

STATE OF NEW YORK

4174

2023-2024 Regular Sessions

IN SENATE

February 3, 2023

Introduced by Sen. KENNEDY -- 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 and the parks, recreation and historic preservation law, in relation to establishing the large projects historic rehabilitation tax credit and the "white elephant" housing historic rehabilitation projects tax credit program

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

1 Section 1. Subsection (oo) of section 606 of the tax law, as amended
2 by chapter 239 of the laws of 2009, paragraph 1 as amended by chapter
3 472 of the laws of 2010, subparagraph (A) of paragraph 1 as amended and
4 paragraph 6 as added by section 1 of part CCC of chapter 59 of the laws
5 of 2021, paragraph 3 as amended by section 1 of part RR of chapter 59 of
6 the laws of 2018, paragraph 4 as amended by section 1 of part F of chap-
7 ter 59 of the laws of 2013 and paragraph 5 as amended by section 2 of
8 part U of chapter 59 of the laws of 2019, is amended to read as follows:
9 (oo) Credit for rehabilitation of historic properties. (1) (A) For
10 taxable years beginning on or after January first, two thousand ten and
11 before January first, two thousand [~~twenty-five~~ thirty-five], a taxpayer
12 shall be allowed a credit as hereinafter provided, against the tax
13 imposed by this article, in an amount equal to:
14 (i) one hundred percent of the amount of credit allowed the taxpayer
15 with respect to a certified historic structure, and one hundred fifty
16 percent of the amount of credit allowed the taxpayer with respect to a
17 certified historic structure that is a small project, under internal
18 revenue code section 47(c)(3), determined without regard to ratably
19 allocating the credit over a five year period as required by subsection
20 (a) of such section 47; and
21 (ii) one hundred percent of the amount of credit allowed the taxpayer
22 with respect to a certified historic structure that is a white
23 elephant project, under internal revenue code section 47(c)(3), with

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

LBD06512-02-3

1 respect to a certified historic structure located within the state.
2 Provided, however, the credit shall not exceed five million dollars,
3 unless such credit is allowed with respect to a certified historic
4 structure that is a white elephant project, in which case, the credit
5 shall not exceed fifteen million dollars. Provided, further, that when-
6 ever the commissioner of parks, recreation and historic preservation
7 receives an application for a white elephant project from an applicant
8 for which such commissioner has previously certified credit for an
9 eligible white elephant project, the commissioner of parks, recreation
10 and historic preservation may deem such subsequent application to be
11 phase II of the original eligible project if such commissioner deter-
12 mines that the two projects are reasonably related, as determined by
13 such commissioner; the previous project qualified as an eligible white
14 elephant project with seventy-five million dollars or less of qualified
15 rehabilitation expenditures; and the phase II application has been
16 submitted within five years of such commissioner's previous certif-
17 ication of credit for the previously eligible white elephant project.

18 (B) For taxable years beginning on or after January first, two thou-
19 sand [~~twenty-five~~] thirty-five, a taxpayer shall be allowed a credit as
20 hereinafter provided, against the tax imposed by this article, in an
21 amount equal to thirty percent of the amount of credit allowed the
22 taxpayer with respect to a certified historic structure under internal
23 revenue code section 47(c)(3), determined without regard to ratably
24 allocating the credit over a five year period as required by subsection
25 (a) of such section 47, with respect to a certified historic structure
26 located within the state; provided, however, the credit shall not exceed
27 one hundred thousand dollars, unless such credit is allowed with respect
28 to a certified historic structure that is a white elephant project, in
29 which case, the credit shall not exceed three hundred thousand dollars.

30 [~~(B)~~] (C) If the taxpayer is a partner in a partnership or a share-
31 holder of a New York S corporation, then the credit cap imposed in
32 [~~subparagraph~~] subparagraphs (A) and (B) of this paragraph shall be
33 applied at the entity level, so that the aggregate credit allowed to all
34 the partners or shareholders of each such entity in the taxable year
35 does not exceed the credit cap that is applicable in that taxable year.

36 (2) Tax credits allowed pursuant to this subsection shall be allowed
37 in the taxable year that the qualified rehabilitation is placed in
38 service under section 167 of the federal internal revenue code.

39 (3) If the taxpayer is allowed a credit pursuant to section 47 of the
40 internal revenue code with respect to a qualified rehabilitation that is
41 also the subject of the credit allowed by this subsection and that cred-
42 it pursuant to such section 47 is recaptured pursuant to subsection (a)
43 of section 50 of the internal revenue code, a portion of the credit
44 allowed under this subsection must be added back in the same taxable
45 year and in the same proportion as the federal recapture.

46 (4) If the amount of the credit allowed under this subsection for any
47 taxable year shall exceed the taxpayer's tax for such year, the excess
48 shall be treated as an overpayment of tax to be credited or refunded in
49 accordance with the provisions of section six hundred eighty-six of this
50 article, provided, however, that no interest shall be paid thereon.

51 (5) Except in the case of (A) a qualified rehabilitation project
52 undertaken within a state park, state historic site, or other land owned
53 by the state, that is under the jurisdiction of the office of parks,
54 recreation and historic preservation, or (B) a qualified white elephant
55 rehabilitation project that is also a qualified low-income housing
56 project under article two-A of the public housing law, to be eligible

1 for the credit allowable under this subsection the rehabilitation
 2 project shall be in whole or in part located within a census tract which
 3 is identified as being at or below one hundred percent of the state
 4 median family income as calculated as of April first of each year using
 5 the most recent five year estimate from the American community survey
 6 published by the United States Census bureau. If there is a change in
 7 the most recent five year estimate, a census tract that qualified for
 8 eligibility under this program before information about the change was
 9 released will remain eligible for a credit under this subsection for an
 10 additional two calendar years.

11 ~~(6) [For purposes of this subsection the term]~~ As used in this
 12 subsection, the following terms shall have the following meanings:

13 ~~["small"]~~ (A) "Small project" means qualified rehabilitation expendi-
 14 tures totaling two million five hundred thousand dollars or less[.];

15 (B) "White elephant project" means qualified rehabilitation expendi-
 16 tures totaling fifty million dollars or more with respect to a certified
 17 historic structure that has been vacant, as determined by local code
 18 enforcement or other reasonable means, for at least ten of fifteen
 19 consecutive years preceding the date of the taxpayer's application for
 20 the rehabilitation credit; and

21 (C) "Phase II housing project" means a white elephant housing project
 22 which the commissioner determines (i) is reasonably related to a prior
 23 eligible white elephant project or eligible white elephant housing
 24 project by the same applicant, (ii) such prior project qualified as
 25 eligible with seventy-five million dollars or less of qualified rehabil-
 26 itation expenditures, and (iii) the phase II application has been
 27 submitted within five years of the commissioner's previous allowance of
 28 credit for the prior eligible white elephant project or eligible white
 29 elephant housing project.

30 (7) The allocation of the credit established by this subdivision may
 31 be made without regard to and in a separate manner from any federal
 32 rehabilitation credit that may be allocated with respect to a qual-
 33 ified white elephant project.

34 (8) The commissioner shall report annually, on or before the first day
 35 of November, on the aggregate amount of credits claimed and awarded
 36 pursuant to this subdivision on returns filed during the preceding
 37 calendar year. Such report shall be provided to the governor, temporary
 38 president of the senate, speaker of the assembly, chair of the senate
 39 finance committee and chair of the assembly ways and means committee and
 40 shall be made publicly available on the department's website.

41 § 2. Subdivision 26 of section 210-B of the tax law, as added by
 42 section 17 of part A of chapter 59 of the laws of 2014, paragraphs (a)
 43 and (c) as amended by section 2 of part RR of chapter 59 of the laws of
 44 2018, subparagraph (i) of paragraph (a) as amended and paragraph (f) as
 45 added by section 2 of part CCC of chapter 59 of the laws of 2021, and
 46 paragraph (e) as amended by section 1 of part U of chapter 59 of the
 47 laws of 2019, is amended to read as follows:

48 26. Credit for rehabilitation of historic properties. (a) Application
 49 of credit. (i) For taxable years beginning on or after January first,
 50 two thousand ten, and before January first, two thousand [~~twenty-five~~]
 51 thirty-five, a taxpayer shall be allowed a credit as hereinafter
 52 provided, against the tax imposed by this article, in an amount equal
 53 to:

54 (A) one hundred percent of the amount of credit allowed the taxpayer
 55 for the same taxable year with respect to a certified historic struc-
 56 ture, and one hundred fifty percent of the amount of credit allowed the

1 taxpayer with respect to a certified historic structure that is a small
2 project, under internal revenue code section 47(c)(3), determined with-
3 out regard to ratably allocating the credit over a five year period as
4 required by subsection (a) of such section 47; and

5 (B) one hundred percent of the amount of credit allowed the taxpayer
6 with respect to a certified historic structure that is a "white
7 elephant project", under internal revenue code section 47(c)(3), with
8 respect to a certified historic structure located within the state.
9 Provided, however, the credit shall not exceed five million dollars,
10 unless such credit is allowed with respect to a certified historic
11 structure that is a white elephant project, in which case, the credit
12 shall not exceed fifteen million dollars. Provided, further, that when-
13 ever the commissioner of parks, recreation and historic preservation
14 receives an application for a white elephant project from an applicant
15 for which such commissioner has previously certified credit for an
16 eligible white elephant project, the commissioner of parks, recreation
17 and historic preservation may deem such subsequent application to be
18 phase II of the original eligible project if such commissioner deter-
19 mines that the two projects are reasonably related, as determined by
20 such commissioner; the previous project qualified as an eligible white
21 elephant project with seventy-five million dollars or less of qualified
22 rehabilitation expenditures; and the phase II application has been
23 submitted within five years of such commissioner's previous certif-
24 ication of credit for the previously eligible white elephant project.

25 (ii) For taxable years beginning on or after January first, two thou-
26 sand [~~twenty-five~~] thirty-five, a taxpayer shall be allowed a credit as
27 hereinafter provided, against the tax imposed by this article, in an
28 amount equal to thirty percent of the amount of credit allowed the
29 taxpayer for the same taxable year determined without regard to ratably
30 allocating the credit over a five year period as required by subsection
31 (a) of section 47 of the internal revenue code, with respect to a certi-
32 fied historic structure under subsection (c)(3) of section 47 of the
33 internal revenue code with respect to a certified historic structure
34 located within the state. Provided, however, the credit shall not exceed
35 one hundred thousand dollars, unless such credit is allowed with respect
36 to a certified historic structure that is a white elephant project, in
37 which case, the credit shall not exceed three hundred thousand dollars.

38 [~~(B)~~] (iii) If the taxpayer is a partner in a partnership or a share-
39 holder in a New York S corporation, then the credit caps imposed in
40 [~~subparagraph (A)~~] subparagraphs (i) and (ii) of this paragraph shall be
41 applied at the entity level, so that the aggregate credit allowed to all
42 the partners or shareholders of each such entity in the taxable year
43 does not exceed the credit cap that is applicable in that taxable year.

44 (b) Tax credits allowed pursuant to this subdivision shall be allowed
45 in the taxable year that the qualified rehabilitation is placed in
46 service under section 167 of the federal internal revenue code.

47 (c) If the taxpayer is allowed a credit pursuant to section 47 of the
48 internal revenue code with respect to a qualified rehabilitation that is
49 also the subject of the credit allowed by this subdivision and that
50 credit pursuant to such section 47 is recaptured pursuant to subsection
51 (a) of section 50 of the internal revenue code, a portion of the credit
52 allowed under this subdivision must be added back in the same taxable
53 year and in the same proportion as the federal credit.

54 (d) The credit allowed under this subdivision for any taxable year
55 shall not reduce the tax due for such year to less than the amount
56 prescribed in paragraph (d) of subdivision one of section two hundred

1 ten of this article. However, if the amount of the credit allowed under
2 this subdivision for any taxable year reduces the tax to such amount or
3 if the taxpayer otherwise pays tax based on the fixed dollar minimum
4 amount, any amount of credit thus not deductible in such taxable year
5 shall be treated as an overpayment of tax to be recredited or refunded
6 in accordance with the provisions of section one thousand eighty-six of
7 this chapter. Provided, however, the provisions of subsection (c) of
8 section one thousand eighty-eight of this chapter notwithstanding, no
9 interest shall be paid thereon.

10 (e) Except in the case of (A) a qualified rehabilitation project
11 undertaken within a state park, state historic site, or other land owned
12 by the state, that is under the jurisdiction of the office of parks,
13 recreation and historic preservation, or (B) a qualified white elephant
14 rehabilitation project that is also a qualified low-income housing
15 project under article two-A of the public housing law, to be eligible
16 for the credit allowable under this subdivision, the rehabilitation
17 project shall be in whole or in part located within a census tract which
18 is identified as being at or below one hundred percent of the state
19 median family income as calculated as of April first of each year using
20 the most recent five year estimate from the American community survey
21 published by the United States Census bureau. If there is a change in
22 the most recent five year estimate, a census tract that qualified for
23 eligibility under this program before information about the change was
24 released will remain eligible for a credit under this subdivision for an
25 additional two calendar years.

26 (f) ~~[For purposes of this subdivision]~~ Definitions. As used in this
27 subdivision, the following terms shall have the following meanings:

28 ~~["small"]~~ (A) "Small project" means qualified rehabilitation expendi-
29 tures totaling two million five hundred thousand dollars or less[-];

30 (B) "White elephant project" means qualified rehabilitation expendi-
31 tures totaling fifty million dollars or more with respect to a certified
32 historic structure that has been vacant, as determined by local code
33 enforcement or other reasonable means, for at least ten of fifteen
34 consecutive years preceding the date of the taxpayer's application for
35 the rehabilitation credit; and

36 (C) "Phase II housing project" means a white elephant housing project
37 which the commissioner determines (i) is reasonably related to a prior
38 eligible white elephant project or eligible white elephant housing
39 project by the same applicant, (ii) such prior project qualified as
40 eligible with seventy-five million dollars or less of qualified rehabil-
41 itation expenditures, and (iii) the phase II application has been
42 submitted within five years of the commissioner's previous allowance of
43 credit for the prior eligible white elephant project or eligible white
44 elephant housing project.

45 (g) The allocation of the credit established by this subdivision
46 may be made without regard to and in a separate manner from any
47 federal rehabilitation credit that may be allocated with respect to
48 a qualified white elephant project.

49 (h) The commissioner shall report annually, on or before the first day
50 of November, on the aggregate amount of credits claimed and awarded
51 pursuant to this subdivision on returns filed during the preceding
52 calendar year. Such report shall be provided to the governor, temporary
53 president of the senate, speaker of the assembly, chair of the senate
54 finance committee and chair of the assembly ways and means committee and
55 shall be made publicly available on the department's website.

1 § 3. Subdivision (y) of section 1511 of the tax law, as added by chap-
2 ter 472 of the laws of 2010, subparagraph (A) of paragraph 1 as amended
3 and paragraph 6 as added by section 3 of part CCC of chapter 59 of the
4 laws of 2021, paragraph 3 as amended by section 3 of part RR of chapter
5 59 of the laws of 2018, paragraph 4 as amended by section 4 of part F of
6 chapter 59 of the laws of 2013 and paragraph 5 as amended by section 3
7 of part U of chapter 59 of the laws of 2019, is amended to read as
8 follows:

9 (y) Credit for rehabilitation of historic properties. (1) (A) For
10 taxable years beginning on or after January first, two thousand ten and
11 before January first, two thousand [~~twenty-five~~ thirty-five, a taxpayer
12 shall be allowed a credit as hereinafter provided, against the tax
13 imposed by this article, in an amount equal to:

14 (i) one hundred percent of the amount of credit allowed the taxpayer
15 with respect to a certified historic structure, and one hundred fifty
16 percent of the amount of credit allowed the taxpayer with respect to a
17 certified historic structure that is a small project, under internal
18 revenue code section 47(c)(3), determined without regard to ratably
19 allocating the credit over a five year period as required by subsection
20 (a) of such section 47; and

21 (ii) one hundred percent of the amount of credit allowed the taxpayer
22 with respect to a certified historic structure that is a "white
23 elephant project", under internal revenue code section 47(c)(3), with
24 respect to a certified historic structure located within the state.
25 Provided, however, the credit shall not exceed five million dollars,
26 unless such credit is allowed with respect to a certified historic
27 structure that is a "white elephant project", in which case, the credit
28 shall not exceed fifteen million dollars. Provided, further, that when-
29 ever the commissioner of parks, recreation and historic preservation
30 receives an application for a white elephant project from an applicant
31 for which such commissioner has previously certified credit for an
32 eligible white elephant project, the commissioner of parks, recreation
33 and historic preservation may deem such subsequent application to be
34 "phase II" of the original eligible project if such commissioner deter-
35 mines that the two projects are reasonably related, as determined by
36 such commissioner; the previous project qualified as an eligible white
37 elephant project with seventy-five million dollars or less of qualified
38 rehabilitation expenditures; and the "phase II" application has been
39 submitted within five years of such commissioner's previous certif-
40 ication of credit for the previously eligible white elephant project.

41 (B) For taxable years beginning on or after January first, two thou-
42 sand [~~twenty-five~~ thirty-five, a taxpayer shall be allowed a credit as
43 hereinafter provided, against the tax imposed by this article, in an
44 amount equal to thirty percent of the amount of credit allowed the
45 taxpayer with respect to a certified historic structure under internal
46 revenue code section 47(c)(3), determined without regard to ratably
47 allocating the credit over a five year period as required by subsection
48 (a) of such section 47 with respect to a certified historic structure
49 located within the state. Provided, however, the credit shall not
50 exceed one hundred thousand dollars, unless such credit is allowed with
51 respect to a certified historic structure that is a white elephant
52 project, in which case, the credit shall not exceed three hundred thou-
53 sand dollars.

54 [~~(B)~~] (C) If the taxpayer is a partner in a partnership, then the cap
55 imposed in [~~subparagraph~~ subparagraphs] (A) and (B) of this paragraph
56 shall be applied at the entity level, so that the aggregate credit

1 allowed to all the partners of such partnership in the taxable year does
2 not exceed the credit cap that is 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 taxpayer is allowed a credit pursuant to section 47 of the
7 internal revenue code with respect to a qualified rehabilitation that is
8 also the subject of the credit allowed by this subdivision and that
9 credit pursuant to such section 47 is recaptured pursuant to subsection
10 (a) of section 50 of the internal revenue code, a portion of the credit
11 allowed under this subdivision in the taxable year the credit was
12 claimed must be added back in the same taxable year and in the same
13 proportion as the federal recapture.

14 (4) The credit allowed under this subdivision for any taxable year
15 shall not reduce the tax due for such year to less than the minimum
16 fixed by paragraph four of subdivision (a) of section fifteen hundred
17 two or section fifteen hundred two-a of this article, whichever is
18 applicable. However, if the amount of credits allowed under this subdivi-
19 sion for any taxable year reduces the tax to such amount, any amount
20 of credit thus not deductible in such taxable year shall be treated as
21 an overpayment of tax to be credited or refunded in accordance with the
22 provisions of section one thousand eighty-six of this chapter. Provided,
23 however, the provisions of subsection (c) of section one thousand eight-
24 y-eight of this chapter notwithstanding, no interest shall be paid ther-
25 eon.

26 (5) Except in the case of a (A) qualified rehabilitation project
27 undertaken within a state park, state historic site, or other land owned
28 by the state, that is under the jurisdiction of the office of parks,
29 recreation and historic preservation, or (B) a qualified white elephant
30 rehabilitation project that is also a qualified low-income housing
31 project under article two-A of the public housing law, to be eligible
32 for the credit allowable under this subdivision, the rehabilitation
33 project shall be in whole or in part located within a census tract which
34 is identified as being at or below one hundred percent of the state
35 median family income as calculated as of April first of each year using
36 the most recent five year estimate from the American community survey
37 published by the United States Census bureau. If there is a change in
38 the most recent five year estimate, a census tract that qualified for
39 eligibility under this program before information about the change was
40 released will remain eligible for a credit under this subdivision for an
41 additional two calendar years.

42 (6) [~~For purposes of this subdivision~~] As used in this subdivision,
43 the following terms shall have the following meanings:

44 [~~small~~] (A) "Small project" means qualified rehabilitation expendi-
45 tures totaling two million five hundred thousand dollars or less[~~+~~];

46 (B) "White elephant project" means qualified rehabilitation expendi-
47 tures totaling fifty million dollars or more with respect to a certified
48 historic structure that has been vacant, as determined by local code
49 enforcement or other reasonable means, for at least ten of fifteen
50 consecutive years preceding the date of the taxpayer's application for
51 the rehabilitation credit; and

52 (C) "Phase II housing project" means a white elephant housing project
53 which the commissioner determines (1) is reasonably related to a prior
54 eligible white elephant project or eligible white elephant housing
55 project by the same applicant, (2) such prior project qualified as
56 eligible with seventy-five million dollars or less of qualified rehabil-

1 itation expenditures, and (3) the phase II application has been submit-
2 ted within five years of the commissioner's previous allowance of credit
3 for the prior eligible white elephant project or eligible white elephant
4 housing project.

5 (7) The allocation of the credit established by this subdivision
6 may be made without regard to and in a separate manner from any
7 federal rehabilitation credit that may be allocated with respect to
8 a qualified white elephant project.

9 (8) The commissioner shall report annually, on or before the first day
10 of November, on the aggregate amount of credits claimed and awarded
11 pursuant to this subdivision on returns filed during the preceding
12 calendar year. Such report shall be provided to the governor, temporary
13 president of the senate, speaker of the assembly, chair of the senate
14 finance committee and chair of the assembly ways and means committee and
15 shall be made publicly available on the department's website.

16 § 4. The parks, recreation and historic preservation law is amended by
17 adding a new article 14-A to read as follows:

18 ARTICLE 14-A

19 WHITE ELEPHANT HOUSING HISTORIC REHABILITATION PROJECTS TAX

20 CREDIT PROGRAM

21 Section 14.15 Definitions.

22 14.16 Allowance of credit, amount and limitations.

23 14.17 Project monitoring.

24 14.18 Regulations, coordination with federal rehabilitation
25 credit provisions.

26 § 14.15 Definitions. As used in this article, the following terms
27 shall have the following meanings:

28 1. "Eligibility statement" means a statement issued by the commission-
29 er, in consultation with the commissioner of the division of community
30 housing and renewal, certifying that a white elephant housing project is
31 eligible for white elephant housing project historic rehabilitation
32 credits under this article and low income housing tax credits under
33 article two-A of the public housing law. Such statement shall set forth
34 the taxable year in which the building is placed in service, the dollar
35 amount of rehabilitation credit certified by the commissioner to such
36 building as provided in section 14.16 of this article, the dollar amount
37 of low income housing tax credit allocated by the commissioner of commu-
38 nity housing and renewal to such building as provided in section twen-
39 ty-two of the public housing law, sufficient information to identify
40 each such building and the taxpayer or taxpayers with respect to each
41 such building, whether the project is a phase II housing project, and
42 such other information as the commissioner, in consultation with the
43 commissioner of taxation and finance and commissioner of community hous-
44 ing and renewal, shall prescribe. Such eligibility statement shall be
45 first issued following the close of the first taxable year, and there-
46 after, to the extent required by the commissioner of taxation and
47 finance, following the close of each of the following four taxable
48 years.

49 2. "Eligible white elephant project" means a white elephant project as
50 defined in section two hundred ten-B, six hundred six or one thousand
51 five hundred eleven of the tax law that qualifies for historic rehabili-
52 tation tax credit.

53 3. "Eligible white elephant housing project" means an eligible white
54 elephant project as defined in this section that also qualifies for low
55 income housing tax credit under article two-A of the public housing law.

1 4. "Phase II housing project" means a white elephant housing project
2 which the commissioner determines (a) is reasonably related to a prior
3 eligible white elephant project or eligible white elephant housing
4 project by the same applicant, (b) such prior project qualified as
5 eligible with less than seventy-five million dollars of qualified reha-
6 bilitation expenditures, and (c) the phase II application has been
7 submitted within five years of the commissioner's previous allowance of
8 credit for the prior eligible white elephant project or eligible white
9 elephant housing project.

10 5. "Qualified rehabilitation expenditures" shall have the same meaning
11 as in section 47 of the internal revenue code.

12 6. "White elephant project" means a project as defined in section two
13 hundred ten-B, six hundred six or one thousand five hundred eleven of
14 the tax law.

15 7. "White elephant housing project" means a "white elephant project"
16 as defined in section two hundred ten-B, six hundred six or one thousand
17 five hundred eleven of the tax law that is also a housing project.

18 8. References in this article to section 47 of the internal revenue
19 code shall mean such section as amended from time to time.

20 § 14.16 Allowance of credit, amount and limitations. 1. A taxpayer
21 subject to tax under article nine-A, twenty-two, or thirty-three of the
22 tax law which owns an interest in one or more eligible white elephant
23 housing projects, or a transferee of such a taxpayer as described in
24 subdivision two of this section, shall be allowed a credit against such
25 tax for the amount of white elephant housing project historic rehabili-
26 tation credit certified by the commissioner to each such structure.

27 2. (a) A taxpayer allowed a credit pursuant to this article may trans-
28 fer the credit, in whole or in part, to another person or entity, who
29 shall be referred to as the transferee, notwithstanding that such other
30 person or entity owns no interest in the eligible white elephant housing
31 project or in an entity with an ownership interest in the eligible white
32 elephant housing project. Transferees shall be entitled to apply trans-
33 ferred credit to a tax imposed under article nine-A, twenty-two or thir-
34 ty-three of the tax law, provided all requirements for claiming the
35 credit are met. A transferee may not transfer any credit, or portion
36 thereof, acquired by transfer.

37 (b) A taxpayer allowed a credit pursuant to this article must enter
38 into a transfer contract with the transferee. The transfer contract must
39 specify:

40 (i) the building identification numbers for all buildings in the white
41 elephant housing project;

42 (ii) the date each building was placed into service;

43 (iii) the five year ownership period for the project;

44 (iv) the schedule of years for which the transfer credit may be
45 claimed and the amount of credit previously claimed;

46 (v) the amount of consideration received by the taxpayer for the
47 transfer credit; and

48 (vi) the amount of credit being transferred.

49 (c) No transfer shall be effective unless the taxpayer allowed a cred-
50 it pursuant to this article and seeking to transfer the credit files a
51 transfer statement with the commissioner prior to the transfer and the
52 commissioner approves such transfer. The transfer statement shall
53 provide the name and federal identification numbers of the filing
54 transferor and the taxpayer to whom the filing transferor transferred
55 the credit, and the amount of credit transferred to each such person or
56 entity. A copy of the transfer contract shall be attached to the trans-

1 fer statement. The statement shall also contain such other information
2 as the commissioner may require. After reviewing the transfer contract
3 and the transfer statement, the commissioner shall approve or deny the
4 transfer as provided in this subdivision. If the commissioner approves
5 the transfer, the commissioner shall issue an approval statement that
6 provides the name of the transferor and transferee, the amount of credit
7 being transferred and such other information as the commissioner and the
8 commissioner of taxation and finance deem necessary. A copy of the
9 commissioner's approval statement must be attached to the transferee's
10 tax return. If the commissioner denies the transfer, the commissioner
11 shall provide the taxpayer a written determination for such denial. The
12 commissioner, in consultation with the commissioner of taxation and
13 finance, may establish such other procedures and standards deemed neces-
14 sary for the transferability of the white elephant housing project
15 historic rehabilitation credit.

16 (d) The commissioner shall forward copies of all transfer statements
17 and attachments thereto and approval statements to the department of
18 taxation and finance within thirty days after the transfer is approved
19 by the commissioner.

20 § 14.17 Project monitoring. The commissioner shall establish such
21 procedures deemed necessary for monitoring compliance of an eligible
22 white elephant housing project with the provisions of this article, and
23 for notifying the commissioner of taxation and finance of any such
24 noncompliance.

25 § 14.18 Regulations, coordination with federal rehabilitation credit
26 provisions. 1. The commissioner shall promulgate rules and regulations
27 necessary to administer the provisions of this article.

28 2. The provisions of section 47 of the internal revenue code shall
29 apply to the credit under this article, provided however, to the extent
30 such provisions are inconsistent with this article, the provisions of
31 this article shall control.

32 3. The allocation of the credit established by this article may be
33 made without regard to and in a separate manner from any federal reha-
34 ilitation credit that may be allocated with respect to an eligible
35 white elephant housing project.

36 § 5. Paragraph 2 of subsection (pp) of section 606 of the tax law, as
37 amended by section 4 of part RR of chapter 59 of the laws of 2018, is
38 amended and a new paragraph 13 is added to read as follows:

39 (2) (A) With respect to any particular residence of a taxpayer, the
40 credit allowed under paragraph one of this subsection shall not exceed
41 fifty thousand dollars for taxable years beginning on or after January
42 first, two thousand ten and before January first, two thousand [~~twenty-~~
43 ~~five~~] thirty-five and twenty-five thousand dollars for taxable years
44 beginning on or after January first, two thousand [~~twenty-five~~] thirty-
45 five. In the case of a husband and wife, the amount of the credit shall
46 be divided between them equally or in such other manner as they may both
47 elect. If a taxpayer incurs qualified rehabilitation expenditures in
48 relation to more than one residence in the same year, the total amount
49 of credit allowed under paragraph one of this subsection for all such
50 expenditures shall not exceed fifty thousand dollars for taxable years
51 beginning on or after January first, two thousand ten and before January
52 first, two thousand [~~twenty-five~~] thirty-five and twenty-five thousand
53 dollars for taxable years beginning on or after January first, two thou-
54 sand [~~twenty-five~~] thirty-five.

55 (B) For taxable years beginning on or after January first, two thou-
56 sand ten and before January first, two thousand [~~twenty-five~~] thirty-

1 five, if the amount of credit allowable under this subsection shall
2 exceed the taxpayer's tax for such year, and the taxpayer's New York
3 adjusted gross income for such year does not exceed sixty thousand
4 dollars, the excess shall be treated as an overpayment of tax to be
5 credited or refunded in accordance with the provisions of section six
6 hundred eighty-six of this article, provided, however, that no interest
7 shall be paid thereon. If the taxpayer's New York adjusted gross income
8 for such year exceeds sixty thousand dollars, the excess credit that may
9 be carried over to the following year or years and may be deducted from
10 the taxpayer's tax for such year or years. For taxable years beginning
11 on or after January first, two thousand [~~twenty-five~~] thirty-five, if
12 the amount of credit allowable under this subsection shall exceed the
13 taxpayer's tax for such year, the excess may be carried over to the
14 following year or years and may be deducted from the taxpayer's tax for
15 such year or years.

16 (13) The commissioner shall report annually, on or before the first
17 day of November, on the aggregate amount of credits claimed and awarded
18 pursuant to this subdivision on returns filed during the preceding
19 calendar year. Such report shall be provided to the governor, temporary
20 president of the senate, speaker of the assembly, chair of the senate
21 finance committee and chair of the assembly ways and means committee,
22 shall be made publicly available on the department's website.

23 § 6. Section 14.05 of the parks, recreation and historic preservation
24 law is amended by adding a new subdivision 5 to read as follows:

25 5. (a) The commissioner shall report annually, on or before the first
26 day of November, on the tax credit projects applied for in accordance
27 with subdivision twenty-six of section two hundred ten-B, subsection
28 (oo) of section six hundred six, and subdivision (y) of section fifteen
29 hundred eleven of the tax law on returns filed during the preceding
30 calendar year. Such report shall be provided to the governor, temporary
31 president of the senate, speaker of the assembly, chair of the senate
32 finance committee and chair of the assembly ways and means committee,
33 shall be made publicly available on the department's website and shall
34 include the following information:

35 (i) the number and value of tax credit projects applied for during the
36 state fiscal year, organized by municipality and county, and project
37 size;

38 (ii) the number and value of tax credit projects certified by the
39 national park service during the state fiscal year, organized by munici-
40 pality and county, and project size;

41 (iii) the total value of credits certified annually for each of the
42 taxable years beginning on or after January first, two thousand seven to
43 the present, by municipality and county;

44 (iv) the number of housing units before and after rehabilitation;

45 (v) the number of low-moderate housing units before and after rehabil-
46 itation; and

47 (vi) the number of projects certified for both federal and state cred-
48 its, and the number of projects certified for federal credits only.

49 (b) The commissioner shall report annually, on or before the first day
50 of November, on the tax credit projects applied for pursuant to subdivi-
51 sion (pp) of section six hundred six of the tax law on returns filed
52 during the preceding calendar year. Such report shall be provided to the
53 governor, temporary president of the senate, speaker of the assembly,
54 chair of the senate finance committee and chair of the assembly ways and
55 means committee, shall be made publicly available on the office's
56 website and shall include the following information:

1 (i) the number and value of tax credit projects applied for during the
2 state fiscal year, organized by municipality and county, and project
3 size;

4 (ii) the number and value of tax credit projects certified by the
5 office during the state fiscal year, organized by municipality and coun-
6 ty, and project size;

7 (iii) the total value of credits certified annually for each of the
8 taxable years beginning on or after January first, two thousand seven to
9 the present, by municipality and county;

10 (iv) the number of housing units before and after rehabilitation; and

11 (v) the number of projects certified for state credits by the office.

12 § 7. This act shall take effect immediately and shall apply to taxable
13 years beginning on or after January 1, 2024.