

7556

I N S E N A T E

April 21, 2010

Introduced by Sen. VALESKY -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to clarifying the application of the credit for the rehabilitation of historic properties and historic homes; and to amend chapter 239 of the laws of 2009 amending the tax law and other laws relating to providing a tax credit for the rehabilitation of historic properties, in relation to making permanent the provisions thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 1 of subsection (oo) of section 606 of the tax  
2 law, as amended by chapter 239 of the laws of 2009, is amended to read  
3 as follows:

4 (1) (A) For taxable years beginning on or after January first, two  
5 thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any  
6 person, firm, partnership, limited liability company, corporation or  
7 other business entity] A TAXPAYER shall be allowed a credit as herein-  
8 after provided, against the tax imposed by this article, in an amount  
9 equal to one hundred percent of the amount of credit allowed the taxpay-  
10 er [for the same taxable year] with respect to a certified historic  
11 structure under subsection [(c)] (A) (2) of section 47 of the federal  
12 internal revenue code with respect to a certified historic structure  
13 located within the state. Provided, however, the credit shall not  
14 exceed five million dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER  
15 JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CRED-  
16 IT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN  
17 AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE  
18 TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION  
19 (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT  
20 TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE; PROVIDED,  
21 HOWEVER, THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

22 (B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER OF  
23 A NEW YORK S CORPORATION, THEN THE CREDIT CAP IMPOSED IN SUBPARAGRAPH

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

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1 (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE  
2 AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH  
3 SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS  
4 APPLICABLE IN THAT TAXABLE YEAR.

5 S 2. Subparagraphs (A) and (B) of paragraph 2 of subsection (pp) of  
6 section 606 of the tax law, as amended by chapter 239 of the laws of  
7 2009, are amended to read as follows:

8 (A) With respect to any particular residence of a taxpayer, the credit  
9 allowed under paragraph one of this subsection shall not exceed fifty  
10 thousand dollars FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,  
11 TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN AND  
12 TWENTY-FIVE THOUSAND DOLLARS FOR TAXABLE YEARS BEGINNING ON OR AFTER  
13 JANUARY FIRST, TWO THOUSAND FIFTEEN. In the case of a husband and wife,  
14 the amount of the credit shall be divided between them equally or in  
15 such other manner as they may both elect. If a taxpayer incurs qualified  
16 rehabilitation expenditures in relation to more than one residence in  
17 the same year, the total amount of credit allowed under paragraph one of  
18 this subsection for all such expenditures shall not exceed [twenty-five]  
19 FIFTY thousand dollars FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY  
20 FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN  
21 AND TWENTY-FIVE THOUSAND DOLLARS FOR TAXABLE YEARS BEGINNING ON OR AFTER  
22 JANUARY FIRST, TWO THOUSAND FIFTEEN.

23 (B) [If] FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO  
24 THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, IF the  
25 amount of credit allowable under this subsection shall exceed the  
26 taxpayer's tax for such year, and the taxpayer's New York adjusted gross  
27 income for such year does not exceed sixty thousand dollars, the excess  
28 shall be treated as an overpayment of tax to be credited or refunded in  
29 accordance with the provisions of section six hundred eighty-six of this  
30 article, provided, however, that no interest shall be paid thereon. If  
31 the taxpayer's New York adjusted gross income for such year exceeds  
32 sixty thousand dollars, the excess credit that may be carried over to  
33 the following year or years and may be deducted from the taxpayer's tax  
34 for such year or years. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY  
35 FIRST, TWO THOUSAND FIFTEEN, IF THE AMOUNT OF CREDIT ALLOWABLE UNDER  
36 THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE  
37 EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE  
38 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

39 S 3. Paragraphs 1, 3 and 4 of subdivision 40 of section 210 of the tax  
40 law, as amended by chapter 239 of the laws of 2009, are amended to read  
41 as follows:

42 (1) (A) For taxable years beginning on or after January first, two  
43 thousand ten AND BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, [any  
44 person, firm, partnership, limited liability company, corporation or  
45 other business entity] A TAXPAYER shall be allowed a credit as herein-  
46 after provided, against the tax imposed by this article, in an amount  
47 equal to one hundred percent of the amount of credit allowed the taxpay-  
48 er [for the same taxable year] with respect to a certified historic  
49 structure under subsection [(c)] (A) (2) of section 47 of the federal  
50 internal revenue code with respect to a certified historic structure  
51 located within the state. Provided, however, the credit shall not  
52 exceed five million dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER  
53 JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CRED-  
54 IT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN  
55 AN AMOUNT EQUAL TO THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE  
56 TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION

1 (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT  
2 TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED,  
3 HOWEVER, THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

4 (B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN  
5 A NEW YORK S CORPORATION, THEN THE CREDIT CAPS IMPOSED IN SUBPARAGRAPH  
6 (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE  
7 AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH  
8 SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS  
9 APPLICABLE IN THAT TAXABLE YEAR.

10 (3) If the credit allowed the taxpayer pursuant to section 47 of the  
11 internal revenue code with respect to a qualified rehabilitation is  
12 recaptured pursuant to subsection (a) of section 50 of the internal  
13 revenue code, a portion of the credit allowed under this subsection must  
14 be added back in the same taxable year and in the same proportion as  
15 [such credit] THE FEDERAL RECAPTURE.

16 (4) [If] THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE  
17 YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER  
18 OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE  
19 OF THIS SECTION. HOWEVER, IF the amount of the credit allowable under  
20 this subdivision for any taxable year shall exceed the taxpayer's tax  
21 for such year, the excess may be carried over to the following year or  
22 years, and may be [applied] DEDUCTED from the taxpayer's tax for such  
23 year or years.

24 S 4. Subdivision 40 of section 210 of the tax law, as amended by chap-  
25 ter 239 of the laws of 2009, is amended by adding a new paragraph 5 to  
26 read as follows:

27 (5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION,  
28 THE REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA  
29 RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE INTERNAL REVENUE  
30 CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR  
31 BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST  
32 RECENT FEDERAL CENSUS.

33 S 5. Section 1456 of the tax law is amended by adding a new subsection  
34 (u) to read as follows:

35 (U) CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES. (1)(A) FOR TAXA-  
36 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND  
37 BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED  
38 A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTI-  
39 CLE, IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE AMOUNT OF CREDIT  
40 ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE  
41 UNDER SUBSECTION (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE  
42 CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE  
43 STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED FIVE MILLION  
44 DOLLARS. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO  
45 THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER  
46 PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO  
47 THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT  
48 TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(2) OF SECTION 47  
49 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTOR-  
50 IC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT  
51 SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

52 (B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER OF  
53 A NEW YORK S CORPORATION, THEN THE CREDIT CAPS IMPOSED IN SUBPARAGRAPH  
54 (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE  
55 AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH

1 SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP THAT IS  
2 APPLICABLE IN THAT TAXABLE YEAR.

3 (2) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED  
4 IN THE TAXABLE YEAR THAT THE QUALIFIED REHABILITATION IS PLACED IN  
5 SERVICE UNDER SECTION 167 OF THE FEDERAL INTERNAL REVENUE CODE.

6 (3) IF THE CREDIT ALLOWED THE TAXPAYER PURSUANT TO SECTION 47 OF THE  
7 INTERNAL REVENUE CODE WITH RESPECT TO A QUALIFIED REHABILITATION IS  
8 RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE INTERNAL  
9 REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION MUST  
10 BE ADDED BACK IN THE SAME TAXABLE YEAR AND IN THE SAME PROPORTION AS THE  
11 FEDERAL RECAPTURE.

12 (4) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR  
13 SHALL NOT REDUCE THE TAX TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINI-  
14 MUM TAX BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS  
15 ARTICLE. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR  
16 ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS MAY BE  
17 CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM  
18 THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

19 (5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBSECTION THE  
20 REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA  
21 RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE INTERNAL REVENUE  
22 CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR  
23 BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST  
24 RECENT FEDERAL CENSUS.

25 S 6. Section 1511 of the tax law is amended by adding a new subsection  
26 (y) to read as follows:

27 (Y) CREDIT FOR REHABILITATION OF HISTORIC PROPERTIES. (1)(A) FOR TAXA-  
28 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN AND  
29 BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED  
30 A CREDIT AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTI-  
31 CLE, IN AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE AMOUNT OF CREDIT  
32 ALLOWED THE TAXPAYER WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE  
33 UNDER SUBSECTION (A)(2) OF SECTION 47 OF THE FEDERAL INTERNAL REVENUE  
34 CODE WITH RESPECT TO A CERTIFIED HISTORIC STRUCTURE LOCATED WITHIN THE  
35 STATE. PROVIDED, HOWEVER, THE CREDIT SHALL NOT EXCEED FIVE MILLION  
36 DOLLARS. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO  
37 THOUSAND FIFTEEN, A TAXPAYER SHALL BE ALLOWED A CREDIT AS HEREINAFTER  
38 PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, IN AN AMOUNT EQUAL TO  
39 THIRTY PERCENT OF THE AMOUNT OF CREDIT ALLOWED THE TAXPAYER WITH RESPECT  
40 TO A CERTIFIED HISTORIC STRUCTURE UNDER SUBSECTION (A)(2) OF SECTION 47  
41 OF THE FEDERAL INTERNAL REVENUE CODE WITH RESPECT TO A CERTIFIED HISTOR-  
42 IC STRUCTURE LOCATED WITHIN THE STATE. PROVIDED, HOWEVER, THE CREDIT  
43 SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS.

44 (B) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, THEN THE CAP  
45 IMPOSED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE APPLIED AT THE  
46 ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS  
47 OF SUCH PARTNERSHIP IN THE TAXABLE YEAR DOES NOT EXCEED THE CREDIT CAP  
48 THAT IS APPLICABLE IN THAT TAXABLE YEAR.

49 (2) TAX CREDITS ALLOWED PURSUANT TO THIS SUBSECTION SHALL BE ALLOWED  
50 IN THE TAXABLE YEAR THAT THE QUALIFIED REHABILITATION IS PLACED IN  
51 SERVICE UNDER SECTION 167 OF THE FEDERAL INTERNAL REVENUE CODE.

52 (3) IF THE CREDIT ALLOWED THE TAXPAYER PURSUANT TO SECTION 47 OF THE  
53 INTERNAL REVENUE CODE WITH RESPECT TO A QUALIFIED REHABILITATION IS  
54 RECAPTURED PURSUANT TO SUBSECTION (A) OF SECTION 50 OF THE INTERNAL  
55 REVENUE CODE, A PORTION OF THE CREDIT ALLOWED UNDER THIS SUBSECTION IN

1 THE TAXABLE YEAR THE CREDIT WAS CLAIMED MUST BE ADDED BACK IN THE SAME  
2 TAXABLE YEAR AND IN THE SAME PROPORTION AS THE FEDERAL RECAPTURE.

3 (4) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR  
4 SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM  
5 FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED  
6 TWO OR SECTION FIFTEEN HUNDRED TWO-A OF THIS ARTICLE, WHICHEVER IS  
7 APPLICABLE. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION  
8 FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THE EXCESS MAY BE  
9 CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM  
10 THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

11 (5) TO BE ELIGIBLE FOR THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION,  
12 THE REHABILITATION PROJECT SHALL BE IN WHOLE OR IN PART A TARGETED AREA  
13 RESIDENCE WITHIN THE MEANING OF SECTION 143(J) OF THE INTERNAL REVENUE  
14 CODE OR LOCATED WITHIN A CENSUS TRACT WHICH IS IDENTIFIED AS BEING AT OR  
15 BELOW ONE HUNDRED PERCENT OF THE STATE MEDIAN FAMILY INCOME IN THE MOST  
16 RECENT FEDERAL CENSUS.

17 S 7. Section 5 of chapter 239 of the laws of 2009 amending the tax law  
18 and other laws relating to providing a tax credit for the rehabilitation  
19 of historic properties, is amended to read as follows:

20 S 5. This act shall take effect immediately and shall apply to taxable  
21 years beginning on and after January 1, 2010 [and shall expire and be  
22 deemed repealed December 31, 2014; provided, however, that the credit  
23 shall be applied to any rehabilitation project commenced on or before  
24 the date on which that act shall be deemed repealed].

25 S 8. This act shall take effect immediately.