

STATE OF NEW YORK

5403

2021-2022 Regular Sessions

IN SENATE

March 4, 2021

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law and the tax law, in relation to establishing the small business pandemic job retention tax credit

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The economic development law is amended by adding a new
2 article 23 to read as follows:

ARTICLE 23

SMALL BUSINESS PANDEMIC JOB RETENTION TAX CREDIT PROGRAM

Section 450. Short title.

451. Statement of legislative findings and declaration.

452. Definitions.

453. Eligibility criteria.

454. Application and approval process.

455. Small business pandemic job retention tax credit.

456. Powers and duties of the commissioner.

457. Maintenance of records.

458. Reporting.

459. Cap on tax credit.

15 § 450. Short title. This article shall be known and may be cited as
16 the "small business pandemic job retention tax credit program act".

17 § 451. Statement of legislative findings and declaration. It is hereby
18 found and declared that New York state needs to provide assistance to
19 small businesses who have suffered economic harm as a result of the
20 COVID-19 pandemic. The small business pandemic job retention tax credit
21 program is designed to provide relief to businesses who maintained
22 staffing levels despite suffering significant loss of revenue due to the
23 pandemic.

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

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1 § 452. Definitions. For the purposes of this article:

2 1. "Average full-time employment" shall mean the average number of
3 full-time equivalent positions employed by an eligible business entity
4 during a given period.

5 2. "Average starting full-time employment" shall be calculated as the
6 average number of full-time equivalent positions employed by a business
7 entity in an eligible industry between January first, two thousand twen-
8 ty, and March first, two thousand twenty.

9 3. "Average ending full-time employment" shall be calculated as the
10 average number of full-time equivalent positions employed by a business
11 entity in an eligible industry between April first, two thousand twen-
12 ty-one, and December thirty-first, two thousand twenty-one.

13 4. "Certificate of tax credit" means the document issued to a business
14 entity by the department after the department has verified that the
15 business entity has met all applicable eligibility criteria in this
16 article. The certificate shall specify the exact amount of the tax cred-
17 it under this article that a business entity may claim, pursuant to
18 section four hundred fifty-five of this article.

19 § 453. Eligibility criteria. 1. To be eligible for a tax credit under
20 the small business pandemic job retention tax credit program, a business
21 entity must:

22 (a) be a small business as defined in section one hundred thirty-one
23 of this chapter and have fewer than one hundred full-time job equiv-
24 alents in New York state as of April first, two thousand twenty-one;

25 (b) operate a business location in New York state that charges admis-
26 sion and/or accepts payment for goods and/or services from in-person
27 customers;

28 (c) have experienced economic harm as a result of the COVID-19 emer-
29 gency as evidenced by a year-to-year decrease of at least forty percent
30 in New York state between the second quarter of two thousand nineteen
31 and the second quarter of two thousand twenty or the third quarter of
32 two thousand nineteen and the third quarter of two thousand twenty for
33 gross receipts; and

34 (d) have demonstrated a flat average level of employees, who have been
35 paid wages at a rate equal to no less than seventy-five percent of their
36 rate of pay during the time period described in subdivision two of
37 section four hundred fifty-two of this article.

38 2. A business entity must be in substantial compliance with any emer-
39 gency restrictions or public health orders impacting the industry sector
40 or other laws and regulations as determined by the commissioner. In
41 addition, a business entity may not owe past due state taxes or local
42 property taxes unless the business entity is making payments and comply-
43 ing with an approved binding payment agreement entered into with the
44 taxing authority.

45 § 454. Application and approval process. 1. A business entity must
46 submit a complete application as prescribed by the commissioner.

47 2. The commissioner shall establish procedures and a timeframe for
48 business entities to submit applications. As part of the application,
49 each business entity must:

50 (a) provide evidence in a form and manner prescribed by the commis-
51 sioner of its business eligibility;

52 (b) agree to allow the department of taxation and finance to share the
53 business entity's tax information with the department; provided, howev-
54 er, that any information shared as a result of the small business
55 pandemic job retention tax credit program shall not be available for
56 disclosure or inspection under the state freedom of information law;

1 (c) agree to allow the department of labor to share its tax and
2 employer information with the department; provided, however, that any
3 information shared as a result of the small business pandemic job
4 retention tax credit program shall not be available for disclosure or
5 inspection under the state freedom of information law;

6 (d) allow the department and its agents access to any and all books
7 and records the department may require to monitor compliance;

8 (e) certify that it is in substantial compliance with all emergency
9 orders or public health regulations currently required of such entity,
10 and local and state tax laws; and

11 (f) agree to provide any additional information required by the
12 department relevant to this article.

13 3. After reviewing a business entity's completed final application and
14 determining that the business entity meets the eligibility criteria as
15 set forth in this article, the department may issue to that business
16 entity a certificate of tax credit. A business entity may claim the tax
17 credit in the taxable year that includes December thirty-first, two
18 thousand twenty-one.

19 § 455. Small business pandemic job retention tax credit. 1. A business
20 entity in the small business pandemic job retention tax credit program
21 that meets the eligibility requirements of section four hundred fifty-
22 three of this article may be eligible to claim a credit of up to ten
23 thousand dollars.

24 2. A business entity, including a partnership, limited liability
25 company and subchapter S corporation, may not receive in excess of ten
26 thousand dollars in tax credits under this program.

27 3. The credit shall be allowed as provided in section forty-five,
28 subdivision fifty-five of section two hundred ten-B and subsection (kkk)
29 of section six hundred six of the tax law.

30 § 456. Powers and duties of the commissioner. 1. The commissioner may
31 promulgate regulations establishing an application process and eligibil-
32 ity criteria, that will be applied consistent with the purposes of this
33 article, so as not to exceed the annual cap on tax credits set forth in
34 section four hundred fifty-nine of this article which, notwithstanding
35 any provisions to the contrary in the state administrative procedure
36 act, may be adopted on an emergency basis.

37 2. The commissioner shall, in consultation with the department of
38 taxation and finance, develop a certificate of tax credit that shall be
39 issued by the commissioner to eligible businesses. Such certificate
40 shall contain such information as required by the department of taxation
41 and finance.

42 3. The commissioner shall solely determine the eligibility of any
43 applicant applying for entry into the program and shall remove any busi-
44 ness entity from the program for failing to meet any of the requirements
45 set forth in section four hundred fifty-three of this article, or for
46 failing to meet the requirements set forth in subdivision one of section
47 four hundred fifty-four of this article.

48 § 457. Maintenance of records. Each business entity participating in
49 the program shall keep all relevant records for their duration of
50 program participation for at least three years.

51 § 458. Reporting. Each business entity participating in this program
52 must submit a performance report to the department at a time prescribed
53 in regulations by the commissioner.

54 § 459. Cap on tax credit. The total amount of tax credits listed on
55 certificates of tax credit issued by the commissioner pursuant to this
56 article may not exceed one hundred million dollars.

1 § 2. The tax law is amended by adding a new section 45 to read as
2 follows:

3 § 45. Small business pandemic job retention tax credit. (a) Allowance
4 of credit. A taxpayer subject to tax under article nine-a or twenty-two
5 of this chapter shall be allowed a credit against such tax, pursuant to
6 the provisions referenced in subdivision (f) of this section. The amount
7 of the credit is equal to the amount determined pursuant to section four
8 hundred fifty-five of the economic development law. No cost or expense
9 paid or incurred by the taxpayer which is included as part of the calcu-
10 lation of this credit shall be the basis of any other tax credit allowed
11 under this chapter.

12 (b) Eligibility. To be eligible for the small business pandemic job
13 retention tax credit, the taxpayer shall have been issued a certificate
14 of tax credit by the department of economic development pursuant to
15 subdivision three of section four hundred fifty-four of the economic
16 development law, which certificate shall set forth the amount of the
17 credit that may be claimed for the taxable year. The taxpayer shall be
18 allowed to claim only the amount listed on the certificate of tax credit
19 for that taxable year. A taxpayer that is a partner in a partnership,
20 member of a limited liability company or shareholder in a subchapter S
21 corporation that has received a certificate of tax credit shall be
22 allowed its pro rata share of the credit earned by the partnership,
23 limited liability company or subchapter S corporation.

24 (c) Tax return requirement. The taxpayer shall be required to attach
25 to its tax return, in the form prescribed by the commissioner, proof of
26 receipt of its certificate of tax credit issued by the commissioner of
27 the department of economic development.

28 (d) Information sharing. Notwithstanding any provision of this chap-
29 ter, employees of the department of economic development and the depart-
30 ment shall be allowed and are directed to share and exchange:

31 (1) information derived from tax returns or reports that is relevant
32 to a taxpayer's eligibility to participate in the small business pandem-
33 ic job retention tax credit program;

34 (2) information regarding the credit applied for, allowed or claimed
35 pursuant to this section and taxpayers that are applying for the credit
36 or that are claiming the credit; and

37 (3) information contained in or derived from credit claim forms
38 submitted to the department and applications for admission into the
39 small business pandemic job retention tax credit program. Except as
40 provided in paragraph two of this subdivision, all information exchanged
41 between the department of economic development and the department shall
42 not be subject to disclosure or inspection under the state's freedom of
43 information law.

44 (e) Credit recapture. If a certificate of tax credit issued by the
45 department of economic development under article twenty-four of the
46 economic development law is revoked by such department, the amount of
47 credit described in this section and claimed by the taxpayer prior to
48 that revocation shall be added back to tax in the taxable year in which
49 any such revocation becomes final.

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

52 (1) article 9-A: section 210-B, subdivision 55;

53 (2) article 22: section 606, subsection (kkk).

54 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
55 sion 55 to read as follows:

1 55. Small business pandemic job retention tax credit. (a) Allowance of
2 credit. A taxpayer shall be allowed a credit, to be computed as provided
3 in section forty-five of this chapter, against the taxes imposed by this
4 article.

5 (b) Application of credit. The credit allowed under this subdivision
6 for the taxable year shall not reduce the tax due for such year to less
7 than the amount prescribed in paragraph (d) of subdivision one of
8 section two hundred ten of this article. However, if the amount of cred-
9 it allowed under this subdivision for the taxable year reduces the tax
10 to such amount or if the taxpayer otherwise pays tax based on the fixed
11 dollar minimum amount, any amount of credit thus not deductible in such
12 taxable year shall be treated as an overpayment of tax to be credited or
13 refunded in accordance with the provisions of section one thousand
14 eighty-six of this chapter. Provided, however, the provisions of
15 subsection (c) of section one thousand eighty-eight of this chapter
16 notwithstanding, no interest will be paid thereon.

17 § 4. Section 606 of the tax law is amended by adding a new subsection
18 (kkk) to read as follows:

19 (kkk) Small business pandemic job retention tax credit. (1) Allowance
20 of credit. A taxpayer shall be allowed a credit, to be computed as
21 provided in section forty-five of this chapter, against the tax imposed
22 by this article.

23 (2) Application of credit. If the amount of the credit allowed under
24 this subsection for the taxable year exceeds the taxpayer's tax for such
25 year, the excess shall be treated as an overpayment of tax to be credit-
26 ed or refunded in accordance with the provisions of section six hundred
27 eighty-six of this article, provided, however, that no interest will be
28 paid thereon.

29 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
30 of the tax law is amended by adding a new clause (xlvi) to read as
31 follows:

32 <u>(xlvi) Small business pandemic</u>	<u>Amount of credit</u>
33 <u>job retention tax credit</u>	<u>under subdivision</u>
34	<u>fifty-five of section</u>
35	<u>two hundred ten-B</u>

36 § 6. This act shall take effect immediately.