenues from these fees shall be deposited by the
21 comptroller in the miscellaneous special revenue fund to be credited to
22 the agency's patron services account and shall be used to support the
23 office's historic preservation program. Nothing in this subdivision
24 shall be construed to limit the ability of a local landmark commission
25 established pursuant to section ninety-six-a or one hundred nineteen-dd
26 of the general municipal law or a local government certified pursuant to
27 section 101(c)(1) of the national historic preservation act to establish
28 and charge fees for its processing and review of applications for the
29 certification of the rehabilitation of historic buildings and the
30 approval of rehabilitation expenditures.

31 § 5. The office of parks, recreation and historic preservation, with
32 the assistance of the office of the secretary of state, shall provide to
33 the commissioner of the department of taxation and finance a list of all
34 cities, towns and villages whose governing bodies have identified by
35 resolution that such area is in need of community renewal because of
36 deteriorated and/or vacant buildings and, by local law, has adopted a
37 historic preservation and community renewal program. Such list shall be
38 provided initially on or before December 1, 2006 and shall be updated
39 thereafter on as current a basis as practicable.

40 § 6. This act shall take effect immediately and shall apply to taxable
41 years beginning on or after January 1, 2007; provided, however that the
42 IMB credit for energy taxes under subsection (t-1), the state film
43 production credit under subsection (gg) and the empire state commercial
44 production credit under subsection (jj) of section 606 of the tax law
45 contained in section two of this act shall expire on the same date as
46 provided in subdivision (a) of section 49 of part Y of chapter 63 of the
47 laws of 2000, as amended, section 9 of part P of chapter 60 of the laws
48 of 2004, as amended and section 10 of part V of a chapter of the laws of
49 2006, in legislative bill numbers S. 6460-C and A. 9560-B, as amended,
50 respectively.