§ 19. Green building credit. (a) Allowance of credit. (1) General. (A) Green building credit. A taxpayer subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a green building credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Provided, however, no credit shall be allowed under this section unless the taxpayer has complied with the applicable requirements of paragraph two of subdivision (d) of this section (relating to reports to DEC). The amount of the credit shall be the sum of the credit components specified in paragraphs two through seven of this subdivision. Provided, however, the amount of each such credit component shall not exceed the limit set forth in the initial credit component certificate obtained pursuant to subdivision (c) of this section. In the determination of such credit components, no cost paid or incurred by the taxpayer shall be the basis for more than one such component.

(B) Credit to successor owner. If a credit is allowed to a building owner pursuant to this subdivision with respect to property, and such property (or an interest therein) is sold, the credit for the period after the sale which would have been allowable under this subdivision to the prior owner had the property not been sold shall be allowable to the new owner. Credit for the year of sale shall be allocated between the parties on the basis of the number of days during such year that the property or interest was held by each.

(C) Credit to successor tenant. If a credit is allowed to a tenant pursuant to this subdivision with respect to property, and if such tenancy is terminated but such property remains in use in the building by a successor tenant, the credit for the period after such termination which would have been allowable under this subdivision to the prior tenant had the tenancy not been terminated shall be allowable to the successor tenant. Credit for the year of termination shall be allocated between the parties on the basis of the number of days during such year that the property was used by each.

(D) Notwithstanding any other provision of law to the contrary, in the case of allowance of credit under this section to a successor owner or tenant, as provided in subparagraph (B) or (C) of this paragraph, the commissioner shall have the authority to reveal to the successor owner or tenant any information, with respect to the credit of the prior owner or tenant, which is the basis for the denial in whole or in part of the credit claimed by such successor owner or tenant.

(2) Green whole-building credit component. The green whole-building credit component shall be equal to the applicable percentage of the allowable costs paid or incurred by the taxpayer (whether owner or tenant), for either the construction of a green building or the rehabilitation of a building which is not a green building to be a green building. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The applicable percentage shall be 1.4 percent, except that if the building is located in an economic development area, the applicable percentage shall be 1.6 percent. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed both an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section, (B) a certificate of occupancy for the building has been issued and (C) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the green building or rehabilitation remains in service during such year. Such credit component amount shall be allowed also for each of the next four succeeding taxable years with respect to which the
taxpayer has obtained and filed an eligibility certificate pursuant to subdivision (c) of this section. Provided, further, the allowable costs may not exceed, in the aggregate, one hundred fifty dollars per square foot with respect to the portion of the building which comprises the base building and seventy-five dollars per square foot with respect to the portion of the building which comprises the tenant space.

(3) Green base building credit component. The green base building credit component shall be equal to the applicable percentage of the allowable costs paid or incurred by the taxpayer, if the owner, for either the construction of a green base building or for the rehabilitation of a base building which is not a green base building to be a green base building. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The applicable percentage shall be one percent, except that if the building is located in an economic development area, the applicable percentage shall be 1.2 percent. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed both an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section, (B) a certificate of occupancy for the building has been issued and (C) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the green base building or rehabilitation of a base building remains in service during such year. Such credit component amount shall be allowed also for each of the next four succeeding taxable years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant to subdivision (c) of this section. Provided, further, the allowable costs for the base building may not exceed, in the aggregate, one hundred fifty dollars per square foot.

(4) Green tenant space credit component. The green tenant space credit component shall be equal to the applicable percentage of allowable costs for tenant improvements paid or incurred by the taxpayer (whether owner or tenant) in constructing (including completing) tenant space, or rehabilitating tenant space which is not green tenant space to be green tenant space. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The applicable percentage shall be one percent, except that if the building is located in an economic development area the applicable percentage shall be 1.2 percent. Provided, however, that the owner, or a tenant who occupies fewer than ten thousand square feet, shall qualify for such green tenant space credit component only in the event that the base building is a green base building. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the construction, completion or rehabilitation remains in service during such year. Such credit component amount shall be allowed also for each of the next four succeeding taxable years with respect to which the taxpayer has obtained and filed an eligibility certificate pursuant to subdivision (c) of this section. Provided, however, the allowable costs for tenant space shall not exceed, in the aggregate, seventy-five dollars per square foot. In the event that both an owner and tenant incur such costs for tenant space with respect to the same tenant space and such costs in the aggregate exceed seventy-five dollars per square foot, the owner shall
have priority as to costs constituting the basis for the green tenant space credit component.

(5) Fuel cell credit component. A fuel cell credit component shall be allowed for the installation of a fuel cell which is a qualifying alternate energy source, installed to serve a green building, green base building or green tenant space. The amount of the credit component shall be six percent of the sum of the capitalized costs paid or incurred by the taxpayer with respect to each fuel cell installed to serve such building or space, including the cost of the foundation or platform and the labor cost associated with installation, such capitalized costs not to exceed one thousand dollars per kilowatt of installed DC rated capacity. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The fuel cell credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the fuel cell remains in service during such year. Such credit component amount shall be allowed also with respect to each of the four taxable years next following during which the fuel cell remains in service. Provided, however, that the amount of any federal, state or local grant received by the taxpayer and used for the purchase and/or installation of such fuel cell and which was not included in the federal gross income of the taxpayer shall be subtracted from the amount of such cost.

(6) Photovoltaic module credit component. A photovoltaic module credit component shall be allowed for the installation of photovoltaic modules which constitute a qualifying alternate energy source installed to serve a green building, green base building or green tenant space. The amount of the credit component shall be twenty percent of the incremental cost paid or incurred by the taxpayer for building-integrated photovoltaic modules and five percent of the cost of non-building-integrated photovoltaic modules, in either case such cost not to exceed the product of (i) three dollars and (ii) the number of watts included in the DC rated capacity of the photovoltaic modules. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The credit component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the modules remain in service during such year. Such credit amount shall be allowed also for the four taxable years next following during which the modules remain in service. Provided, however, that the amount of any federal, state or local grant received by the taxpayer and used for the purchase and/or installation of such photovoltaic equipment and which was not included in the federal gross income of the taxpayer shall be subtracted from the amount of such cost.

(7) Green refrigerant component. A green refrigerant component shall be allowed for new air conditioning equipment (including chillers and absorption chillers, water or air cooled unitary equipment, water-cooled heat pumps, packaged terminal heat pumps, air conditioners, and other similar air conditioning equipment) that uses an EPA-approved non-ozone depleting refrigerant installed to serve a green building, green base building or green tenant space. The amount of the credit component shall
be two percent of the cost of such air conditioning equipment. The commissioner of environmental conservation, in consultation with NYSERDA, shall promulgate regulations concerning the eligibility of other EPA-approved refrigerants to receive a credit pursuant to this paragraph. Provided, however, the credit component shall not exceed the maximum amount specified in the initial credit component certificate. The green refrigerant component amount so determined shall be allowed for the credit allowance year, but only if (A) the taxpayer has obtained and filed an initial credit component certificate and an eligibility certificate issued pursuant to subdivision (c) of this section, and (B) where the credit allowance year is a year described in subparagraph (B) of paragraph two-a of subdivision (b) of this section, the air conditioning equipment remains in service. Such credit component amount shall be allowed also with respect to each of the four taxable years next following during which the air conditioning equipment remains in service.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Allowable costs" means amounts properly chargeable to capital account (other than for land), which are paid or incurred on or after June first, nineteen hundred ninety-nine, for: construction or rehabilitation; commissioning costs; interest paid or incurred during the construction or rehabilitation period; legal, architectural, engineering and other professional fees allocable to construction or rehabilitation; closing costs for construction, rehabilitation or mortgage loans; recording taxes and filing fees incurred with respect to construction or rehabilitation; site costs (such as temporary electric wiring, scaffolding, demolition costs, and fencing and security facilities); and costs of furniture, carpeting, partitions, walls and wall coverings, ceilings, drapes, blinds, lighting, plumbing, electrical wiring and ventilation; provided that such costs shall not include the cost of telephone systems and computers (other than electrical wiring costs) and shall not include the cost of fuel cells or photovoltaic modules (including installation) or the cost of new air conditioning equipment using an EPA-approved non-ozone depleting refrigerant or other EPA-approved refrigerant approved by the commissioner of environmental conservation (excluding installation).

(2) "Base building" means all areas of a building not intended for occupancy by a tenant or owner, including but not limited to the structural components of the building, exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking areas, mechanical rooms and mechanical systems, and owner-controlled and/or operated service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms, stairways and corridors.

(2-a) "Credit allowance year" means the later of (A) the taxable year during which the property, construction, completion or rehabilitation referred to in paragraphs two through seven of subdivision (a) of this section has been placed in service or has received a final certificate of occupancy or (B) the first taxable year with respect to which the credit may be claimed pursuant to the initial credit component certificate issued pursuant to subdivision (c) of this section.

(3) "Commissioning" means the testing and fine-tuning of heat, ventilating and air conditioning and other systems to assure proper functioning and adherence to design criteria and the preparation of system operation manuals and instruction of maintenance personnel.

(5) "Economic development area" means an area which is designated (A) an empire zone pursuant to article eighteen-B of the general municipal law or (B) an empowerment zone or enterprise community pursuant to section 1391 of the Internal Revenue Code.

(6) "Eligible building" means a building located in this state which is:
(A) classified B2, B3, B4, C1, C2, C5, or C6 for purposes of the New York state uniform fire prevention and building code or similarly classified under any subsequent code; provided that any such building contains at least twenty thousand square feet of interior space, or
(B) a residential multi-family building with at least twelve dwelling units that contain at least twenty thousand square feet of interior space, or
(C) one or more residential multi-family buildings with at least two dwelling units that are part of a single or phased construction project that contains, in the aggregate, at least twenty thousand square feet of interior space; provided that in any single phase of such project at least ten thousand square feet of interior space is under construction or rehabilitation, or
(D) any combination of buildings described in subparagraphs (A), (B) and (C) of this paragraph, and
(E) is not a building located on freshwater wetlands or tidal wetlands the construction of which requires a permit under section 24-0701 or 25-0403, respectively, of the environmental conservation law, or on wetlands such that the construction thereof requires a permit pursuant to section 404 of the federal clean water act (33 U.S.C. § 1344).

(7) "Energy code" means the New York state energy conservation construction code.

(8) "Fuel cell" means a device that produces electricity directly from hydrogen or hydrocarbon fuel through a non-combustive electro-chemical process.

(9) "Green base building" means a base building which is part of an eligible building and which meets the following standards:
(A) Energy and energy efficiency. (i) Energy use is no more than sixty-five percent (in the case of new construction of a base building) or seventy-five percent (in the case of rehabilitation of a base building) of the use permitted under the energy code or, in the event such standard is revised or superseded, energy use shall meet such other energy efficiency standards that DEC, in consultation with NYSERDA, shall establish in regulations promulgated pursuant to paragraph one of subdivision (e) of this section, in effect at the time the base building or rehabilitation thereof is placed in service.
(ii) All appliances and any heating, cooling and water heating equipment used in the base building and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to paragraph one of subdivision (e) of this section, shall meet the standards established by such regulations in effect at the time the base building or rehabilitation thereof is placed in service.
(B) Zoning, indoor air quality, building materials, finishes and furnishings. (i) The base building shall comply with all applicable zoning, land use and erosion control requirements, stormwater management ordinances, building code requirements and environmental regulations. In the case of the rehabilitation of an existing building, all existing environmental hazards shall be identified and managed in accordance with applicable laws, regulations and industry guidelines.
(ii) Buildings classified B2, B3, B4, C1, C2, C5, or C6, for purposes of the New York state uniform fire prevention and building code, or
similarly classified under any subsequent code, shall meet the following indoor air quality requirements:

(I) ventilation and exchange of indoor/outdoor air shall meet the standards established by regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section;

(II) if smoking is permitted in specific areas of the building, separate air ventilation and circulation shall be provided for smoking and non-smoking areas;

(III) the ventilation system shall include an air purging system that is capable of replacing one hundred percent of the air on any floor, on a minimum of two floors at a time. The air shall be purged for a period of one week on every floor immediately prior to initial occupancy and on any floor that undergoes renovation immediately prior to re-occupancy; provided that, if a taxpayer obtains certification from a licensed architect, engineer, certified industrial hygienist, or other licensed or certified professional whom the commissioner of environmental conservation shall approve, pursuant to regulations, verifying that off-gassing and any other contamination can be reduced to comparable levels in less than one week, the period of purging may be shortened. The taxpayer shall maintain a copy of such certification in accordance with the provisions of subdivision (d) of this section.

(C) Building fresh air intake shall be located a minimum of twenty-five feet away from loading areas, building exhaust fans, cooling towers and other point sources of contamination.

(D) During construction or rehabilitation, the ventilation system components and pathways shall be protected from contamination in accordance with an indoor air quality management plan for the construction or rehabilitation process that meets the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section. In the event that such areas are not protected from contamination in accordance with such standards, they shall be cleaned prior to occupancy.

(E) A licensed engineer, certified industrial hygienist, or other licensed or certified professional whom the commissioner of environmental conservation shall approve, pursuant to regulations, shall conduct indoor air quality testing with respect to the entire building immediately following occupancy, if any, and on an annual basis, to monitor supply and return air and ambient air for carbon monoxide, carbon dioxide, total volatile organic compounds, radon, and particulate matter. Provided, however, once radon measurements have been found to be satisfactory, subsequent annual testing is not required. The taxpayer shall record baseline readings immediately following occupancy, if any, and annually thereafter. In the event that the taxpayer does not establish that during a taxable year during which any part of the building is occupied, indoor air quality met the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section, the base building shall not constitute a green base building.

(F) The mechanical plant of the building shall be commissioned in accordance with the standards established in regulations promulgated by DEC, in consultation with NYSERDA, pursuant to subparagraph (D) of paragraph one of subdivision (e) of this section, which standards shall be informed by documents such as ASHRAE G-1 and the United States general services administration "Model Commissioning Plan and Guide Specifications". For purposes of this subparagraph the term "ASHRAE"
means the American society of heating, refrigerating and air conditioning engineers.

(G) Separate waste disposal chutes or a carousel compactor system for recyclable materials shall be provided for the recycling of waste by occupants, or recycling shall be otherwise facilitated by, at a minimum, providing a readily accessible designated collection area or areas with sufficient space to store recyclable materials separately between collection dates.

(H) All plumbing fixtures in the public areas of the building shall meet the plumbing fixture requirements of the energy policy act of 1992 or any successor provision in effect at the time the building or rehabilitation is placed in service.

(I) Prior to initial occupancy and upon request, the owner of the building shall provide each tenant with (1) written notification of the opportunity to apply for a tax credit pursuant to this section and (2) written guidelines regarding opportunities to improve the energy efficiency and air quality of tenant space and to reduce and recycle waste streams.

(J) All building materials, finishes and furnishings used in the base building and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to subparagraph (A) of paragraph three of subdivision (e) of this section, shall meet the standards established by such regulations in effect at the time the building or rehabilitation is placed in service; provided further that with respect to furnishings, this requirement shall apply only to newly purchased items.

(K) All tenant space in the building occupied by the owner must be green tenant space.

(10) "Green building" means a building wherein the base building is a green base building and all tenant space is green tenant space.

(11) "Green tenant space" means tenant space in a building if such building is an eligible building and if such tenant space complies with the following requirements:

(A) Energy and energy efficiency. (i) Energy use for tenant space is no more than sixty-five percent (in the case of new construction) or seventy-five percent (in the case of rehabilitation) of the use permitted under the energy code or, in the event such standard is revised or superseded, energy use shall meet such other energy efficiency standards that DEC, in consultation with NYSERDA, shall establish in regulations promulgated pursuant to paragraph one of subdivision (e) of this section, in effect at the time the improvements with respect to which a tax credit is claimed are placed in service.

(ii) All appliances and any heating, cooling and water heating equipment used in the tenant space and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to paragraph one of subdivision (e) of this section shall meet the standards established by such regulations or, in the event that such standards are revised, the standards in effect at the time the improvements with respect to which a tax credit is claimed are placed in service.

(B) Code requirements, indoor air quality, building materials, finishes and furnishings. (i) The tenant space shall comply with all applicable building code requirements and environmental regulations and, with respect to projects other than new construction, all existing environmental hazards shall be identified and managed in accordance with applicable laws, regulations and industry guidelines.

(ii) In the case of buildings classified B2, B3, B4, C1, C2, C5, or C6, for purposes of the New York state uniform fire prevention and building code, or similarly classified under any subsequent code,
ventilation and exchange of indoor/outdoor air shall meet the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section.

(iii) For buildings in which smoking is permitted, the taxpayer shall ensure that, if smoking is permitted in the tenant space, it is permitted only in areas in which the air ventilation and circulation is separate from that for non-smoking areas.

(iv) During construction or rehabilitation, the ventilation system components and pathways shall be protected from contamination in accordance with an indoor air quality management plan for the construction or rehabilitation process that meets the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section. In the event that such areas are not protected from contamination in accordance with such standards, they shall be cleaned prior to occupancy.

(v) A licensed engineer, certified industrial hygienist, or other licensed or certified professional whom the commissioner of environmental conservation shall approve, pursuant to regulations, shall conduct indoor air quality testing with respect to the tenant space immediately following occupancy, if any, and on an annual basis, to monitor supply and return air and ambient air for carbon monoxide, carbon dioxide, total volatile organic compounds, radon, and particulate matter. Provided, however, once radon measurements have been found to be satisfactory, subsequent annual testing is not required. The taxpayer shall record baseline readings immediately following occupancy, if any, and annually thereafter. In the event that the taxpayer does not establish that during a taxable year during which the tenant space is occupied, indoor air quality met the standards established in regulations promulgated by DEC, in consultation with DOH and NYSERDA, pursuant to paragraph two of subdivision (e) of this section, the tenant space shall not constitute green tenant space.

(vi) All plumbing fixtures in the tenant space shall meet the plumbing fixture requirements of the energy policy act of 1992 or successor provision in effect at the time the improvements with respect to which a tax credit is claimed are placed in service.

(vii) All building materials, finishes and furnishings selected for use in the tenant space and subject to the regulations promulgated by DEC, in consultation with NYSERDA, pursuant to subparagraph (A) of paragraph three of subdivision (e) of this section, shall meet the standards established by such regulations or, in the event that such standards are revised, the standards in effect at the time the improvements with respect to which a tax credit is claimed are placed in service, provided that, with respect to furnishings, this requirement shall apply only to newly purchased items.

(12) "Incremental cost of building-integrated photovoltaic modules" means:

(A) the cost of building-integrated photovoltaic modules and any associated inverter, additional wiring or other electrical equipment or additional mounting or structural materials, less the cost of spandrel glass or other building material that would have been used in the event that building-integrated photovoltaic modules were not installed,

(B) incremental labor costs properly allocable to on-site preparation, assembly and original installation of photovoltaic modules, and

(C) incremental architectural and engineering services and designs and plans directly related to the construction or installation of photovoltaic modules.
(13) "NYSERDA" means the New York state energy research and development authority.

(14) "Qualifying alternate energy sources" means building-integrated and non-building-integrated photovoltaic modules and fuel cells installed to serve the base building or tenant space which have the capability to monitor their AC output, and which are validated upon installation, and annually thereafter, to ensure that such systems meet their design specifications.

(15) "Tenant improvements" means improvements which are necessary or appropriate to support or conduct the business of a tenant or occupying owner.

(16) "Tenant space" means the portion of a building intended for occupancy by a tenant or occupying owner.

(c) Certifications. (1) Initial credit component certificate. Upon application by a taxpayer, DEC shall issue an initial credit component certificate where the taxpayer has made a showing that the taxpayer is likely within a reasonable time to place in service property which would warrant the allowance of a credit under this section. Such certificate shall state the first taxable year for which the credit may be claimed and an expiration date, and shall apply only to property placed in service by such expiration date. Such expiration date may be extended at the discretion of DEC, in order to avoid unwarranted hardship. Such certificates shall state the maximum amount of credit component allowable for each of the five taxable years for which the credit component is allowed, under paragraphs two through seven of subdivision (a) of this section.

(a) Period one. Initial credit component certificates for period one may be issued in years 2000-2004. Such certificates for period one shall not be issued, in the aggregate, for more than twenty-five million dollars worth of credit components. In addition, such certificates for period one shall be limited in their applicability, as follows:

<table>
<thead>
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<th>Credit components in the aggregate</th>
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<td>$ 1 million</td>
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Provided, however, that if as of the end of a calendar year, certificates for credit component amounts totalling less than the amount permitted with respect to taxable years commencing in such calendar year have been issued, then the amount permitted with respect to taxable years commencing in the subsequent calendar year shall be augmented by the amount of such shortfall.

(b) Period two. Initial credit component certificates for period two may be issued in years 2005-2009. Such certificates for period two shall not be issued, in the aggregate, for more than twenty-five million dollars worth of credit components. The total amount of credit component allowable for the five taxable years for which the credit components are allowed, as set forth on any one initial credit component certificate, shall be limited to two million dollars. However, a taxpayer that is the owner or tenant of more than one building that qualifies for the credits
provided for under this section may be issued initial credit component certificates with respect to each such building with the aggregate amount of credit components permitted for each such certificate being two million dollars. Provided further, a taxpayer that is the owner or tenant of a building for which an initial credit component certificate was issued for period one, shall not be issued an initial credit component certificate with respect to such building for period two. In addition, such certificates for period two shall be limited in their applicability, as follows:

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<tr>
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<td>$ 2 million</td>
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<td>$ 1 million</td>
<td>2014</td>
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Provided, however, that if as of the end of a calendar year, certificates for credit component amounts totaling less than the amount permitted with respect to taxable years commencing in such calendar year have been issued, then the amount permitted with respect to taxable years commencing in the subsequent calendar year shall be augmented by the amount of such shortfall. Provided, further, that if at the end of calendar year two thousand nine, certificates for credit component amounts issued by the DEC have totaled less than twenty-five million dollars for calendar years 2005-2009, then the period to issue initial credit component certificates shall be extended to the end of calendar year two thousand ten and the DEC shall be permitted to issue in two thousand ten initial credit component certificates for amounts that equal the difference between the amounts issued for calendar years 2005-2009 and twenty-five million dollars.

(c) For purposes of either period one or two, if a taxpayer who is issued an initial credit component certificate is unable to claim as a credit any amount of credit component (i) such amount of unclaimed credit component may be allocated to another taxpayer that has already been issued an initial credit component certificate with such certificate being reissued to reflect the amount so allocated, provided that such other taxpayer applied for and would have qualified for such additional amount, and with respect to period two the initial credit component certificate of such other taxpayer as augmented does not exceed the two million dollar limit, or as an alternative (ii) the DEC may issue to other applicants new initial credit component certificates which include such amounts of unclaimed credit components. If a taxpayer is unable to claim all or a portion of the amount of credit components after the close of the last calendar year for which initial credit component certificates may be issued, the DEC shall have twelve months to accept applications for and issue initial credit component certificates for such amount of unclaimed credit components.

(2) Eligibility certificate. For each taxable year for which a taxpayer claims a credit under this section with respect to a green building, green base building or green tenant space, a fuel cell, or photovoltaic modules, or air conditioning equipment using an EPA-approved non-ozone depleting refrigerant or other EPA-approved
refrigerant approved by the commissioner of environmental conservation, the taxpayer shall obtain from an architect or professional engineer licensed to practice in this state an eligibility certificate. Such certificate shall consist of a certification, under the seal of such architect or engineer, that the building, base building or tenant space with respect to which the credit is claimed is a green building, green base building or green tenant space, respectively, that the fuel cell or photovoltaic modules constitute qualifying alternate energy sources and that the air conditioning equipment uses an EPA-approved non-ozone depleting refrigerant or other EPA-approved refrigerant approved by the commissioner of environmental conservation and remains in service. Such certification shall be made in accordance with the standards and guidelines in effect at the time the property which is the basis for the credit was placed in service. Such certification shall set forth the specific findings upon which the certification was based. The taxpayer shall file such certificate, and the associated initial credit component certificate, with the claim for credit and shall file duplicate copies with DEC. Such certificate shall include sufficient information to identify each building or space, and such other information as DEC and the commissioner shall prescribe.

(3) Wrongful certification. If DEC has reason to believe that an architect or professional engineer, in making any certification under this subdivision, engaged in professional misconduct, then DEC shall so inform the education department.

(d) Other requirements; miscellaneous. (1) Record keeping. Each taxpayer shall, for any taxable year for which the green building credit provided for under this section is claimed, maintain records of the following information:

(A) annual energy consumption for building, base building or tenant space;
(B) annual results of air monitoring;
(C) annual confirmation that the building, base building or tenant space continues to meet requirements regarding smoking areas, if provided;
(D) tenant guidelines referred to in subparagraph (I) of paragraph nine of subdivision (b) of this section, if applicable;
(E) all written notification of tenants and requests to remedy any indoor air quality problems;
(F) initial and annual (by month) results of validation of performance of photovoltaic modules and fuel cells; and
(G) certifications as to off-gassing and other contamination, as prescribed in subclause (III) of clause (ii) of subparagraph (B) of paragraph nine of subdivision (b) of this section, where applicable.

(2) Reporting to DEC. Each taxpayer shall also provide to DEC the information described in paragraph one of this subdivision, in the form and at the time prescribed by DEC, such time to be determined in consultation with the commissioner. Such information shall be provided to DEC with respect to each taxable year with respect to which the taxpayer claims a credit under this section.

(3) Regulations. The commissioner, the commissioner of environmental conservation and the commissioner of education are hereby authorized to promulgate and adopt regulations necessary to the implementation of this section. Such regulations shall construe the provisions of this section in such a manner as to encourage the development of green buildings, green base buildings and green tenant space and to maintain high but commercially reasonable standards for obtaining tax credits hereunder. Such regulations shall establish a reasonable time or period of time for submission of applications, and shall establish a method for allocating
initial credit component certificates among eligible applicants. Regulations, standards or requirements adopted pursuant to this section shall apply only to a "green base building" as defined in paragraph nine of subdivision (b) of this section, a "green building" as defined in paragraph ten of subdivision (b) or "green tenant space" as defined in paragraph eleven of subdivision (b) of this section.

(4) Report. For period one, on or before April first, two thousand eleven, the commissioner and the commissioner of DEC, jointly and in consultation with NYSERDA, shall submit a written report regarding the number of certifications and taxpayers claiming the credit provided for under this section; the amount of the credits claimed, the geographical distribution of the credits claimed; and any other such available information DEC may deem meaningful and appropriate. A preliminary version of such report for period one shall be so issued by April first, two thousand five. For period two, on or before April first, two thousand sixteen the commissioner and the commissioner of DEC, jointly and in consultation with NYSERDA, shall submit a written report regarding the number of certificates and taxpayers claiming the credit provided for under this section; the amount of the credits claimed, the geographical distribution of the credits claimed; and any other such available information DEC may deem meaningful and appropriate. A preliminary version of such report for period two shall be issued by April first, two thousand ten. The commissioner and the commissioner of DEC shall ensure that the information is presented and/or classified in a manner consistent with the secrecy requirements of this chapter. DEC shall also make recommendations regarding the establishment of a permanent green building tax credit program. Recommendations may include methods to enhance the effectiveness, simplicity or other aspects of the program. The report shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

(e) Standards and regulations. (1) Energy standards: base buildings. Within six months of the effective date of this section, DEC, in consultation with NYSERDA, shall promulgate the following, with respect to base buildings:
   (A) regulations establishing standards for energy use for eligible buildings. DEC, in consultation with NYSERDA shall review and update such regulations if deemed necessary at least every two years from the date on which such regulations are promulgated.
   (B) regulations establishing standards for appliances and heating, cooling and water heating equipment that, on the effective date of this section, are covered by specifications from organizations such as the United States department of energy or environmental protection agency. The development of such regulations shall be informed by such specifications. DEC, in consultation with NYSERDA shall review and update such regulations if deemed necessary at least every two years from the date on which such regulations are promulgated.
   (C) regulations indicating the methodology by which a taxpayer shall demonstrate compliance with subparagraph (A) of paragraph nine of subdivision (b) of this section. Such regulations shall include, at a minimum, a requirement to conduct hourly computer modeling for one full year.
   (D) regulations establishing standards for the commissioning of buildings.

(2) Indoor air standards: base buildings. Within six months of the effective date of this section, DEC, in consultation with DOH and NYSERDA, shall promulgate regulations establishing standards, with
respect to base buildings, for (A) ventilation and exchange of indoor/outdoor air, (B) indoor air quality management plans for the construction or rehabilitation process, and (C) indoor air quality with respect to levels of carbon monoxide, carbon dioxide and total volatile organic compounds, radon and particulate matter.

(3) Standards for materials, water conservation, drainage: base buildings. Within one year of the effective date of this section, DEC, in consultation with NYSERDA, shall promulgate the following, with regard to base buildings:

(A) regulations establishing standards for building materials, finishes and furnishings regarding minimum percentages of recycled content and renewable source material and maximum levels of toxicity and volatile organic compounds and any other standards that the DEC deems appropriate. Standards shall be developed for building materials, finishes and furnishings, including but not limited to concrete and concrete masonry units; wood and wood products; millwork substrates; insulation; ceramic, ceramic/glass and cementitious tiles; ceiling tiles and panels; flooring and carpet; paints, coatings, sealants and adhesives; and furniture. The development of such standards shall be informed by the LEED rating system. The DEC shall review and update such regulations if deemed necessary at least every two years from the date on which such regulations are promulgated. For purposes of this clause, "LEED rating system" means the leadership in energy and environmental design green building rating system criteria being developed by the United States green building council.

(B) regulations establishing standards for buildings located in areas where water use is not metered, which regulations shall require, at a minimum, that the building include one of the following features:

(i) a gray water system that recovers non-sewage waste water or uses roof or ground storm water collection systems, or recovers ground water from sump pumps;

(ii) for buildings with a cooling tower system, such system shall be designed with delimiters to reduce drift and evaporation; or

(iii) for buildings with exterior plants, all such plants shall be tolerant of climate, soils and natural water availability and shall not receive watering from municipal potable water after a period of establishment is complete.

(C) regulations establishing standards for buildings located in areas that do not have sewers or that have designated storm sewers, which regulations shall require, at a minimum, that the building shall include one of the following features:

(i) an oil grit separator or water quality pond for pretreatment of runoff from any surface parking areas; or

(ii) at least fifty percent of nonlandscaped areas (including roadways, surface parking, plazas and pathways), if any, shall be comprised of pervious paving materials.

(D) regulations indicating the methodology by which taxpayers shall demonstrate compliance with subparagraphs (B) and (C) of paragraph nine of subdivision (b) of this section.

(4) Energy standards: tenant space. Within six months of the effective date of this section, DEC, in consultation with NYSERDA, shall promulgate regulations, with respect to tenant space, indicating the methodology by which taxpayers shall demonstrate compliance with subparagraph (A) of paragraph eleven of subdivision (b) of this section.

(5) Standards for indoor air quality, building materials, finishes and furnishings: tenant space. Within one year of the effective date of this section, DEC, in consultation with DOH and NYSERDA, shall promulgate regulations, with respect to tenant space, indicating the methodology by
which taxpayers shall demonstrate compliance with subparagraph (B) of paragraph eleven of subdivision (b) of this section.

(f) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article nine: Section one hundred eighty-seven-d;
(2) Article nine-A: Subdivision thirty-one of section two hundred ten;
(3) Article twenty-two: Subsections (i) and (y) of section six hundred sixty;
(4) Article thirty-two: Subsection (m) of section fourteen hundred fifty-six;
(5) Article thirty-three: Subdivision (o) of section fifteen hundred eleven.