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

5264--A

2009-2010 Regular Sessions

I N  S E N A T E

April 27, 2009

Introduced by Sens. RANZENHOFER, O. JOHNSON, LITTLE, MORAHAN, PADAVAN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to the creation of a New York jobs development 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 shall make an expedited 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 and three of this act is in conformity with federal law. If the United States secretary of labor determines that any provision in section two or three of this act is not in conformity with federal law, then sections two and three shall not become effective. Upon such determination the commissioner shall take all necessary steps to obtain a waiver of conformity with federal law from the United States secretary of labor. If such waiver is granted, sections two and three shall become effective immediately. If the United States secretary of labor determines that sections two and three of this act are in conformity with federal law, sections two and three of this act shall become effective immediately.

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

S 582. NEW YORK JOBS DEVELOPMENT CREDIT. THERE SHALL BE A CREDIT AGAINST CONTRIBUTION TO BE KNOWN AS THE "NEW YORK JOBS DEVELOPMENT CREDIT". THE AMOUNT OF THE CREDIT SHALL BE SEVENTY-FIVE DOLLARS PER INDIVID-

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

LBD11574-04-0

UAL EMPLOYEE PER CALENDAR QUARTER. THE CREDIT MAY BE CLAIMED BY AN EMPLOYER FOR UP TO FOUR CALENDAR QUARTERS WITH RESPECT TO A NEW EMPLOYEE HIRED BY THAT EMPLOYER FOR SERVICES IN ACCORDANCE WITH SUBDIVISIONS ONE, TWO OR FOUR OF SECTION FIVE HUNDRED ELEVEN OF THIS ARTICLE UNDER THE FOLLOWING CONDITIONS:

1. SUCH NEW EMPLOYEE:

(A) HAS FILED A CLAIM FOR UNEMPLOYMENT COMPENSATION IN THIS STATE, HAS RECEIVED UNEMPLOYMENT BENEFITS IN THIS STATE FOR AT LEAST TWO MONTHS AND IS AT THE TIME OF HIRE RECEIVING WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS ON THAT CLAIM UNDER THE PROVISIONS OF TITLE SEVEN OF THIS ARTICLE AND SUCH BENEFITS ARE CHARGEABLE TO THE EXPERIENCE RATING ACCOUNT OF AN EMPLOYER UNDER THIS TITLE; OR

(B) HAS SUCCESSFULLY COMPLETED A TRAINING PROGRAM PURSUANT TO SECTION FIVE HUNDRED NINETY-NINE OF THIS ARTICLE; AND

(C) IS A NEW EMPLOYEE.

2. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "NEW EMPLOYEE" SHALL MEAN ANY FULL TIME EMPLOYEE, EMPLOYED AT LEAST THIRTY HOURS PER WEEK, THAT CAUSES THE TOTAL NUMBER OF EMPLOYEES TO INCREASE ABOVE BASE EMPLOYMENT OR CREDIT EMPLOYMENT, WHICHEVER IS HIGHER.

(B) "BASE YEAR" SHALL MEAN CALENDAR YEAR TWO THOUSAND NINE.

(C) "BASE EMPLOYMENT" SHALL MEAN THE AVERAGE NUMBER OF FULL TIME EMPLOYEES OR FULL TIME EQUIVALENT EMPLOYEES DURING THE BASE YEAR. FOR A NEW BUSINESS, BASE EMPLOYMENT SHALL BEGIN AT ZERO.

(D) "CREDIT EMPLOYMENT" SHALL MEAN BASE EMPLOYMENT PLUS THE NUMBER OF NEW EMPLOYEES FOR WHICH A CREDIT IS EARNED.

S 3. Section 570 of the labor law is amended by adding a new subdivision 8 to read as follows:

8. THE CREDIT FOR EACH HIRED INDIVIDUAL PER CALENDAR QUARTER AS PROVIDED IN SECTION FIVE HUNDRED EIGHTY-TWO OF THIS TITLE:

(A) MAY BE CLAIMED ON THE REPORTS REQUIRED TO BE FILED PURSUANT TO THIS TITLE 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;

(B) 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;

(C) THE CREDIT SHALL BE TIMELY CLAIMED FOR THE CALENDAR QUARTER TO WHICH THE CREDIT IS APPLICABLE. THE CREDIT SHALL NOT REDUCE LIABILITY BELOW ZERO; PROVIDED, HOWEVER, THAT ANY CREDIT REMAINING MAY BE CARRIED FORWARD AND APPLIED AGAINST CONTRIBUTIONS DUE IN ANY SUBSEQUENT CALENDAR QUARTER; AND

(D) 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 CANCELLED 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 4. 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 A NEW EMPLOYEE OF AN EMPLOYER WHO:

(I) IS EMPLOYED BY THE EMPLOYER FOR THE FIRST TIME ON OR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION;

(II) HAS FILED A CLAIM FOR UNEMPLOYMENT COMPENSATION IN THIS STATE;

(III) HAS RECEIVED UNEMPLOYMENT BENEFITS IN THIS STATE FOR AT LEAST TWO MONTHS;

(IV) IS CURRENTLY RECEIVING WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS ON THAT CLAIM UNDER THE PROVISIONS OF TITLE SEVEN OF ARTICLE EIGHTEEN OF THE LABOR LAW; AND

(V) SUCH BENEFITS ARE CHARGEABLE TO THE EXPERIENCE RATING ACCOUNT OF AN EMPLOYER UNDER THIS ARTICLE; OR

(VI) HAS SUCCESSFULLY COMPLETED A TRAINING PROGRAM PURSUANT TO SECTION FIVE HUNDRED NINETY-NINE OF THE LABOR LAW; AND

(VII) PERFORMS SERVICES IN ACCORDANCE WITH SUBDIVISION ONE, TWO OR FOUR OF SECTION FIVE HUNDRED ELEVEN OF THE LABOR LAW;

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

(IX) DURING THE ENTIRE PERIOD SUCH EMPLOYMENT SHALL CONSIST OF AT LEAST THIRTY HOURS PER WEEK.

(D) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(I) "NEW EMPLOYEE" SHALL MEAN ANY FULL TIME EMPLOYEE THAT CAUSES THE TOTAL NUMBER OF EMPLOYEES TO INCREASE ABOVE BASE EMPLOYMENT OR CREDIT EMPLOYMENT, WHICHEVER IS HIGHER.

(II) "BASE YEAR" SHALL MEAN CALENDAR YEAR TWO THOUSAND NINE.

(III) "BASE EMPLOYMENT" SHALL MEAN THE AVERAGE NUMBER OF FULL-TIME EMPLOYEES OR FULL-TIME EQUIVALENT EMPLOYEES DURING THE BASE YEAR. FOR A NEW BUSINESS, BASE EMPLOYMENT SHALL BEGIN AT ZERO.

(IV) "CREDIT EMPLOYMENT" SHALL MEAN BASE EMPLOYMENT PLUS THE NUMBER OF NEW EMPLOYEES FOR WHICH A CREDIT IS EARNED.

(E) AN EMPLOYER WHO HAS ONE OR MORE CREDITABLE EMPLOYEES 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 FIVE 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.

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

(QQ) EMPLOYMENT INCENTIVE TAX CREDIT. (1) 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.

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

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

(A) IS EMPLOYED BY THE EMPLOYER FOR THE FIRST TIME ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION;

(B) HAS FILED A CLAIM FOR UNEMPLOYMENT COMPENSATION IN THIS STATE;

(C) HAS RECEIVED UNEMPLOYMENT BENEFITS IN THIS STATE FOR AT LEAST TWO MONTHS;

(D) IS CURRENTLY RECEIVING WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS ON THAT CLAIM UNDER THE PROVISIONS OF TITLE SEVEN OF ARTICLE EIGHTEEN OF THE LABOR LAW; AND

(E) SUCH BENEFITS ARE CHARGEABLE TO THE EXPERIENCE RATING ACCOUNT OF AN EMPLOYER UNDER THIS ARTICLE; OR

(F) HAS SUCCESSFULLY COMPLETED A TRAINING PROGRAM PURSUANT TO SECTION FIVE HUNDRED NINETY-NINE OF THE LABOR LAW; AND

(G) PERFORMS SERVICES IN ACCORDANCE WITH SUBDIVISION ONE, TWO OR FOUR OF SECTION FIVE HUNDRED ELEVEN OF THE LABOR LAW;

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

(I) DURING THE ENTIRE PERIOD SUCH EMPLOYMENT SHALL CONSIST OF AT LEAST THIRTY HOURS PER WEEK.

(4) FOR THE PURPOSES OF THIS SUBSECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "NEW EMPLOYEE" SHALL MEAN ANY FULL TIME EMPLOYEE THAT CAUSES THE TOTAL NUMBER OF EMPLOYEES TO INCREASE ABOVE BASE EMPLOYMENT OR CREDIT EMPLOYMENT, WHICHEVER IS HIGHER.

(B) "BASE YEAR" SHALL MEAN CALENDAR YEAR TWO THOUSAND NINE.

(C) "BASE EMPLOYMENT" SHALL MEAN THE AVERAGE NUMBER OF FULL TIME EMPLOYEES OR FULL TIME EQUIVALENT EMPLOYEES DURING THE BASE YEAR. FOR A NEW BUSINESS, BASE EMPLOYMENT SHALL BEGIN AT ZERO.

(D) "CREDIT EMPLOYMENT" SHALL MEAN BASE EMPLOYMENT PLUS THE NUMBER OF NEW EMPLOYEES FOR WHICH A CREDIT IS EARNED.

(5) AN EMPLOYER WHO HAS ONE OR MORE CREDITABLE EMPLOYEES 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.

(6) 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 FIVE YEARS' TAX LIABILITY. NO SUCH TAX CREDIT SHALL BE ALLOWED THE TAXPAYER AGAINST PRIOR YEARS' TAX LIABILITY.

(7) THE CREDIT SHALL BE CLAIMED AND GRANTED IN SUCH MANNER AS SHALL BE SPECIFIED BY RULES ADOPTED BY THE COMMISSIONER.

S 6. 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 OF THIS CHAPTER |

S 7. This act shall take effect immediately; provided, however, that sections two and three 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.