S T A T E   O F   N E W   Y O R K

5264

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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, in relation to the creation of a New York jobs development tax credit; and to amend the tax law, in relation to an employment incentive income tax credit available to employers who employ individuals previously receiving unemployment benefits

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

Section 1. The commissioner of labor of the state of New York shall make a request within fifteen days of the effective date of this act for a determination by the United States secretary of labor that implementation of sections two, three, four and five of this act are in conformity with federal law.

S 2. The labor law is amended by adding a new section 582 to read as follows:

S 582. NEW YORK JOBS DEVELOPMENT TAX CREDIT. THERE SHALL BE A CREDIT TO BE KNOWN AS THE "NEW YORK JOBS DEVELOPMENT TAX CREDIT". THE AMOUNT OF THE CREDIT SHALL NOT BE LESS THAN TWENTY-FIVE DOLLARS AND NOT MORE THAN ONE HUNDRED TWENTY-FIVE DOLLARS PER INDIVIDUAL EMPLOYEE PER CALENDAR QUARTER. THE DETERMINATION OF THE AMOUNT OF THE CREDIT, WITHIN THE PERMISSIBLE RANGE, SHALL BE MADE AND PERIODICALLY REVISED BY THE COMMISSIONER BASED ON THE COMMISSIONER'S EVALUATION OF CONDITIONS IN THE NEW YORK LABOR MARKET, THE STATE OF THE ECONOMY, AND THE STATE-WIDE RESERVE RATIO. THE CREDIT MAY BE CLAIMED BY AN EMPLOYER FOR UP TO FOUR CALENDAR QUARTERS WITH RESPECT TO AN INDIVIDUAL HIRED BY THAT EMPLOYER FOR SERVICES TO BE PERFORMED IN THIS STATE UNDER THE FOLLOWING CONDITIONS:

1. SUCH INDIVIDUAL:

(A) HAS FILED A CLAIM FOR UNEMPLOYMENT COMPENSATION IN THIS STATE AND IS CURRENTLY RECEIVING WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS ON THAT CLAIM UNDER THE PROVISIONS OF TITLE SEVEN OF ARTICLE EIGHTEEN OF THIS

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

LBD11574-01-9

CHAPTER AND SUCH BENEFITS ARE CHARGEABLE TO THE EXPERIENCE RATING ACCOUNT OF AN EMPLOYER UNDER THIS TITLE;

(B) HAS BEEN PROFILED BY THE DEPARTMENT AS LIKELY TO EXHAUST BENEFITS;

(C) HAS NO RETURN TO WORK DATE OR PROMISE OF FUTURE EMPLOYMENT; AND

(D) HAS AT LEAST EIGHT WEEKS OF BENEFIT ELIGIBILITY REMAINING ON HIS OR HER CURRENT CLAIM AT THE TIME THE EMPLOYER HIRES THE INDIVIDUAL;

2. THE CREDIT FOR EACH HIRED INDIVIDUAL PER CALENDAR QUARTER MAY BE CLAIMED ON THE REPORTS REQUIRED TO BE FILED UNDER SECTION SIX HUNDRED SEVENTY-FOUR OF THE TAX LAW AS A REDUCTION FROM AMOUNTS OTHERWISE DUE WITH RESPECT TO EACH OF THE FOUR CALENDAR QUARTERS IMMEDIATELY FOLLOWING THE HIRE DATE OF THE INDIVIDUAL; PROVIDED, HOWEVER, THAT THE CREDIT MAY NOT BE CLAIMED FOR ANY HIRED INDIVIDUAL WITH RESPECT TO MORE THAN ONE HIRING BY THE EMPLOYER CLAIMING THE CREDIT OR FOR MORE THAN FOUR CALENDAR QUARTERS WITH RESPECT TO THAT ONE HIRING;

3. FOR EACH CALENDAR QUARTER FOR WHICH THE CREDIT IS CLAIMED, SUCH INDIVIDUAL SHALL BE CONTINUOUSLY EMPLOYED BY THE EMPLOYER CLAIMING THE CREDIT, AND SUCH INDIVIDUAL'S EMPLOYMENT WITH THAT EMPLOYER SHALL CONSIST OF AT LEAST THIRTY HOURS PER WEEK DURING EACH WEEK OF THAT CALENDAR QUARTER;

4. THE CREDIT SHALL BE TIMELY CLAIMED FOR THE CALENDAR QUARTER TO WHICH THE CREDIT IS APPLICABLE, AND IN NO EVENT LATER THAN THE LAST DAY OF THE REPORTING MONTH FOLLOWING THE END OF THE CALENDAR QUARTER TO WHICH THE CREDIT IS APPLICABLE. THE CREDIT SHALL NOT BE REFUNDABLE. THE CREDIT SHALL NOT REDUCE TAX LIABILITY BELOW ZERO; PROVIDED, HOWEVER, THAT THE CREDIT, IF PROPERLY AND TIMELY CLAIMED, MAY BE CARRIED FORWARD AND APPLIED AGAINST CONTRIBUTIONS DUE IN ANY SUBSEQUENT CALENDAR QUARTER IN THE SAME CALENDAR YEAR AS CLAIMED. ANY UNUSED CREDIT REMAINING AT THE END OF A CALENDAR YEAR MAY NOT BE CARRIED FORWARD TO ANOTHER CALENDAR YEAR AND SHALL BE DEEMED TO HAVE EXPIRED; AND

5. NO CREDIT SHALL BE CLAIMED OR TAKEN BY ANY EMPLOYER WHO FAILS TO TIMELY FILE ANY REPORT OR TO TIMELY PAY ALL AMOUNTS OTHERWISE DUE FOR ALL CALENDAR QUARTERS DURING THE CALENDAR YEAR FOR WHICH THE CREDIT IS CLAIMED. IN THE EVENT AN EMPLOYER HAS CLAIMED A CREDIT UNDER THIS SECTION AND FAILS TO TIMELY FILE ANY REPORT OR TO TIMELY PAY ALL AMOUNTS OTHERWISE DUE DURING THE YEAR THE CREDIT IS CLAIMED, THE AMOUNT OF ANY CREDITS CLAIMED WITH RESPECT TO THE CALENDAR YEAR SHALL BE CANCELED AND BECOME DELINQUENT AS OF THE DATE ORIGINALLY DUE UNDER SECTION SIX HUNDRED SEVENTY-FOUR OF THE TAX LAW AND SUBJECT TO ALL THE PROVISIONS OF THIS ARTICLE AS IF NO CREDIT HAD EVER BEEN AVAILABLE OR CLAIMED.

S 3. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. EMPLOYMENT INCENTIVE TAX CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE IN THE AMOUNT PRESCRIBED BY THIS SUBDIVISION WHERE SUCH TAXPAYER EMPLOYS ONE OR MORE CREDITABLE EMPLOYEE.

(B) THE AMOUNT OF THE CREDIT SHALL BE TWO THOUSAND FOUR HUNDRED DOLLARS FOR EACH CREDITABLE EMPLOYEE.

(C) FOR THE PURPOSES OF THIS SUBDIVISION, "CREDITABLE EMPLOYEE" SHALL MEAN AN EMPLOYEE OF AN EMPLOYER WHO:

(I) RESIDES IN THE STATE;

(II) IS EMPLOYED BY THE EMPLOYER FOR THE FIRST TIME ON OR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION AND PRIOR TO JULY FIRST, TWO THOUSAND TEN;

(III) WAS UNEMPLOYED AT LEAST FOUR WEEKS IMMEDIATELY PRIOR TO BECOMING SO EMPLOYED;

(IV) REMAINS EMPLOYED BY THE EMPLOYER FOR AT LEAST TWENTY-FOUR CONSECUTIVE MONTHS; AND

(V) DURING THE ENTIRE PERIOD OF SUCH EMPLOYMENT RECEIVES MONTHLY COMPENSATION IN AN AMOUNT AT LEAST EQUAL TO THE AVERAGE MONTHLY EMPLOYMENT COMPENSATION BENEFIT PAID TO PERSONS RECEIVING EMPLOYMENT COMPENSATION BENEFITS IN THIS STATE.

(D) FOR THE PURPOSES OF THIS SUBDIVISION, "STAFFING FIRM" MEANS AN ORGANIZATION THAT HIRES ITS OWN EMPLOYEES AND ASSIGNS THEM TO A CLIENT TO SUPPORT OR SUPPLEMENT THE CLIENT'S WORK FORCE IN SPECIAL WORK SITUATIONS SUCH AS EMPLOYEE ABSENCES, TEMPORARY SKILL SHORTAGES, SEASONAL WORKLOADS, AND SPECIAL ASSIGNMENTS AND PROJECTS.

(E) AN EMPLOYER WHO HAS ONE OR MORE CREDITABLE EMPLOYEES AND WHO PROVIDES A NOTARIZED AFFIDAVIT ATTESTING TO USE OF THE FEDERAL EMPLOYMENT VERIFICATION SYSTEM NOW KNOWN AS 'E-VERIFY' OR ANY FUTURE FEDERAL EMPLOYMENT VERIFICATION SYSTEM SHALL BE ELIGIBLE TO APPLY FOR AND RECEIVE THE CREDIT ESTABLISHED IN THIS SUBDIVISION. ELIGIBILITY FOR THE CREDIT SHALL BE ESTABLISHED AS OF THE TIME THE CREDITABLE EMPLOYEE COMPLETES TWENTY-FOUR CONSECUTIVE MONTHS OF EMPLOYMENT; AND THE CREDIT SHALL BE CLAIMED FOR THE TAXABLE YEAR IN WHICH THE TWENTY-FOURTH MONTH OF SUCH EMPLOYMENT IS COMPLETED.

(F) IN NO EVENT SHALL THE TOTAL AMOUNT OF ANY TAX CREDIT UNDER THIS SUBDIVISION FOR A TAXABLE YEAR EXCEED THE TAXPAYER'S INCOME TAX LIABILITY. ANY UNUSED TAX CREDIT SHALL BE ALLOWED TO BE CARRIED FORWARD TO APPLY TO THE TAXPAYER'S SUCCEEDING TWO YEARS' TAX LIABILITY. NO SUCH TAX CREDIT SHALL BE ALLOWED THE TAXPAYER AGAINST PRIOR YEARS' TAX LIABILITY.

(G) THE CREDIT SHALL BE CLAIMED AND GRANTED IN SUCH MANNER AS SHALL BE SPECIFIED BY RULES ADOPTED BY THE COMMISSIONER; AND SUCH RULES SHALL SPECIFICALLY PROVIDE FOR THE MANNER OF ESTABLISHING THE QUALIFYING STATUS OF UNEMPLOYMENT OF THE EMPLOYEE PRIOR TO EMPLOYMENT. THE AVERAGE MONTHLY EMPLOYMENT SECURITY BENEFIT SHALL BE COMPUTED ON A MONTHLY BASIS BY THE UNITED STATES COMMISSIONER OF LABOR.

(H) FOR THE PURPOSE OF DETERMINING WHETHER AN EMPLOYEE IS EMPLOYED BY THE EMPLOYER UNDER PARAGRAPH (C) OF THIS SUBDIVISION, EMPLOYMENT MAY INCLUDE UP TO THIRTEEN WEEKS CONTINUOUS PRIOR SERVICE FOR THE EMPLOYER AS A TEMPORARY EMPLOYEE OF A STAFFING FIRM.

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

(QQ) EMPLOYMENT INCENTIVE TAX CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE IN THE AMOUNT PRESCRIBED BY THIS SUBSECTION WHERE SUCH TAXPAYER EMPLOYS ONE OR MORE CREDITABLE EMPLOYEE.

(B) THE AMOUNT OF THE CREDIT SHALL BE TWO THOUSAND FOUR HUNDRED DOLLARS FOR EACH CREDITABLE EMPLOYEE.

(C) FOR THE PURPOSES OF THIS SUBSECTION, "CREDITABLE EMPLOYEE" SHALL MEAN AN EMPLOYEE OF AN EMPLOYER WHO:

(I) RESIDES IN THE STATE;

(II) IS EMPLOYED BY THE EMPLOYER FOR THE FIRST TIME ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION AND PRIOR TO JULY FIRST, TWO THOUSAND TEN;

(III) WAS UNEMPLOYED AT LEAST FOUR WEEKS IMMEDIATELY PRIOR TO BECOMING SO EMPLOYED;

(IV) REMAINS EMPLOYED BY THE EMPLOYER FOR AT LEAST TWENTY-FOUR CONSECUTIVE MONTHS; AND

(V) DURING THE ENTIRE PERIOD OF SUCH EMPLOYMENT RECEIVES MONTHLY COMPENSATION IN AN AMOUNT AT LEAST EQUAL TO THE AVERAGE MONTHLY EMPLOY-

MENT COMPENSATION BENEFIT PAID TO PERSONS RECEIVING EMPLOYMENT COMPENSATION BENEFITS IN THIS STATE.

(D) FOR THE PURPOSES OF THIS SUBSECTION, "STAFFING FIRM" MEANS AN ORGANIZATION THAT HIRES ITS OWN EMPLOYEES AND ASSIGNS THEM TO A CLIENT TO SUPPORT OR SUPPLEMENT THE CLIENT'S WORK FORCE IN SPECIAL WORK SITUATIONS SUCH AS EMPLOYEE ABSENCES, TEMPORARY SKILL SHORTAGES, SEASONAL WORKLOADS, AND SPECIAL ASSIGNMENTS AND PROJECTS.

(E) AN EMPLOYER WHO HAS ONE OR MORE CREDITABLE EMPLOYEES AND WHO PROVIDES A NOTARIZED AFFIDAVIT ATTESTING TO USE OF THE FEDERAL EMPLOYMENT VERIFICATION SYSTEM NOW KNOWN AS 'E-VERIFY' OR ANY FUTURE FEDERAL EMPLOYMENT VERIFICATION SYSTEM SHALL BE ELIGIBLE TO APPLY FOR AND RECEIVE THE CREDIT ESTABLISHED IN THIS SUBSECTION. ELIGIBILITY FOR THE CREDIT SHALL BE ESTABLISHED AS OF THE TIME THE CREDITABLE EMPLOYEE COMPLETES TWENTY-FOUR CONSECUTIVE MONTHS OF EMPLOYMENT; AND THE CREDIT SHALL BE CLAIMED FOR THE TAXABLE YEAR IN WHICH THE TWENTY-FOURTH MONTH OF SUCH EMPLOYMENT IS COMPLETED.

(F) IN NO EVENT SHALL THE TOTAL AMOUNT OF ANY TAX CREDIT UNDER THIS SUBSECTION FOR A TAXABLE YEAR EXCEED THE TAXPAYER'S INCOME TAX LIABILITY. ANY UNUSED TAX CREDIT SHALL BE ALLOWED TO BE CARRIED FORWARD TO APPLY TO THE TAXPAYER'S SUCCEEDING TWO YEARS' TAX LIABILITY. NO SUCH TAX CREDIT SHALL BE ALLOWED THE TAXPAYER AGAINST PRIOR YEARS' TAX LIABILITY.

(G) THE CREDIT SHALL BE CLAIMED AND GRANTED IN SUCH MANNER AS SHALL BE SPECIFIED BY RULES ADOPTED BY THE COMMISSIONER; AND SUCH RULES SHALL SPECIFICALLY PROVIDE FOR THE MANNER OF ESTABLISHING THE QUALIFYING STATUS OF UNEMPLOYMENT OF THE EMPLOYEE PRIOR TO EMPLOYMENT. THE AVERAGE MONTHLY EMPLOYMENT SECURITY BENEFIT SHALL BE COMPUTED ON A MONTHLY BASIS BY THE UNITED STATES COMMISSIONER OF LABOR.

(H) FOR THE PURPOSE OF DETERMINING WHETHER AN EMPLOYEE IS EMPLOYED BY THE EMPLOYER UNDER PARAGRAPH (C) OF THIS SUBSECTION, EMPLOYMENT MAY INCLUDE UP TO THIRTEEN WEEKS CONTINUOUS PRIOR SERVICE FOR THE EMPLOYER AS A TEMPORARY EMPLOYEE OF A STAFFING FIRM.

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

(XXXI) EMPLOYMENT INCENTIVE TAX CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

S 6. This act shall take effect immediately; provided, however that sections two, three, four and five of this act shall take effect upon written notification by the United States secretary of labor that the provisions of this act are in conformity with federal law, pursuant to section one of this act. The commissioner of labor of the state of New York shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.