

ARTICLE 18 OF THE ECONOMIC DEVELOPMENT LAW

ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM

Section 400	Definitions.
401	Eligibility criteria.
402	Application and approval process.
403	Powers and duties of the commissioner.
404	Reporting.

§ 400. Definitions. For the purposes of this article:

1. "Benefit-cost ratio" means the following calculation: the numerator is the sum of (i) the value of all remuneration projected to be paid for all net new jobs during the period of participation in the program, and (ii) the cost of qualified investments to be made by the business entity during the period of participation in the program, and the denominator is the amount of total tax benefits under this article that is projected to be used and refunded.

2. "Certificate of eligibility" means the document issued by the department to an applicant that demonstrates that the applicant has been admitted as a participant into the economic transformation and facility redevelopment program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility of the participant to claim the tax credits allowed pursuant to section thirty-five of the tax law.

3. "Net new jobs" means jobs created in the economic transformation area that:

- (a) are new to the area;
- (b) have not been transferred from employment in this state with the participant or with a related person in this state, and are not replacing jobs with similar titles or job responsibilities;
- (c) are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week;
- (d) are filled for more than six months in a taxable year;
- (e) are not general executive officers of the participant; and
- (f) may not be filled with individuals having the familial relationship defined in section 267(c)(4) of the internal revenue code with any owner of the participant.

4. "Participant" means a business entity that:

- (a) is a new business as defined in subdivision nine of this section.
- (b) has completed an application prescribed by the department to be admitted into the program;
- (c) has demonstrated how it plans to meet the eligibility criteria in section four hundred one of this article; and

(d) has been issued a certificate of eligibility by the department.

5. "Preliminary schedule of benefits" means the estimated aggregate amount of the tax credits that a participant in the economic transformation and facility redevelopment program is eligible to receive pursuant to section thirty-five of the tax law. The schedule shall indicate the annual amount of each credit a participant expects to claim in each of its five years of eligibility.

6. "Qualified investment" means an investment in tangible property (including a building or a structural component of a building) owned by a business entity which:

- (a) is depreciable pursuant to section one hundred sixty-seven of the internal revenue code;
- (b) has a useful life of four years or more;
- (c) is acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code;
- (d) has a situs in an economic transformation area in this state in which it is certified; and
- (e) is placed in service in an economic transformation area in the state on or after the date the certificate of eligibility is issued to the business entity.

7. "Related person" means a "related person" pursuant to subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

8. "Remuneration" means wages paid to and benefits received by an employee by a participant in the economic transformation and facility redevelopment program.

9. "New business" means a business entity that satisfies all of the following tests:

- (a) the business entity must not be currently operating or located within the economic transformation area in which it is applying for certification;
- (b) the business entity must not be moving existing jobs into the economic transformation area in which it is applying for certification from another area of the state;
- (c) the business entity must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine, former section one hundred eighty-six or article nine-A, twenty-two, thirty-two or thirty-three of the tax law or the income or losses of which is or was includable under article twenty-two of the tax law;
- (d) the business entity must not have caused individuals to transfer from existing employment with a related person and located in New York state to similar employment with the business entity;
- (e) the business entity must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is

- applying for certification if that real property was previously owned by an entity with similar ownership, regardless of form of incorporation or organization; and
- (f) the business entity must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification.

10. "Economic transformation area" means:

- (a) In the region of the state outside of the metropolitan commuter transportation district (as defined in section twelve hundred sixty-two of the public authorities law) and the port authority district (as defined by article two of chapter one hundred fifty-four of the laws of nineteen hundred twenty-one), an area within a five mile radius in this state of a closed facility. If more than sixty persons were employed in full-time positions at a closed facility on April first, two thousand eleven, then it is the area within a ten mile radius in this state of that closed facility. The commissioner may increase the radius of the area from ten miles to up to fifteen miles in this state based on factors including but not limited to population density, the poverty rate, the unemployment rate and the loss of jobs in the region. However, the increased radius may not extend into the metropolitan commuter transportation district. The commissioner may also decrease the radius of the ten mile area but to no less than a five mile radius based on factors including but not limited to population density, the poverty rate, the unemployment rate and the loss of jobs in the region. Upon notification of the commissioner, pursuant to subdivision eleven of this section, the commissioner shall establish the size of the transformation area prior to the acceptance of any applications into the program.
- (b) In the metropolitan commuter transportation district outside the port authority district, an area within a one mile radius in this state of a closed facility. If more than sixty persons were employed in full-time positions at a closed facility on April first, two thousand eleven, then it is the area within a five mile radius in this state of that closed facility, provided that the commissioner may decrease the radius of the expanded area but to no less than a one mile radius based on factors including but not limited to population density, the poverty rate, the unemployment rate, and the loss of jobs in the area and whether the radius would extend outside of the metropolitan commuter transportation district. Upon notification of the commissioner pursuant to subdivision eleven of this section, the commissioner shall establish the size of the transformation area prior to the acceptance of any applications into the program.
- (c) In the port authority district, an area limited to the site of the closed facility.

11. "Closed facility" means:

- (a) a correctional facility, as defined in paragraph (a) of subdivision four of section two of the correction law, that has been selected by the governor of the state of New

- York for closure after April first, two thousand eleven but no later than March thirty-first, two thousand twelve; or
- (b) a facility operated by the office of children and family services under article nineteen-G of the executive law that is closed pursuant to authority granted to such office in a chapter of the laws of two thousand eleven; and
 - (c) which has been closed provided that the commissioner of correctional services or the commissioner of the office of children and family services has notified the commissioner of such closure.

§ 401. Eligibility criteria.

1. In order to be eligible for benefits in the economic transformation and facility redevelopment program, a participant must satisfy the following criteria:
 - (a) must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; and
 - (b) must be in compliance with all worker protection and environmental laws and regulations; and
 - (c) must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and
 - (d) the location of the participant's operations for which it seeks tax benefits must be wholly located within the economic transformation area.

2. A business entity that is primarily operated as a retail business is not eligible to participate in the economic transformation and facility redevelopment program if their application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the economic transformation and facility redevelopment program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state shall not be eligible to participate in the economic transformation and facility redevelopment program. Provided, however, that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility.

3. Additional eligibility criteria may be developed pursuant to regulations promulgated by the commissioner. The additional eligibility criteria may include, but not be limited to, alignment with any adaptive reuse plan for a closed facility developed by the department.

4. A business entity must continue to satisfy the employment requirements in subdivision one of this section in each year in which it claims the economic transformation and facility redevelopment tax credits. Prior to claiming the economic transformation and facility redevelopment tax credits in the final year of its five year benefit period, a business entity must

demonstrate to the commissioner that it has created the jobs and made the qualified investments necessary to meet a benefit-cost ratio of at least ten to one.

§ 402. Application and approval process.

1. A business entity must submit a completed application as prescribed by the commissioner by the later of (a) the date that is three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (b) January first, two thousand fifteen.

2. As part of such application, each business entity must:

- (a) Agree to allow the department of taxation and finance to share its tax information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.
- (b) Agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.
- (c) Agree to not participate in the excelsior jobs program, the New York state empire zones program, or claim any tax credits under the brownfield cleanup program if admitted into the economic transformation and facility redevelopment program with regard to the facility (or facilities) located in the economic transformation area.
- (d) Provide the following information to the department upon request:
 - i. a plan outlining the schedule for meeting the job and investment requirements set forth in section four hundred one of this article, including details on job titles and expected salaries;
 - ii. (ii) the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements;
 - iii. (iii) the amount and description of projected qualified investments for which it plans to claim the economic transformation and facility redevelopment investment tax credit;
 - iv. (iv) the employer identification numbers or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership.
- (e) Provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state.
- (f) Certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.
- (g) Agree, to the extent practicable, to consider for employment persons displaced by a facility closure.

3. After reviewing a business entity's completed application and determining that the business entity satisfies the requirements in subdivision four of section four hundred of this article and will meet eligibility requirements set forth in section four hundred one of this article, the department may, at the discretion of the commissioner, admit the applicant into the program and provide the applicant with a certificate of eligibility. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the economic transformation and facility redevelopment program tax credits.

4. A participant may claim tax credits pursuant to section thirty-five of the tax law commencing in the first taxable year in which the participant creates five net new jobs. A participant may claim such benefits for the next four consecutive taxable years, provided that the participant demonstrates to the commissioner of taxation and finance that it continues to maintain five net new jobs. However, in no event may that benefit period start later than two years after the certificate of eligibility is issued. The participant may also be eligible for the economic transformation and facility redevelopment sales tax refund.

§ 403. Powers and duties of the commissioner.

1. The commissioner shall promulgate regulations establishing an application process and eligibility criteria set forth in section four hundred one of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. When considering an application, the commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the program.

3. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of eligibility that shall be issued by the commissioner to participants. Participants must include a copy of the certificate of eligibility with their tax return to receive any tax benefits under section thirty-five of the tax law. Participants must also include a copy of the certificate of eligibility with their application for the real property tax exemption authorized by section four hundred eighty-five-p of the real property tax law, if such exemption is available where the property is located.

§ 404. Reporting. The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June thirtieth, two thousand twelve, and every three months thereafter. Such report shall include, but not be limited to, the following: number of applicants; number of participants approved; names of participants; total amount of projected benefits certified by type of benefit; total number of projected new jobs to be created; number of projected net new jobs created per participant; aggregate projected new investment in the state; projected new investment per participant; and such other information as the commissioner determines.

TAX LAW PROVISIONS FOR THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM

§ 35. Economic transformation and facility redevelopment program tax credit.

(a) General.

1. A taxpayer which is a participant or the owner of a participant in the economic transformation and facility redevelopment program under article eighteen of the economic development law that is subject to tax under section one hundred eighty-five of article nine, or article nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed the sum of following components against such tax, pursuant to the provisions referenced in subdivision (f) of this section.

(A) the economic transformation and facility redevelopment program jobs tax credit component;

(B) the economic transformation and facility redevelopment program investment tax credit component;

(C) the economic transformation and facility redevelopment program job training credit component; and

(D) the economic transformation and facility redevelopment program real property tax credit component.

2. A taxpayer which is a participant in the economic transformation and facility redevelopment program under article eighteen of the economic development law, or such participant's contractor, shall be allowed a sales tax refund as provided in subdivision (f) of section one thousand one hundred nineteen of this chapter.

3. To be eligible for the economic transformation and facility redevelopment program tax credit, the taxpayer must meet all the following requirements.

(A) The taxpayer must be a participant or the owner of a participant in the economic transformation and facility development program. The commissioner of economic development must have issued a certificate of eligibility pursuant to section four hundred two of the economic development law to the taxpayer or to an entity in which the taxpayer is an owner. A copy of the certificate shall be attached to the taxpayer's report or return.

(B) The taxpayer or the entity in which the taxpayer is an owner must be a qualified new business as defined in subdivision (e) of this section.

(C) The taxpayer or the entity in which the taxpayer is an owner must create and maintain at least five net new jobs in the economic transformation area.

4. The benefit period for the tax credits under articles nine, nine-A, twenty-two, thirty-two and thirty-three of this chapter is five consecutive taxable years, beginning with the first taxable year in which the five net new jobs are created. However, in no event may that benefit period start later than two years after the certificate of eligibility is issued. If, in any year of the benefit

period, the taxpayer fails to maintain the required level of five net new jobs (measured quarterly), the taxpayer will not be allowed a credit for that year. Such failure to be allowed a credit will not extend the taxpayer's benefit period.

(b) Election of credit.

No cost or expense paid or incurred by the taxpayer or the entity in which the taxpayer is an owner that is the basis for any of the above named credits shall be the basis for any other tax credit under this chapter. If a taxpayer elects to claim an economic transformation and facility redevelopment program tax credit, the election is irrevocable.

(c) Information sharing.

1. Notwithstanding any provision of this chapter, employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange:

(A) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the economic transformation and facility redevelopment program;

(B) information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for the credits or who are claiming the credits; and

(C) information contained in or derived from credit claim forms submitted to the department and applications for admission into the economic transformation and facility redevelopment program.

2. Other than the information required to be contained in the report issued pursuant to subdivision (d) of this section, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(d) Economic transformation and facility redevelopment program tax credits report.

1. The commissioner must publish an economic transformation and facility redevelopment program tax credits report annually by July thirty-first. The first report shall be due July thirty-first, two thousand thirteen.

2. The credits report shall contain the following information about the economic transformation program and facility redevelopment tax credits claimed under this chapter during the previous calendar year:

(A) the name of each taxpayer claiming a credit; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation, the name of each limited liability company, partnership or New York subchapter S corporation earning any of the credit must be included in the report instead of information about the taxpayer claiming the credit; and

(B) the amount of each credit earned by each taxpayer; provided however, if the taxpayer claims a credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation, the amount of credit earned by each entity must be included in the report instead of information about the taxpayer claiming the credit.

3. The credit report may also contain any other information received by the commissioner with regard to the economic transformation and facility redevelopment program tax credits that the commissioner deems to be useful in evaluating the use of the credits. The information included in the credit report will be based on the information filed with the department during the previous calendar year, to the extent that it is practicable to use that information.

(e) Definitions.

1. The terms "participant", "net new jobs", "economic transformation area", "related person", "certificate of eligibility", "benefit-cost ratio", and "qualified investment" shall have the same meaning as those terms have in section four hundred of the economic development law.

2. The term "qualified new business" means a business entity that satisfies all of the following tests:

(A) the business entity must not be currently operating or located within the economic transformation area in which it is applying for certification under article eighteen of the economic development law;

(B) the business entity must not be moving existing jobs into the economic transformation area in which it is applying for certification under article eighteen of the economic development law from another area of the state;

(C) the business entity must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine, former section one hundred eighty-six of this chapter or article nine-A, twenty-two, thirty-two or thirty-three of this chapter or the income or losses of which is or was includable under article twenty-two of this chapter;

(D) the business entity must not have caused individuals to transfer from existing employment in New York with another business entity with similar ownership to similar employment with the business entity;

(E) the business entity must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is applying for certification if that real property was previously owned by an entity with similar ownership, regardless of form of incorporation or organization; and

(F) the business entity must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification under article eighteen of the economic development law.

3. The term "entity in which the taxpayer is an owner" shall mean a limited liability company in which the taxpayer is a member, a partnership in which the taxpayer is a partner and a New York subchapter S corporation in which the taxpayer is a shareholder.

(f) Cross-references.

For application of the credits provided for in this section, see the following provisions of this chapter:

- (1) section 185: section 187-r
- (2) article 9-A: section 210(43).
- (3) article 22: section 606 (ss).
- (4) article 32: section 1456(x).
- (5) article 33: section 1511 (aa).

(g) Economic transformation and facility redevelopment program jobs tax credit.

A taxpayer which meets the requirements in this section shall be eligible to claim a credit for each net new job that the taxpayer creates in the economic transformation area with respect to the project for which the certificate of eligibility is issued. The amount of such credit per job shall be equal to the product of the gross wages paid and 6.85 percent.

(h) Economic transformation and facility redevelopment program investment tax credit.

1. A taxpayer which meets the requirements in this section shall be eligible to claim a credit on qualified investments with respect to the project for which the certificate of eligibility is issued. The credit shall be equal to ten percent of the cost or other basis for federal income tax purposes of the qualified investment at a closed facility. The total amount of investment tax credit allowed for all eligible participants under this subdivision for qualified investments located at each closed facility shall not exceed eight million dollars. The credit shall be equal to six percent of the cost or other basis for federal income tax purposes for all other qualified investments, but the credit allowed to a taxpayer may not exceed four million dollars.

2. Costs incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the credit. A taxpayer which is a participant in the economic transformation and redevelopment program or is an owner of an entity that is a participant is not eligible for any other investment tax credit provided under this chapter.

3. If the taxpayer is a partner in a partnership, member of a limited liability company or shareholder of a New York S corporation, then the four million dollar limit imposed above by the preceding sentences shall be applied at the entity level, so that the aggregate credit allowed to all the partners, members or shareholders of each such entity in the taxable year does not exceed the four million dollar limitation. Further, in order to properly administer the limitation of investment tax credit at a closed facility, the department may disclose information about the calculation and the amounts of the credits claimed under this subdivision for qualified investments at a particular closed facility to other taxpayers claiming investment tax credits under this subdivision at that same closed facility.

(i) Economic transformation and facility redevelopment program training tax credit.

1. A taxpayer which meets the requirements of this section shall be allowed a credit for qualified training expenditures paid by the taxpayer with respect to the project for which the certificate of eligibility is issued. The amount of the credit shall be fifty percent of the qualified training expenses paid during the taxable year, subject to a limitation of no more than four thousand dollars per employee per year for such training expenses. This credit applies only to qualified training provided to employees who were hired after they lost their jobs at a closed facility as a result of the closure of that facility as described in subdivision eleven of section four hundred of the economic development law.

2. Qualified training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting, post-secondary college or university in New York state that

(A) directly relates to the duties that the employee performs for the taxpayer within the economic transformation area; and

(B) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

3. Qualified training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any related person, that are paid or reimbursed by the taxpayer. Qualified training expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified training expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a site in an economic transformation area during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified training expenditures shall not include expenses for in-house or shared training outside of a New York state higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(j) Economic transformation and facility redevelopment program real property tax credit.

1. A taxpayer which meets the requirements of this section shall be allowed a credit measured by the real property taxes on the real property located in the economic transformation area with respect to the project for which the certificate of eligibility is issued. In the first taxable year that the taxpayer may claim this credit, the credit shall be equal to twenty-five percent of the real property taxes assessed and paid during that year by the participant on the real property located in the economic transformation area outside of the closed facility. If the real property is located entirely within the grounds of a closed facility, the credit in the first year of the benefit period shall be equal to fifty percent of the real property taxes assessed and paid by the participant during that year on that property. In the following years of the benefit period, the percentage decreases by five percentage points each year for real property located in the economic transformation area outside of the closed facility, and ten percentage points for real property located at the closed facility.

2. (A) For purposes of this credit, "real property taxes" means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to article eighteen or article nineteen of the real property tax law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such article eighteen or nineteen, whichever is applicable.

(B) The term "real property taxes" does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when (i) the property subject to the charge is limited to the property that benefits from the charge, or (ii) the amount of the charge is determined by the benefit to the property assessed, or (iii) the improvement for which the charge is assessed tends to increase the property value.

(C) The term "real property taxes" includes payments in lieu of taxes made by the participant which is the beneficial owner of the real property to the state, a municipal corporation or a public benefit corporation pursuant to a written agreement entered into between the participant and the state, municipal corporation, or public benefit corporation. Provided, however, a payment in lieu of taxes made by the participant pursuant to a written agreement shall not constitute real property taxes in any taxable year to the extent that such payment exceeds the product of (i) the basis for federal income tax purposes of the real property located in the economic transformation area and subject to that agreement, calculated without regard to depreciation, on the last day of the taxable year, and (ii) the estimated effective full value tax rate within the county in which such property is located, as most recently calculated by the commissioner. The commissioner shall annually calculate estimated effective full value tax rates within each county for this purpose based upon the most current information available to him or her in relation to county, city, town, village and school district taxes.

(k) Recapture of credits.

If the participant at the end of its benefit period has not created sufficient net new jobs and made sufficient qualified investments to achieve a benefit-cost ratio of at least ten to one, the

taxpayer shall be required to add back as tax in the last year of its benefit period the portion of the economic transformation and facility redevelopment tax credits claimed in the years of its benefit period necessary to achieve a cost benefit ratio of ten to one.

§ 187-r. Economic transformation and facility redevelopment tax credit.

(a) Allowance of credit.

A taxpayer shall be allowed a credit, to be computed as provided in section thirty-five of this chapter, against the tax imposed by section one hundred eighty-five of this article.

(b) Application of credit.

The credit allowed under this subdivision for any taxable year may 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. However, if the amount of credit allowed under this section for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

Section 210, subdivision 43

*** 43. Economic transformation and facility redevelopment program tax credit.**

(a) Allowance of credit.

A taxpayer shall be allowed a credit, to be computed as provided in section thirty-five of this chapter, against the tax imposed by this article.

(b) Application of credit.

The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of this section. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

Subparagraph B of paragraph 1 of subsection (i) of section 606, clause (xxxii)

(xxxii) Economic transformation and facility redevelopment credit

Amount of credit under subdivision and facility redevelopment credit forty-three of section 210 or under subsection (x) of section fourteen hundred fifty-six

Section 606, subsection (ss)

(ss) Economic transformation and facility redevelopment program tax credit

(1) Allowance of credit.

A taxpayer shall be allowed a credit, to the extent allowed under section thirty-five of this chapter, against the tax imposed by this article.

(2) Application of credit.

If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

Section 1456 subsection (x)

(x) Economic transformation and facility redevelopment program tax credit.

(1) Allowance of credit.

A taxpayer shall be allowed a credit, to be computed as provided in section thirty-five of this chapter, against the tax imposed by this article.

(2) The credit allowed under this subsection for any taxable year will not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

Section 1511, subdivision (aa)

*** (aa) Economic transformation and facility redevelopment program tax credit.**

(1) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section thirty-five of this chapter, against the taxes imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year will not reduce the tax due for such year to less than the minimum tax fixed by this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

Section 1119, subdivision (f)

(1) Subject to the conditions and limitations provided for in this section, a refund will be allowed for tax paid pursuant to subdivision (a) of section eleven hundred five, or section eleven hundred ten of this article, on the purchase or use of tangible personal property sold to a participant who has received a certificate of eligibility in the economic transformation and facility redevelopment program; provided that such tangible personal property has been used in constructing, expanding or rehabilitating industrial or commercial real property located in an area designated as an economic transformation area pursuant to article eighteen of the economic development law, but only to the extent that such tangible personal property becomes an integral component part of such real property. Such tangible personal property must be purchased, or contracted to be purchased, after the participant receives its certificate of eligibility and before the issuance of a certificate of occupancy and it must be used in a manner consistent with the participant's application for such constructed, expanded, or rehabilitated real property.

(2) Subject to the conditions and limitations provided for in this section, a refund will be allowed for taxes imposed on receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, tangible personal property sold to a contractor, subcontractor or repairman for use in (A) erecting a structure or building of a participant who has received a certificate of eligibility, or (B) adding to, altering or improving real property, property or land of such a participant, as the terms real property, property or land are defined in the real property tax law; provided, however, no refund will be allowed under this paragraph unless such tangible personal property has become an integral component part of such structure, building, real property, property or land located within an economic transformation area as defined by article eighteen of the economic development law in, and with respect to which such participant has been issued a certificate of eligibility pursuant to such article eighteen and only to the extent that such property is used in a manner consistent with the participant's application. Such tangible personal property must be in the contractor's inventory on or after the day the participant receives its certificate of eligibility, or be purchased or contracted to be purchased after the participant receives its certificate of eligibility, but such property must meet the conditions of the preceding sentence and be used before the issuance of a certificate of occupancy for such constructed, expanded, or rehabilitated real property.

(3) Notwithstanding any other provision of law, the refund provided for in this subdivision shall not apply to the taxes imposed by section eleven hundred seven or eleven hundred nine of this article or to any tax imposed pursuant to the authority of article twenty-nine of this chapter.

(4) Notwithstanding any other provision of law, where the tax on the sale or use of such tangible personal property has been paid to the vendor, to qualify for such refund, such tangible personal property must be incorporated into real property and used as required in

paragraphs one and two of this subdivision within three years after the date such tax was payable to the commissioner by the vendor pursuant to section eleven hundred thirty-seven of this article. Where the tax on the sale or use of such tangible personal property was paid by the applicant for the refund directly to the commissioner, to qualify for such refund, such tangible personal property must be incorporated into real property and used in the manner described in paragraphs one and two of this subdivision within three years after the date such tax was payable to the commissioner by such applicant pursuant to this article. An application for a refund pursuant to this section must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. Such application shall be in such form as the commissioner may prescribe. This application will be the only means of applying for the refund allowed by this section; the applicant may not take this refund in any other manner, including the taking of a credit on any return due pursuant to section eleven hundred thirty-six of this article. A taxpayer may not apply for a refund under this subdivision more frequently than once a sales tax quarterly period as described in subdivision (b) of section eleven hundred thirty-six of this article.

(5) The terms "participant", "economic transformation area", and "certificate of eligibility" shall have the same meaning as those terms have in section four hundred of the economic development law.

REAL PROPERTY TAX LAW PROVISIONS OF THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM

§ 485-p. Economic transformation area exemption.

1. (a) Real property constructed, altered, installed or improved in an economic transformation area as defined in subdivision ten of section four hundred of the economic development law which is used for business, commercial or industrial purposes and which is owned by a business entity that has been issued a certificate of eligibility pursuant to subdivision three of section four hundred two of the economic development law shall be exempt from taxation and special ad valorem levies by any municipal corporation in which located, for the period and to the extent herein provided, provided that the governing board of such municipal corporation, after public hearing, adopts a local law, ordinance or resolution providing therefore. Such local law, ordinance or resolution must be adopted within three years of the date of the closure of a closed facility (as that term is defined in subdivision eleven of section four hundred of the economic development law) located in the economic transformation area.

(b) The exemption so authorized shall be for a term of five years. The amount of such exemption shall be as follows:

(i) If the construction, alteration, installation or improvement occurs on or at the site of the closed facility in the economic transformation area, then the exemption in the first year of its term shall be fifty percent of the "base amount," determined pursuant to subdivision two of this section. The amount of the exemption in the second, third, fourth and fifth year of its term shall be forty percent, thirty percent, twenty percent and ten percent, respectively, of such base amount.

(ii) If the construction, alteration, installation or improvement occurs in the economic transformation area outside of the closed facility, then the exemption in the first year of its term shall be twenty-five percent of the "base amount," determined pursuant to subdivision two of this section. The amount of the exemption in the second, third, fourth and fifth year of its term shall be twenty percent, fifteen percent, ten percent and five percent, respectively, of such base amount.

2. (a) The base amount of the exemption shall be the extent of the increase in assessed value attributable to such construction, alteration, installation or improvement as determined in the initial year for which application for exemption is made pursuant to this section. The base amount shall remain constant for the authorized term of the exemption, subject to the following:

(i) If there is subsequent construction, alteration, installation or improvement during the term of the exemption, the base amount shall be revised to include the increase in assessed value attributable to such construction, alteration, installation or improvement.

(ii) If a change in level of assessment of fifteen percent or more is certified for an assessment roll pursuant to the rules of the commissioner, the base amount shall be adjusted by such change in level of assessment. The exemption on that assessment roll shall thereupon be recomputed, notwithstanding the fact that the assessor receives the certification after the completion, verification and filing of the final assessment roll. In the event the assessor does

not have custody of the roll when such certification is received, the assessor shall certify the recomputed exemption to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certified by the assessor on the roll.

(b) No such exemption shall be granted unless the construction, alteration, installation or improvement commenced within one year of the date of the issuance of the certificate of eligibility to the property owner.

(c) For purposes of this section the terms construction, alteration, installation and improvement shall not include ordinary maintenance and repairs.

(d) No such exemption shall be granted concurrently with or subsequent to any other real property tax exemption granted to the same improvements to real property, except, where during the period of such previous exemption, payments in lieu of taxes or other payments were made to the local government in an amount that would have been equal to or greater than the amount of real property taxes that would have been paid on such improvements had such property been granted an exemption pursuant to this section. In such case, an exemption shall be granted for a number of years equal to the five year exemption granted pursuant to this section less the number of years the property would have been previously exempt from real property taxes.

3. Such exemption shall be granted only upon application by the owner of such real property on a form prescribed by the commissioner. The original of such application shall be filed with the assessor of the assessing unit. Such original application shall be filed on or before the appropriate taxable status date of such assessing unit and no later than one year from the date of completion of such construction, alteration, installation or improvement.

4. If the assessor receives an application by the owner of the real property, he or she shall approve the application and such real property shall thereafter be exempt from taxation as herein provided commencing with the assessment roll prepared after the taxable status date referred to in subdivision three of this section. The assessed value of any exemption granted pursuant to this section shall be entered by the assessor on the assessment roll with the taxable property, with the amount of the exemption entered in a separate column.