

4946

2013-2014 Regular Sessions

I N S E N A T E

May 1, 2013

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the tax law, in relation to the
creation of the workers with disabilities tax credit program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new section 25-b to
2 read as follows:
3 S 25-B. POWER TO ADMINISTER THE WORKERS WITH DISABILITIES TAX CREDIT
4 PROGRAM. (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH AND ADMINISTER
5 THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM TO PROVIDE TAX INCEN-
6 TIVES TO EMPLOYERS FOR EMPLOYING INDIVIDUALS WITH DEVELOPMENTAL DISABIL-
7 ITIES. THERE WILL BE FIVE DISTINCT POOLS OF TAX INCENTIVES. PROGRAM ONE
8 WILL COVER TAX INCENTIVES ALLOCATED FOR TWO THOUSAND THIRTEEN. PROGRAM
9 TWO WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND FOURTEEN TO BE
10 USED IN TWO THOUSAND FOURTEEN AND TWO THOUSAND FIFTEEN. PROGRAM THREE
11 WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND FIFTEEN TO BE USED
12 IN TWO THOUSAND FIFTEEN AND TWO THOUSAND SIXTEEN. PROGRAM FOUR WILL
13 COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND SIXTEEN TO BE USED IN TWO
14 THOUSAND SIXTEEN AND TWO THOUSAND SEVENTEEN. PROGRAM FIVE WILL COVER TAX
15 INCENTIVES ALLOCATED IN TWO THOUSAND SEVENTEEN TO BE USED IN TWO THOU-
16 SAND SEVENTEEN AND TWO THOUSAND EIGHTEEN. THE COMMISSIONER IS AUTHORIZED
17 TO ALLOCATE UP TO SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM ONE,
18 SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM TWO, SIX MILLION
19 DOLLARS OF TAX CREDITS UNDER PROGRAM THREE, AND SIX MILLION DOLLARS OF
20 TAX CREDITS UNDER PROGRAM FOUR, AND SIX MILLION DOLLARS OF TAX CREDITS
21 UNDER PROGRAM FIVE.
22 (B) DEFINITIONS. (1) THE TERM "QUALIFIED EMPLOYER" MEANS AN EMPLOYER
23 THAT HAS BEEN CERTIFIED BY THE COMMISSIONER TO PARTICIPATE IN THE WORK-
24 ERS WITH DISABILITIES TAX CREDIT PROGRAM AND THAT EMPLOYS ONE OR MORE
25 QUALIFIED EMPLOYEES.

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

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(2) THE TERM "QUALIFIED EMPLOYEE" MEANS AN INDIVIDUAL:

(I) WHO IS DEEMED TO HAVE A DEVELOPMENTAL DISABILITY, AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW AND WHO IS CERTIFIED BY THE EDUCATION DEPARTMENT:

(A) AS A PERSON WITH A DISABILITY WHICH CONSTITUTES OR RESULTS IN A SUBSTANTIAL HANDICAP TO EMPLOYMENT; AND

(B) AS A PERSON HAVING COMPLETED OR AS RECEIVING SERVICES UNDER AN INDIVIDUALIZED WRITTEN REHABILITATION PLAN APPROVED BY THE EDUCATION DEPARTMENT OR OTHER STATE AGENCY RESPONSIBLE FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SUCH INDIVIDUAL; AND

(II) WHO IS UNEMPLOYED PRIOR TO BEING HIRED BY THE QUALIFIED EMPLOYER BUT IS NOT RESTRICTED IN HIS OR HER EMPLOYMENT UNDER A FEDERAL OR STATE LAW, RULE OR REGULATION; AND

(III) WHO WILL BE WORKING FOR THE QUALIFIED EMPLOYER IN A FULL-TIME OR PART-TIME POSITION THAT PAYS WAGES THAT ARE EQUIVALENT TO THE WAGES PAID FOR SIMILAR JOBS, WITH APPROPRIATE ADJUSTMENTS FOR EXPERIENCE AND TRAINING, AND FOR WHICH NO OTHER EMPLOYEE HAS BEEN TERMINATED, OR WHERE THE EMPLOYER HAS NOT OTHERWISE REDUCED ITS WORKFORCE BY INVOLUNTARY TERMINATIONS WITH THE INTENTION OF FILLING THE VACANCY BY CREATING A NEW HIRE.

(C) A QUALIFIED EMPLOYER SHALL BE ENTITLED TO A TAX CREDIT EQUAL TO (1) FIVE HUNDRED DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A FULL-TIME JOB OR TWO HUNDRED FIFTY DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A PART-TIME JOB OF AT LEAST TWENTY HOURS PER WEEK, AND (2) ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME JOB OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A PART-TIME JOB OF AT LEAST TWENTY HOURS PER WEEK. THE TAX CREDITS SHALL BE CLAIMED BY THE QUALIFIED EMPLOYER AS SPECIFIED IN SUBDIVISION FORTY-SEVEN OF SECTION TWO HUNDRED TEN AND SUBSECTION (WW) OF SECTION SIX HUNDRED SIX OF THE TAX LAW.

(D) TO PARTICIPATE IN THE DEVELOPMENTALLY DISABLED WORKS TAX CREDIT PROGRAM, AN EMPLOYER MUST SUBMIT AN APPLICATION (IN A FORM PRESCRIBED BY THE COMMISSIONER) TO THE COMMISSIONER NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND THIRTEEN FOR PROGRAM ONE, AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND FOURTEEN FOR PROGRAM TWO, AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND FIFTEEN FOR PROGRAM THREE, AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND SIXTEEN FOR PROGRAM FOUR, AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND SEVENTEEN FOR PROGRAM FIVE. THE QUALIFIED EMPLOYEES MUST START THEIR EMPLOYMENT ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN FOR PROGRAM ONE, ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN FOR PROGRAM TWO, ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN FOR PROGRAM THREE, ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN FOR PROGRAM FOUR, AND ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN FOR PROGRAM FIVE. THE COMMISSIONER SHALL ESTABLISH GUIDELINES AND CRITERIA THAT SPECIFY REQUIREMENTS FOR EMPLOYERS TO PARTICIPATE IN THE PROGRAM INCLUDING CRITERIA FOR CERTIFYING QUALIFIED EMPLOYEES. ANY REGU-

1 LATIONS THAT THE COMMISSIONER DETERMINES ARE NECESSARY MAY BE ADOPTED ON
2 AN EMERGENCY BASIS NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION
3 TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT. SUCH REQUIRE-
4 MENTS MAY INCLUDE THE TYPES OF INDUSTRIES THAT THE EMPLOYERS ARE ENGAGED
5 IN. THE COMMISSIONER MAY GIVE PREFERENCE TO EMPLOYERS THAT ARE ENGAGED
6 IN DEMAND OCCUPATIONS OR INDUSTRIES, OR IN REGIONAL GROWTH SECTORS,
7 INCLUDING THOSE IDENTIFIED BY THE REGIONAL ECONOMIC DEVELOPMENT COUN-
8 CILS, SUCH AS CLEAN ENERGY, HEALTHCARE, ADVANCED MANUFACTURING AND
9 CONSERVATION. IN ADDITION, THE COMMISSIONER SHALL GIVE PREFERENCE TO
10 EMPLOYERS WHO OFFER ADVANCEMENT AND EMPLOYEE BENEFIT PACKAGES TO THE
11 QUALIFIED INDIVIDUALS.

12 (E) IF, AFTER REVIEWING THE APPLICATION SUBMITTED BY AN EMPLOYER, THE
13 COMMISSIONER DETERMINES THAT SUCH EMPLOYER IS ELIGIBLE TO PARTICIPATE IN
14 THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM, THE COMMISSIONER SHALL
15 ISSUE THE EMPLOYER A CERTIFICATE OF ELIGIBILITY THAT ESTABLISHES THE
16 EMPLOYER AS A QUALIFIED EMPLOYER. THE CERTIFICATE OF ELIGIBILITY SHALL
17 SPECIFY THE MAXIMUM AMOUNT OF WORKERS WITH DISABILITIES TAX CREDIT THAT
18 THE EMPLOYER WILL BE ALLOWED TO CLAIM.

19 S 2. Section 210 of the tax law is amended by adding a new subdivision
20 47 to read as follows:

21 47. WORKERS WITH DISABILITIES TAX CREDIT. (A) A TAXPAYER THAT HAS BEEN
22 CERTIFIED BY THE COMMISSIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT
23 TO SECTION TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED A CREDIT
24 AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO (I) FIVE HUNDRED
25 DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE
26 EMPLOYER EMPLOYS IN A FULL-TIME JOB OR TWO HUNDRED FIFTY DOLLARS PER
27 MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER
28 EMPLOYS IN A PART-TIME JOB OF AT LEAST TWENTY HOURS PER WEEK, AND (II)
29 ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT
30 LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME
31 JOB OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED
32 FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A
33 PART-TIME JOB OF AT LEAST TWENTY HOURS PER WEEK. FOR PURPOSES OF THIS
34 SUBDIVISION, THE TERM "QUALIFIED EMPLOYEE" SHALL HAVE THE SAME MEANING
35 AS SET FORTH IN SUBDIVISION (B) OF SECTION TWENTY-FIVE-B OF THE LABOR
36 LAW. THE PORTION OF THE CREDIT DESCRIBED IN THIS PARAGRAPH SHALL BE
37 ALLOWED FOR THE TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO
38 THOUSAND THIRTEEN.

39 (B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY
40 NOT REDUCE THE TAX DUE FOR THAT YEAR TO LESS THAN THE AMOUNT PRESCRIBED
41 IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE
42 AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
43 REDUCES THE TAX TO THAT AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN
44 THAT TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDIT-
45 ED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
46 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, NO INTEREST WILL BE PAID
47 THEREON.

48 (C) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS
49 CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT
50 TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAY-
51 ER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON
52 THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS
53 CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIG-
54 NEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS
55 CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED,
56 HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A

1 LIMITED LIABILITY COMPANY OR A PARTNER IN A PARTNERSHIP, ONLY THE AMOUNT
2 OF CREDIT EARNED BY THE ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY
3 THE TAXPAYER MAY BE RELEASED.

4 S 3. Section 606 of the tax law is amended by adding a new subsection
5 (ww) to read as follows:

6 (WW) WORKERS WITH DISABILITIES TAX CREDIT. (1) A TAXPAYER THAT HAS
7 BEEN CERTIFIED BY THE COMMISSIONER OF LABOR AS A QUALIFIED EMPLOYER
8 PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED A
9 CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO (A) FIVE HUNDRED
10 DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE
11 EMPLOYER EMPLOYS IN A FULL-TIME JOB OR TWO HUNDRED FIFTY DOLLARS PER
12 MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER
13 EMPLOYS IN A PART-TIME JOB OF AT LEAST TWENTY HOURS PER WEEK, AND (B)
14 ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT
15 LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME
16 JOB OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED
17 FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A
18 PART-TIME JOB OF AT LEAST TWENTY HOURS PER WEEK. A TAXPAYER THAT IS A
19 PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR
20 SHAREHOLDER IN AN S CORPORATION THAT HAS BEEN CERTIFIED BY THE COMMISS-
21 SIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT TO SECTION
22 TWENTY-FIVE-A OF THE LABOR LAW SHALL BE ALLOWED ITS PRO RATA SHARE OF
23 THE CREDIT EARNED BY THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S
24 CORPORATION. FOR PURPOSES OF THIS SUBSECTION, THE TERM "QUALIFIED
25 EMPLOYEE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION (B) OF
26 SECTION TWENTY-FIVE-B OF THE LABOR LAW. THE PORTION OF THE CREDIT
27 DESCRIBED IN THIS PARAGRAPH SHALL BE ALLOWED FOR THE TAXABLE YEAR BEGIN-
28 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN.

29 (2) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION EXCEEDS
30 THE TAXPAYER'S TAX FOR THE TAXABLE YEAR, ANY AMOUNT OF CREDIT NOT DEDUC-
31 TIBLE IN THAT TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO
32 BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX
33 HUNDRED EIGHTY-SIX OF THIS ARTICLE. PROVIDED, HOWEVER, NO INTEREST WILL
34 BE PAID THEREON.

35 (3) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS
36 CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT
37 TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAY-
38 ER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON
39 THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS
40 CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIG-
41 NEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS
42 CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED,
43 HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A
44 LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP, OR A SHAREHOLDER
45 IN A SUBCHAPTER S CORPORATION, ONLY THE AMOUNT OF CREDIT EARNED BY THE
46 ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY THE TAXPAYER MAY BE
47 RELEASED.

48 S 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
49 of the tax law is amended by adding a new clause (xxxvi) to read as
50 follows:

51 (XXXVI) WORKERS WITH DISABILITIES	AMOUNT OF
52 TAX CREDIT UNDER SUBSECTION (WW)	CREDIT UNDER SUBDIVISION
53	FORTY-SEVEN OF SECTION TWO
54	HUNDRED TEN

55 S 5. This act shall take effect immediately.