

STATE OF NEW YORK

5892

2009-2010 Regular Sessions

IN ASSEMBLY

February 23, 2009

Introduced by M. of A. HOYT, PEOPLES, QUINN --
read once and referred to
the Committee on Ways and Means

AN ACT to amend the tax law, in relation
to enacting the "city of
Buffalo historic preservation tax credit act"

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

1 Section 1. Short title. This act shall be
known and may be cited as

2 the "city of Buffalo historic preservation tax
credit act".

3 § 2. Section 606 of the tax law is amended by
adding a new subsection

4 (qq) to read as follows:

5 (qq) City of Buffalo historic structure
rehabilitation credit. (1) A

6 taxpayer shall be allowed a credit, to be
computed as provided in this

7 subsection, against the tax imposed by this
article. The amount of the

8 credit shall be equal to thirty percent of the
9 qualified rehabilitation
10 expenditures made by the taxpayer with respect
11 to a qualified historic
12 structure and may only be taken by the taxpayer
13 upon completion of the
14 rehabilitation work and approval of such work
15 by the office of parks,
16 recreation and historic preservation or by a
17 local government certified
18 pursuant to section 101 (c)(1) of the
19 National Historic Preservation
20 Act. Approval is necessary of exterior work and
21 interior work affecting
22 primary significant historic spaces. Interior
23 work may also qualify for
24 the credit so long as no more than ninety-five
percent of the total
expenditures made in the rehabilitation
process are allowable to the
rehabilitation of the interior. Work will be
reviewed pursuant to the
standards established by the commissioner of
parks, recreation and
historic preservation.
(2) Tax credits allowed pursuant to this
article shall be allowed for
the taxable year in which such qualified
historic structure or an iden-
tifiable portion of the structure is placed in
service provided that the
substantial rehabilitation test is met for such
year.

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

1 (3) If the amount of the tax credit exceeds the
2 taxpayer's total tax
3 liability for the year in which the substantially
4 rehabilitated property
5 is placed in service, the excess shall be
6 treated as an overpayment of
7 tax to be credited or refunded in accordance
8 with the provisions of
9 section six hundred eighty-six of this article,
10 provided however, that

11 no interest shall be paid thereon.

12 (4) For purposes of this subsection:

13 (A)(i) The term "qualified rehabilitation
14 expenditure" means any
15 amount properly chargeable to capital account
16 in connection with the

17 certified rehabilitation of a certified historic
18 structure for property
19 either:

20 1. for which depreciation would be allowable
21 under section 168 of the

22 Internal Revenue Code; or

23 2. made with respect to property held for sale
24 by the owner.

25 (ii) Such term shall not include:

26 1. the cost of acquiring any building or
27 interest thereon;

28 2. any expenditure in connection with the
29 rehabilitation of a building

30 unless at least five percent of the total
31 expenditures made in the reha-

32 bilitation process are allocable to the
33 rehabilitation of the exterior

34 of such building; or

35 3. any expenditures excluded under clauses
36 (ii) and (iii) of section

37 47(c)(2)(B) of the Internal Revenue Code.

23 (B)(i) The term "certified rehabilitation"
24 shall mean any rehabili-
25 tation of a certified historic structure
26 which has been approved and
27 certified as being consistent with the
28 standards established by the
29 commissioner of parks, recreation and historic
30 preservation, the city of
31 Buffalo, if certified by the commissioner
32 of parks, recreation and
33 historic preservation, or a local landmark
34 commission established pursu-
35 ant to section ninety-six-a, as added by chapter
36 five hundred thirteen
37 of the laws of nineteen hundred sixty-eight, or
38 one hundred nineteen-dd
39 of the general municipal law.

40 (ii) A certified rehabilitation expenditure
41 shall require:
42 1. an initial certification that the structure
43 meets the definition of
44 "certified historic structure";
45 2. a second certification, to be issued prior
46 to construction, certi-
47 fying that the proposed rehabilitation work is
48 consistent with the stan-
49 dards established by the commissioner of parks,
50 recreation and historic
51 preservation for rehabilitation; and
52 3. a final certification, issued when
53 construction is completed,
54 certifying that the work was completed as
55 proposed and that the costs
56 are consistent with the work completed. Such
57 final certification shall
58 be acceptable as proof that the
59 expenditures related to such
60 construction qualify as qualified
61 rehabilitation expenditures for

44 purposes of the credit allowed under paragraph
45 one of this subsection.

46 (C) The term "certified historic structure"
47 shall mean any building,

48 and its structural components located in the city
49 of Buffalo which:

50 (i) is listed on the state or national register
51 of historic places; or

52 (ii) is located in a registered historic
53 district and is certified as

54 being of historical significance to such
55 district by such district or

56 the commissioner of parks, recreation and
57 historic preservation; or

58 (iii) is located in a local historic district
59 and is certified as

60 being of historical significance to such district
61 or by the commissioner

62 of parks, recreation and historic preservation;
63 and

64 (iv) which has been substantially
65 rehabilitated; and

66 (v) which or any portion of which is owned, in
67 whole or in part by the

68 taxpayer.

A. 5892

3

1 (D) A building shall be treated as having been
2 "substantially rehabil-

3 itated" if the qualified rehabilitation
4 expenditures in relation to such

5 building during the twenty-four month period
6 selected by the taxpayer

7 ending with or within the taxable year exceed
8 fifty percent of the

9 adjusted basis in such building and its
10 structural components as of the

11 beginning of such period. In the case of any
12 rehabilitation, which may

7 reasonably be expected to be completed in phases
8 set forth in architec-

9 tural plans and specifications completed
10 before the rehabilitation

11 begins, this definition shall be applied by
12 substituting "sixty month

13 period" for "twenty-four month period".

14 (E) A rehabilitation shall not be treated as
15 complete before the date

16 of the certification referred to in this
17 subsection.

18 (F) Qualified rehabilitation expenditures
19 shall be treated for

20 purposes of this subsection as made:

21 (i) on the date the rehabilitation is
22 completed; or

23 (ii) to the extent provided by the commissioner
24 by regulation, when

25 such expenditures are properly chargeable to
26 capital account. Regu-

27 lations under this subparagraph shall include a
28 rule similar to the rule

29 under section 50 (a) (2) of the Internal Revenue
30 Code relating to recap-

31 ture if property ceases to qualify for progress
32 expenditures.

33 (5) The commissioner in conjunction with the
34 commissioner of the

35 office of parks, recreation and historic
36 preservation shall prescribe

37 such regulations as may be appropriate to carry
38 out the purposes of this

39 subsection. Such regulations may also include the
40 imposition of a fee

41 for the processing of applications for
42 certification of any rehabili-

43 tation under this subsection provided that the
44 amount of such fee is

45 used only to defray expenses associated with
46 the processing of such

28 applications.

29 § 3. This act shall take effect on the first of
January next succeed-

30 ing the date on which it shall have become a
law and shall apply to

31 taxable years commencing on and after such
effective date; provided,

32 however, that prior to the effective date of this
act, the commissioners

33 of taxation and finance and parks, recreation
and historic preservation

34 may promulgate any regulations necessary to
implement and facilitate the

35 implementation of this act.