

NYS Department of Environmental Conservation

New York State Green Building Tax Credit Legislation Overview

Introduction

Legislation passed in 2000, Part II of Chapter 63 of the Laws of 2000, establishes a Green Building Tax Credit to be allowable against various business and personal income taxes. The Green Building Tax Credit provides for tax credits to owners and tenants of eligible buildings and tenant spaces which meet certain "green" standards. These standards increase energy efficiency, improve indoor air quality, and reduce the environmental impacts of large commercial and residential buildings in New York State, among other benefits.

The overview set forth below is intended as a general summary only, and the reader is directed to the full text of the legislation for further details. This document is not intended as official guidance and no taxpayer should rely solely on this document in evaluating eligibility for the tax credit.

Overview Of the Legislation

- **Total Aggregate Credits That May Be Issued:**
 - \$25 million
- **Credit Timing:**
 - Credit certificates may be issued during years 2000-2004
 - Allowed for taxable years 2001-2009
 - Credit is for a percentage of "Allowable Costs" (generally, those costs properly chargeable to capital account, other than for land) and paid or incurred by taxpayer after June 1, 1999.
- **Applicability:**
 - Law applies to property placed in service or that has received a final certificate of occupancy in taxable years beginning on or after January 1, 2001.
- **Tax details:**
 - Credit allowable against the taxes imposed under:
 - Tax Law Articles 9 (Tax on Certain Business Corporations and other Business Entities);
 - 9-A (Franchise Tax on Business Corporations);
 - 22 (Personal Income Tax);
 - 32 (Franchise Tax on Banking Corporations) and
 - 33 (Franchise Taxes on Insurance Corporations)
 - Tax credit is non-refundable
 - Unused tax credit can be carried forward by the taxpayer indefinitely
 - Successor owners/tenants are entitled to the remaining credits if the building/tenant space continues to meet the applicable standards and requirements
- **Eligible Taxpayers:**
 - Corporations, utilities, banks, insurance companies and personal income taxpayers.

- Eligible Buildings (provided not on freshwater or tidal wetlands requiring a state or federal permit):
 - Certain hotels and office buildings having at least 20,000 square feet of interior space
 - Residential multi-family buildings having at least 12 units having at least 20,000 square feet of interior space
 - Residential multi-family buildings, at least 2 units, part of single or phased construction, with at least 20,000 square feet of interior space, provided at least 10,000 square feet is under construction or rehabilitation in any single phase
 - Any combination of above
- Credit Allowance and Eligibility Process:
 - Initial Credit Component Certificate. Department of Environmental Conservation is to issue the credits by an initial credit component certificate upon application by a taxpayer
 - The amount of the credit is the sum of the credit components specified in the initial credit component certificate.
 - The taxpayer must show that taxpayer is "likely within a reasonable time to place in service property" that would be green.
 - Initial credit component certificate to state:
 - The maximum amount of credit component allowable for each of the five taxable years for which the credit component is allowed
 - What year taxpayer may first start claiming the credit and
 - Expiration date
 - The property must be placed in service by the expiration date
 - Initial credit component certificates may be issued in the years 2000-2004.
 - No more than \$25 million of initial credit component certificates may be issued.
- Eligibility Certificate: An eligibility certificate from an architect or professional engineer licensed to practice in New York State is required each year and must certify that the building and/or tenant space remains green and that any fuel cells, photovoltaic modules and air conditioning equipment for which a credit is being claimed also remain qualified.
 - Filing: Initial credit component certificate and eligibility certificate are to be filed with the claim for credit, with duplicate copies to the Department of Environmental Conservation.
 - **Types of Credit Components:** There are six different credit components for which the taxpayer might be allowed a credit. Each credit component has its own requirements, formula for calculating the amount of the credit, and cap. A taxpayer might be allowed one or more of these components, with certain restrictions. The components are:
 - Whole Building Credit Component (owner or tenant)
 - Where base building and all tenant space are green.
 - For green new construction or green rehabilitation
 - 7% of Allowable Costs (1.4% x 5 years)
 - If in Economic Development Area, then 8% of Allowable Costs (1.6% x 5 years)

- Cap (aggregate):
 - \$150/sq. ft. for base building
 - \$75/sq. ft. for tenant space
 - Base Building Credit Component (owner)
 - Applies to areas not intended for occupancy by either a tenant or owner
 - For green new construction or green rehabilitation
 - 5% of Allowable Costs (1% x 5 years)
 - If in Economic Development Area, then 6% of Allowable Costs (1.2% x 5 years)
- years)
- Cap (aggregate): \$150/sq. ft.
 - Tenant Space Credit Component (owner or tenant)
 - For green construction or green rehabilitation
 - 5% of Allowable Costs (1% x 5 years)
 - If in Economic Development Area, then 6% of Allowable Costs (1.2% x 5 years)
- years)
- Cap (aggregate): \$75/sq. ft.
 - If < 10,000 sq. ft., base building must be green to qualify
 - Fuel Cell Credit Component
 - Must be serving green space to qualify
 - Must be a "qualifying alternate energy source"
 - 30% of capitalized cost of each fuel cell (6% x 5 years)
 - Cap: \$1,000/kw x DC-rated capacity
 - Photovoltaic Module Credit Component
 - Must be serving green space to qualify
 - Must be a "qualifying alternate energy source"
 - 100% of incremental cost of Building integrated photovoltaic modules
- (20% x 5 years)
- 25% of incremental cost of non-Building integrated photovoltaic modules
- (5% x 5 years)
- Cap: \$3/w x DC-rated capacity
 - Green Refrigerant Credit Component
 - Must be serving green space to qualify
 - 10 % of cost of new air conditioning equipment using an EPA-approved non-ozone depleting refrigerant (2% x 5 years)
 - Department of Environmental Conservation, in consultation with the New York State Energy Research and Development Authority may promulgate regulations concerning the eligibility of other EPA-approved refrigerants to receive this credit
 - **Standards To Be Met:** The statute itself sets forth certain specific requirements. Other standards will be established in regulations which will be promulgated by Department of Environmental Conservation. These standards will be established by Department of Environmental Conservation in consultation with the New York State Energy Research and Development Authority and the New York State Department of Health. The standards which must be met in order for a building and/or tenant space to be "green" such that a building owner and/or tenant might qualify for the credit include standards addressing the following:
 - Energy and energy efficiency:

- New construction: no more than 65% of energy use allowed under The New York State Energy Conservation and Construction Code
- Rehabilitation: no more than 75% of energy use allowed under The New York State Energy Conservation and Construction Code
- Other standards set by Department of Environmental Conservation in effect at time placed in service.
 - Appliances and any heating, cooling and water heating equipment.
 - Compliance with other requirements: zoning, land use, erosion control, storm water management, building code, environmental regulations.
 - Indoor Air Quality
 - Ventilation and exchange of indoor/outdoor air.
 - Smoking areas.
 - Ventilation capable of purging two floors at a time.
 - Fresh air intake located away from sources of contamination.
 - Indoor air quality management plan during construction or rehabilitation.
 - Annual Indoor Air Quality testing: Carbon monoxide, carbon dioxide, volatile organic compounds, radon, and particulates (OK to do radon once).
 - Mechanical Plant Commissioning.
 - Facilitating recycling of wastes.
 - Energy compliant plumbing fixtures.
 - Notices to tenants of tax credit opportunity and guidelines for energy efficiency air quality and recycling.
 - Building Materials, Finishes and Furnishings.
 - Owner occupied tenant space must be green if owner wants credit
 - Record keeping requirements & reporting to Department of Environmental Conservation:
 - Taxpayer required to maintain certain records showing compliance.
 - Taxpayer to provide these records to the Department of Environmental Conservation with respect to each taxable year the credit is claimed at the time. The form will be determined by the Department of Environmental Conservation.
 - Regulations:
 - NYS Department of Environmental Conservation
 - NYS Department of Tax and Finance
 - NYS Department of Education
 - Report to legislature:
 - By Department of Tax and Finance and Department of Environmental Conservation, in consultation with the New York State Energy Research and Development Authority
 - Report due April 1, 2008, with preliminary report due April 1, 2005

Any comments or questions?

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