

2005-06 Executive Budget
30-DAY AMENDMENTS

Amendments to Senate 996, Assembly 1926
(Strategic Partnership For Upstate Resurgence Article VII Bill)

Senate 996, Assembly 1926, A BUDGET BILL, AN ACT to amend the public authorities law and the economic development law, in relation to reauthorize the New York power authority to make contributions to the general fund and authorize the continuation of power for jobs and electricity savings reimbursement program; and to amend chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development, in relation to extending such provisions...

Page 48, Line 19, After "(g)" insert ", (i)"

Page 48, Line 20, After "(c)" insert ",," delete "and" after "(g)" insert "and (i)"

Page 50, Line 46, After "[(j)]" insert
"(i) Cessation of status. A business enterprise shall cease to be a qualified empire zone enterprise:

(1) for purposes of section one hundred eighty-seven-j of article nine, and articles nine-A, twenty-two, thirty-two and thirty-three of this chapter, on the first day of the taxable year during which revocation of its certification under article eighteen-B of the general municipal law occurs, and

(2) for purposes of articles twenty-eight and twenty-nine of this chapter, on the day such revocation occurs."

Page 55, Between lines 3 and 4, Insert
"\$ 13-a. Section 187-j of the tax law, as added by chapter 39 of the laws of 2004, is amended to read as follows:

§ 187-j. QEZE credit for real property taxes for agricultural cooperatives. 1. Allowance of credit. A taxpayer, subject to the tax imposed by section one hundred eighty-five of this article, which is a qualified empire zone enterprise shall be allowed a credit for eligible real property taxes, to be computed as provided in section fifteen of this chapter, against the tax imposed by such section.

2. Application of credit. The credit allowed under this section for any taxable year shall not reduce the tax due for such year to less than the minimum tax

prescribed in subdivision two of section one hundred eighty-five of this article. If the amount of credit allowed under this section for any taxable year [shall exceed] reduces the taxpayer's tax for such year to such amount, [the excess] any amount of credit thus not deductible shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 13-b. The tax law is amended by adding three new sections, section 187-k, section 187-l and section 187-m, to read as follows:

§ 187-k. Empire zone investment tax credit for agricultural cooperatives.
1. A taxpayer subject to the tax imposed by section one hundred eighty-five of this article shall be allowed a credit, to be computed as herein provided, against the tax imposed by this article if the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of the credit shall be ten percent of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subdivision two of this section, which is located within an empire zone designated as such pursuant to article eighteen-B of such law, but only if the acquisition, construction, reconstruction or erection of such property occurred or was commenced on or after the date of such designation and prior to the expiration thereof. Provided, however, that in the case of an acquisition, construction, reconstruction or erection which was commenced during such period and continued or completed subsequently, such credit shall be ten percent of the portion of the cost or other basis for federal income tax purposes attributable to such period, which portion shall be ascertained by multiplying such cost or basis by a fraction the numerator of which shall be the expenditures paid or incurred during such period for such purposes and the denominator of which shall be the total of all expenditures paid or incurred for such acquisition, construction, reconstruction or erection.

(2) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which (i) are depreciable pursuant to section one hundred sixty-seven of the internal revenue code or recovery property with respect to which a deduction is allowable under section one hundred sixty-eight of the internal revenue code, (ii) have a useful life of four years or more, (iii) are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, (iv) have a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, and (v) are principally used by the taxpayer in the production of goods by processing, assembling, refining, farming, agriculture, horticulture, floriculture or viticulture. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced. For purposes of this section, the term "goods" shall not include electricity.

3. A taxpayer shall not be allowed a credit under this section with respect to any tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this section with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded.

4.(i) The credit allowed under this section for any taxable year shall not reduce the tax due for such year to less than the minimum tax prescribed in

subdivision two of section one hundred eighty-five of this article. Provided, however, that if the amount of credit allowable under this section for any taxable year reduces the tax to such minimum tax, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph (ii) of this subdivision may elect, on its report for its taxable year with respect to which such credit is allowed, to treat fifty percent of the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(ii) For purposes of this subdivision, a new business shall include any corporation subject to tax under section one hundred eighty-five of this article, except a corporation which:

(I) over fifty percent of the number of shares or amount of the membership capital entitling the holders thereof to vote for the election of directors is owned or controlled, either directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of this article; article nine-A, article thirty-two or article thirty-three of this chapter; or

(II) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of this article; article nine-A, thirty-two or thirty-three of this chapter; article twenty-three of this chapter or would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this subdivision with respect to refunding a credit to new business would be evaded; or

(III) has been subject to tax

under section one hundred eighty-five of this article for more than five taxable years (excluding short taxable years).

5. (a) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subdivision, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(b) Except with respect to that property to which paragraph (d) of this subdivision applies, with respect to three-year property, as defined in paragraph two of subsection (c) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(c) Except with respect to that property to which paragraph (d) of this subdivision applies, with respect to five-year property and ten-year property, as defined in paragraph two of subsection (c) of section one hundred sixty-eight of the internal revenue code, fifteen-year real property, as defined in such paragraph as it was in effect for property placed in service after December thirty-first, nineteen hundred eighty in taxable years ending after such date, eighteen-year real property, as defined in such paragraph as it was in effect for property placed in service after March fifteenth, nineteen hundred eighty-four, and nineteen-year real property, as defined in such paragraph, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(d) With respect to any recovery property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this section which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under section one hundred sixty-eight of the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under section one hundred sixty-eight of the internal revenue code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of

or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this paragraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under section one hundred sixty-eight of the internal revenue code.

(e) For purposes of this subdivision, disposal or cessation of qualified use shall not be deemed to have occurred solely by reason of the termination or expiration of an empire zone's designation as such.

(f) (I) For purposes of this subdivision, the decertification of a business enterprise with respect to an empire zone shall constitute a disposal or cessation of qualified use of the property on which the credit was taken which is located in the zone to which the decertification applies, on the effective date of such decertification.

(II) Where a business enterprise has been decertified based on a finding pursuant to clause one, two, or five of subdivision (a) of section nine hundred fifty-nine of the general municipal law, the amount required to be added back by reason of this subdivision shall be augmented by an amount equal to the product of the amount of credit, with respect to property which is disposed of or ceases to be in qualified use, which was deducted from the taxpayer's tax otherwise due under this article for all prior taxable years (subject to the limit set forth in this subparagraph) and the underpayment rate of interest (without regard to compounding) set by the commissioner of taxation and finance pursuant to subdivision (e) of section one thousand ninety-six of this chapter, in effect on the last day of the taxable year. The limit shall be (i) the amount of credit, with respect to the property which is disposed of or ceases to be in qualified use, which was deducted from the taxpayer's tax otherwise due under this article for all prior taxable years, reduced (but not below zero) by (ii) the credit allowed for actual use. For purposes of this subparagraph, the attribution to specific property of credit amounts deducted from tax shall be established in accordance with the date of

placement in service of such property in the empire zone.

(III) Notwithstanding any other provision of this section, in the case of a business enterprise which has been decertified, any amount of credit allowed with respect to the property of such business enterprise located in the zone to which the decertification applies which is carried over pursuant to subdivision four of this section shall not be carried over beyond the seventh taxable year next following the taxable year with respect to which the credit provided for in this section was allowed.

§187-1. Empire zone employment incentive credit for agricultural cooperatives. 1. Where a taxpayer is allowed a credit under section one hundred eighty-seven-k of this article, the taxpayer shall be allowed a credit for each of the three years next succeeding the taxable year for which the credit under such section one hundred eighty-seven-k is allowed, with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to subdivision four of such section one hundred eighty-seven-k, of thirty percent of the credit allowable under such section one hundred eighty-seven-k; provided, however, that the credit allowable under this section for any taxable year shall only be allowed if the average number of employees employed by the taxpayer in the empire zone, designated pursuant to article eighteen-B of the general municipal law, in which such property is located during such taxable year is at least one hundred one percent of the average number of employees employed by the taxpayer in such empire zone or, where applicable, in the geographic area subsequently constituting such zone, during the taxable year immediately preceding the taxable year for which the credit under such section one hundred eighty-seven-k is allowed and provided, further, that if the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the credit under section one hundred eighty-seven-k is allowed, the credit allowable under this section for any taxable year shall be allowed if the average number of employees employed in such empire zone in such taxable year is at least one hundred one percent of the average number of such employees during the taxable year in which the credit under such section one hundred

eighty-seven-k is allowed.

2. The average number of employees employed in an empire zone, or, where applicable, in the geographic area subsequently constituting such zone, in a taxable year shall be computed by ascertaining the number of such employees within such zone, or, where applicable, in the geographic area subsequently constituting such zone, except general executive officers, employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained on each of such dates and dividing the sum so obtained by the number of such above-mentioned dates occurring within the taxable year. For the purposes of this section, the term "employees" and the term "general executive officers" shall mean the same as in subparagraph three of paragraph (a) of subdivision three of section two hundred ten of this chapter.

3. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the minimum tax prescribed in subdivision two of section one hundred eighty-five of this article. Provided, however, that if the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 187-m. Empire zone wage tax credit for agricultural cooperatives. 1. A taxpayer subject to the tax imposed by section one hundred eighty-five of this article shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article where the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of such credit shall be as prescribed by subdivision four hereof.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "Empire zone wages" means wages paid by the taxpayer for full-time employment, other than to general executive officers, during the taxable year in an area designated or previously designated as an empire zone pursuant to

article eighteen-B of the general municipal law, where such employment is in a job created in the area (i) during the period of its designation as an empire zone or (ii) within four years of the expiration of such designation, provided, however, that if the taxpayer's certification under article eighteen-B of the general municipal law is revoked with respect to an empire zone, any wages paid by the taxpayer, on or after the effective date of such decertification, for employment in such zone shall not constitute empire zone wages.

(b) "Targeted employee" means a New York resident who receives empire zone wages and who is (I) an eligible individual under the provisions of the targeted jobs tax credit (section fifty-one of the internal revenue code), (II) eligible for benefits under the provisions of the workforce investment act (P.L. 105-220, as amended), (III) a recipient of public assistance benefits or (IV) an individual whose income is below the most recently established poverty rate promulgated by the United States department of commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate federal agency.

An individual who satisfies the criteria set forth in subparagraph (I), (II) or (IV) at the time of initial employment in the job with respect to which the credit is claimed, or who satisfies the criterion set forth in subparagraph (III) at such time or at any time within the previous two years, shall be a targeted employee so long as such individual continues to receive empire zone wages.

(c) "Average number of individuals, excluding general executive officers, employed full-time" shall be computed by ascertaining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period.

3. The credit provided for herein shall be allowed only where the average number of individuals, excluding general

executive officers, employed full-time by the taxpayer in (A) the state and (B) the empire zone or the area previously constituting such zone, during the taxable year exceeds the average number of such individuals employed full-time by the taxpayer in (A) the state and (B) such zone or area subsequently or previously constituting such zone, respectively, during the four years immediately preceding the first taxable year in which the credit is claimed with respect to such zone. Where the taxpayer provided full-time employment within (A) the state or (B) such zone during only a portion of such four-year period, then for purposes of this paragraph the term "four years" shall be deemed to refer instead to such portion, if any.

The credit shall be allowed only with respect to the first taxable year during which payments of empire zone wages are made and the conditions set forth in this subdivision are satisfied, and with respect to each of the four taxable years next following (but only, with respect to each of such years, if such conditions are satisfied), in accordance with subdivision four of this section. Subsequent certifications of the taxpayer pursuant to article eighteen-B of the general municipal law, at the same or a different location in the same empire zone or at a location in a different empire zone, shall not extend the five taxable year time limitation on the allowance of the credit set forth in the preceding sentence. Provided, further, however, that no credit shall be allowed with respect to any taxable year beginning more than four years following the taxable year in which designation as an empire zone expired.

4. The amount of the credit shall equal the sum of (a) the product of three thousand dollars and the average number of individuals (excluding general executive officers) employed full-time by the taxpayer, computed pursuant to the provisions of paragraph (c) of subdivision two of this section, who

(I) received empire zone wages for more than half of the taxable year,

(II) received, with respect to more than half of the period of employment by the taxpayer during the taxable year, an hourly wage which was at least one hundred thirty-five percent of the minimum wage specified in section six hundred fifty-two of the labor law, and

(III) are targeted employees; and

(b) the product of fifteen hundred

dollars and the average number of individuals (excluding general executive officers and individuals described in paragraph (a) of this subdivision) employed full-time by the taxpayer, computed pursuant to the provisions of paragraph (c) of subdivision two of this section, who received empire zone wages for more than half of the taxable year.

Provided, further, however, that the credit provided for herein with respect to the taxable year, and carryovers of such credit to the taxable year, deducted from the tax otherwise due, may not, in the aggregate, exceed fifty percent of the tax imposed under section one hundred eighty-five of this article computed without regard to any credit provided for by this article.

(c) For purposes of calculating the amount of the credit, individuals employed within an empire zone within the immediately preceding sixty months by a related person, as such term is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, shall not be included in the average number of individuals described in paragraph (a) or paragraph (b) of this subdivision, unless such related person was never allowed a credit under this section with respect to such employees. For the purposes of this paragraph, a "related person" shall include an entity which would have qualified as a "related person" to the taxpayer if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate.

5. The credit and carryovers of such credit allowed under this section for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax prescribed in subdivision two of section one hundred eighty-five of this article. However, if the amount of credit or carryovers of such credit, or both, allowable under this section for any taxable year reduces the tax to such minimum tax, or if any part of the credit or carryovers of such credit is disallowed by reason of the final sentence of paragraph (b) of subdivision four hereof, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In lieu of such carryover, any such taxpayer which

qualifies as a new business under paragraph (ii) of subdivision four of section one hundred eighty-seven-k of this article may elect, on its report for its taxable year with respect to which such credit is allowed, to treat fifty percent of the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon."

- Page 62, Line 6, After "thirteen," insert "thirteen-b,"
- Page 62, Line 13, After "2002;" strike out "and"
- Page 62, Between lines 13 and 14, Insert "(iii) the amendment to subdivision (i) of section 14 of the tax law by section twelve of this act, and section 13-a of this act shall apply to taxable years beginning on or after January 1, 2004; and"
- Page 62, Line 14, Strike out "(iii)" and insert "(iv)"