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

1502

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, CAMARA -- read once and referred to the Committee on Cities

AN ACT to amend the administrative code of the city of New York, in relation to tax credits for New York city businesses that hire new employees

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

Section 1. Legislative intent. The legislature finds that the current method of awarding property tax exemptions in New York city to promote development achieves inconsistent and unreliable results. The legislature further finds that different commercial or industrial projects are likely to have different employment and income impacts under different market conditions. Consequently, in awarding subsidies based on property investment, there is no guarantee that local job or income creation will result, especially during current exemption periods as long as twenty-two years. Therefore, the legislature finds that the current method of awarding property tax exemptions constitutes an excessively costly, risky, and speculative approach to promoting job and income growth in the city.

To address this problem, the legislature finds it appropriate to enact reforms that would directly link and continually adjust the amount of incentives provided by the city to the number of new jobs a firm generates. Therefore, the legislature finds it appropriate to enact legislation to change the basis of incentive awards from property investment to new job creation in the city.

S 2. Subchapter 2 of chapter 2 of title 11 of the administrative code of the city of New York is amended by adding a new part 6 to read as follows:

PART 6

TAX CREDIT FOR PRIVATE SECTOR JOB CREATION

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

S 11-280 DEFINITIONS. WHEN USED IN THIS PART:

A. "CREDIT AMOUNT" MEANS THE TAX CREDIT AMOUNT DETERMINED UNDER THIS PART, BUT NOT TO EXCEED THE INCREMENTAL INCOME TAX WITHHOLDING ATTRIBUTABLE TO THE APPLICANT'S PROJECT.

B. "COMMISSIONER" MEANS THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK.

C. "DEPARTMENT" MEANS THE NEW YORK CITY DEPARTMENT OF FINANCE.

D. "ENHANCED CREDIT AREA" MEANS ANY AREA IN THE CITY NOT DESIGNATED AS A REGULAR CREDIT AREA.

E. "FULL-TIME EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED FOR CONSIDERATION FOR AT LEAST THIRTY-FIVE HOURS EACH WEEK OR WHO RENDERS ANY OTHER STANDARD OF SERVICE GENERALLY ACCEPTED BY CUSTOM OR SPECIFIED BY CONTRACT AS FULL-TIME EMPLOYMENT.

F. "INCREMENTAL INCOME TAX WITHHOLDINGS" MEANS THE TOTAL AMOUNT OF NEW YORK CITY PERSONAL INCOME TAX WITHHELD BY THE TAXPAYER DURING THE TAXABLE YEAR FROM THE COMPENSATION OF NEW EMPLOYEES.

G. "LOCAL TAX LIABILITY" MEANS A TAXPAYER'S TOTAL TAX LIABILITY THAT IS INCURRED UNDER ADMINISTRATIVE CODE SECTIONS 11-638 THROUGH 11-647, THE BANKING CORPORATION TAX, 11-701 THROUGH 11-718, THE COMMERCIAL RENT TAX, 11-602 THROUGH 11-610, THE GENERAL CORPORATION TAX, 11-501 THROUGH 11-538, THE UNINCORPORATED BUSINESS TAX AS COMPUTED AFTER THE APPLICATION OF OTHER CREDITS THAT MAY BE AVAILABLE TO THE TAXPAYER.

H. "NEW EMPLOYEE" MEANS A FULL-TIME EMPLOYEE FIRST EMPLOYED BY A TAXPAYER IN THE PROJECT THAT IS THE SUBJECT OF A TAX CREDIT AGREEMENT AND WHO IS EMPLOYED AFTER THE TAXPAYER ENTERS INTO THE TAX CREDIT AGREEMENT. THE TERM "NEW EMPLOYEE" DOES NOT INCLUDE:

(1) AN EMPLOYEE OF THE TAXPAYER WHO PERFORMS A JOB THAT WAS PREVIOUSLY PERFORMED BY ANOTHER EMPLOYEE, IF THAT JOB EXISTED FOR AT LEAST SIX MONTHS BEFORE HIRING THE NEW EMPLOYEE;

(2) AN EMPLOYEE OF THE TAXPAYER WHO WAS PREVIOUSLY EMPLOYED IN NEW YORK CITY BY A RELATED MEMBER OF THE TAXPAYER AND WHOSE EMPLOYMENT WAS SHIFTED TO THE TAXPAYER AFTER THE TAXPAYER ENTERED INTO THE TAX CREDIT AGREEMENT;

(3) A CHILD, GRANDCHILD, PARENT, OR SPOUSE, OTHER THAN A SPOUSE WHO IS LEGALLY SEPARATED FROM THE INDIVIDUAL, OF ANY INDIVIDUAL WHO IS AN EMPLOYEE OF THE TAXPAYER AND WHO HAS A DIRECT OR INDIRECT OWNERSHIP INTEREST OF AT LEAST FIVE PERCENT IN THE PROFITS, CAPITAL, OR VALUE OF THE TAXPAYER; SUCH OWNERSHIP INTEREST SHALL BE DETERMINED IN ACCORDANCE WITH SECTION 1563 OF THE INTERNAL REVENUE CODE AND REGULATIONS PRESCRIBED UNDER THAT SECTION.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, IF A NEW EMPLOYEE PERFORMS A JOB THAT WAS PREVIOUSLY PERFORMED BY AN EMPLOYEE WHO WAS TREATED UNDER THE AGREEMENT AS A NEW EMPLOYEE AND PROMOTED BY THE TAXPAYER TO ANOTHER JOB, THE EMPLOYEE MAY BE CONSIDERED A NEW EMPLOYEE UNDER THE AGREEMENT.

I. "PASS THROUGH ENTITY" MEANS A CORPORATION THAT IS EXEMPT FROM NEW YORK STATE ADJUSTED GROSS INCOME TAX OR A PARTNERSHIP.

J. "REGULAR CREDIT AREA" MEANS THE AREA OF NEW YORK CITY LYING SOUTH OF THE NINETY-SIXTH STREET CENTERLINE IN THE BOROUGH OF MANHATTAN.

K. "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT TO A TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS ANY ONE OF THE FOLLOWING:

(1) AN INDIVIDUAL STOCKHOLDER, OR A MEMBER OF THE STOCKHOLDER'S FAMILY ENUMERATED IN SECTION 318 OF THE INTERNAL REVENUE CODE, IF THE STOCKHOLDER AND THE MEMBER OF THE STOCKHOLDER'S FAMILY OWN DIRECTLY, INDI-

RECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST FIFTY PERCENT OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;

(2) A STOCKHOLDER, OR A STOCKHOLDER'S PARTNERSHIP, ESTATE, TRUST, OR CORPORATION, IF THE STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIP, ESTATE, TRUST, OR CORPORATION OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST FIFTY PERCENT OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;

(3) A CORPORATION, OR A PARTY RELATED TO THE CORPORATION IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER THE ATTRIBUTION RULES OF SECTION 318 OF THE INTERNAL REVENUE CODE, IF THE TAXPAYER OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY AT LEAST FIFTY PERCENT OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK;

(4) A COMPONENT MEMBER, AS DEFINED IN SECTION 1563(B) OF THE INTERNAL REVENUE CODE; OR

(5) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF STOCK OWNERSHIP IN ACCORDANCE WITH SECTION 1563(E) OF THE INTERNAL REVENUE CODE EXCEPT, FOR PURPOSES OF DETERMINING WHETHER A PERSON IS A RELATED MEMBER UNDER THIS SUBDIVISION, TWENTY PERCENT SHALL BE SUBSTITUTED FOR FIVE PERCENT WHEREVER FIVE PERCENT APPEARS IN SECTION 1563(E) OF THE INTERNAL REVENUE CODE.

1. "TAXPAYER" MEANS ANY PERSON, CORPORATION, PARTNERSHIP, OR OTHER ENTITY THAT HAS ANY LOCAL TAX LIABILITY.

S 11-281 CREDIT AGAINST LOCAL TAX LIABILITY. SUBJECT TO THE CONDITIONS SET FORTH IN THIS PART, A TAXPAYER IS ENTITLED TO A CREDIT AGAINST ANY LOCAL TAX LIABILITY THAT MAY BE IMPOSED ON THE TAXPAYER FOR A TAXABLE YEAR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND, IF THE TAXPAYER IS AWARDED A CREDIT BY THE COMMISSIONER FOR THE TAXABLE YEAR.

S 11-282 AGREEMENT FOR TAX CREDIT; JOB CREATION; APPLICATION FORM. A TAXPAYER THAT PROPOSES A PROJECT TO CREATE NEW JOBS IN THE CITY OF NEW YORK MAY APPLY TO THE COMMISSIONER TO ENTER INTO AN AGREEMENT FOR A TAX CREDIT. THE COMMISSIONER SHALL PRESCRIBE THE FORM OF THE APPLICATION.

S 11-283 FOSTER JOB CREATION; CREDIT AWARDS; CLAIM OF CREDIT. A. THE COMMISSIONER SHALL MAKE CREDIT AWARDS UNDER THIS PART SOLELY TO FOSTER JOB CREATION IN THE CITY OF NEW YORK.

B. THE CREDIT SHALL BE CLAIMED FOR THE TAXABLE YEAR SPECIFIED IN THE TAXPAYER'S TAX CREDIT AGREEMENT.

S 11-284 AMOUNT OF CREDIT AWARDED. A. THE CREDIT SHALL BE STATED AS A PERCENTAGE OF THE INCREMENTAL INCOME TAX WITHHOLDINGS ATTRIBUTABLE TO THE APPLICANT'S PROJECT.

B. IF THE CREDIT IS AWARDED TO A PROJECT LOCATED IN A REGULAR CREDIT AREA, THE CREDIT AMOUNT SHALL BE SEVENTY-FIVE PERCENT OF THE INCREMENTAL INCOME TAX WITHHOLDINGS ATTRIBUTABLE TO THE APPLICANT'S PROJECT.

C. IF THE CREDIT IS AWARDED TO A PROJECT LOCATED IN AN ENHANCED CREDIT AREA, THE CREDIT AMOUNT SHALL BE ONE HUNDRED PERCENT OF THE INCREMENTAL INCOME TAX WITHHOLDINGS ATTRIBUTABLE TO THE APPLICANT'S PROJECT.

D. IF THE AMOUNT OF THE CREDIT FOR A TAXPAYER IN A TAXABLE YEAR EXCEEDS THE TAXPAYER'S LOCAL TAX LIABILITY FOR THAT TAXABLE YEAR, THE TAXPAYER MAY CARRY THE EXCESS OVER TO NOT MORE THAN TWO TAXABLE YEARS.

S 11-285 AGREEMENT FOR TAX CREDIT; REQUIREMENTS. AFTER RECEIPT OF AN APPLICATION, THE COMMISSIONER SHALL ENTER INTO AN AGREEMENT WITH AN APPLICANT FOR A CREDIT. THE AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO:

A. A DETAILED DESCRIPTION OF THE PROJECT THAT IS THE SUBJECT OF THE AGREEMENT.

B. THE DURATION OF THE TAX CREDIT AND THE FIRST TAXABLE YEAR FOR WHICH THE CREDIT MAY BE CLAIMED.

C. A REQUIREMENT THAT THE TAXPAYER MAINTAIN OPERATIONS AT THE PROJECT LOCATION FOR THE TERM OF THE TAX CREDIT.

D. A SPECIFIC METHOD FOR DETERMINING THE NUMBER OF NEW EMPLOYEES EMPLOYED DURING THE TAXABLE YEAR WHO ARE PERFORMING JOBS NOT PREVIOUSLY PERFORMED BY EXISTING EMPLOYEES.

E. A REQUIREMENT THAT THE TAXPAYER SHALL ANNUALLY REPORT TO THE COMMISSIONER THE NUMBER OF NEW EMPLOYEES WHO ARE PERFORMING JOBS NOT PREVIOUSLY PERFORMED BY AN EMPLOYEE, THE NEW INCOME TAX REVENUE WITHHELD IN CONNECTION WITH THE NEW EMPLOYEES, AND ANY OTHER INFORMATION THE COMMISSIONER DEEMS NECESSARY TO CARRY OUT THE PURPOSES OF THIS PART.

F. A REQUIREMENT THAT THE COMMISSIONER IS AUTHORIZED TO VERIFY WITH THE APPROPRIATE STATE AND CITY AGENCIES THE AMOUNTS REPORTED UNDER SUBDIVISION E OF THIS SECTION, AND AFTER DOING SO SHALL ISSUE A CERTIFICATE TO THE TAXPAYER STATING THAT THE AMOUNTS HAVE BEEN SO VERIFIED.

G. A REQUIREMENT THAT THE TAXPAYER PROVIDE WRITTEN NOTIFICATION TO THE COMMISSIONER NOT MORE THAN THIRTY DAYS AFTER THE TAXPAYER MAKES OR RECEIVES A PROPOSAL THAT WOULD TRANSFER THE TAXPAYER'S LOCAL TAX LIABILITY OBLIGATIONS TO A SUCCESSOR TAXPAYER.

H. ANY OTHER CONDITIONS THAT THE COMMISSIONER DETERMINES ARE APPROPRIATE.

S 11-286 DURATION OF TAX CREDITS; MAXIMUM CREDIT. THE DURATION OF THE CREDIT SHALL BE TWELVE TAXABLE YEARS.

S 11-287 RELOCATION OF JOBS FROM ONE SITE TO ANOTHER WITHIN CITY; CREDIT PROHIBITED. A TAXPAYER IS NOT ENTITLED TO CLAIM A CREDIT FOR ANY JOB RELOCATED FROM ONE SITE IN NEW YORK CITY TO ANOTHER SITE IN NEW YORK CITY. DETERMINATIONS UNDER THIS SECTION SHALL BE MADE BY THE COMMISSIONER.

S 11-288 PERIODS OF RAPID EMPLOYMENT GROWTH IN THE CITY; CREDIT PROHIBITED. THE COMMISSIONER SHALL NOT AWARD ANY NEW CREDITS IF THE UNEMPLOYMENT RATE IN THE CITY FALLS BELOW SIX PERCENT AS REPORTED BY THE NEW YORK STATE DEPARTMENT OF LABOR.

S 11-289 CERTIFICATE OF VERIFICATION; SUBMISSION TO DEPARTMENT; FAILURE TO SUBMIT COPY. A TAXPAYER CLAIMING A CREDIT SHALL SUBMIT TO THE DEPARTMENT A COPY OF THE COMMISSIONER'S CERTIFICATE OF VERIFICATION FOR THE TAXABLE YEAR. HOWEVER, FAILURE TO SUBMIT A COPY OF THE CERTIFICATE SHALL NOT INVALIDATE A CLAIM FOR A CREDIT.

S 11-290 PASS THROUGH ENTITY; CALCULATION OF TAX CREDIT; SHAREHOLDER OR PARTNER CLAIMING CREDIT. A. IF A PASS THROUGH ENTITY DOES NOT HAVE LOCAL INCOME TAX LIABILITY AGAINST WHICH THE TAX CREDIT MAY BE APPLIED, A SHAREHOLDER OR PARTNER OF THE PASS THROUGH ENTITY IS ENTITLED TO A TAX CREDIT EQUAL TO THE TAX CREDIT DETERMINED FOR THE PASS THROUGH ENTITY'S DISTRIBUTIVE INCOME TO WHICH THE SHAREHOLDER OR PARTNER IS ENTITLED.

B. THE CREDIT PROVIDED HEREIN IS IN ADDITION TO ANY TAX CREDIT TO WHICH A SHAREHOLDER OR PARTNER OF A PASS THROUGH ENTITY IS OTHERWISE ENTITLED UNDER A SEPARATE AGREEMENT UNDER THIS PART. A PASS THROUGH ENTITY AND A SHAREHOLDER OR PARTNER OF THE PASS THROUGH ENTITY MAY NOT CLAIM MORE THAN ONE CREDIT UNDER THE SAME AGREEMENT.

S 11-291 NONCOMPLIANCE WITH AGREEMENT; ASSESSMENTS. IF THE COMMISSIONER DETERMINES THAT A TAXPAYER WHO HAS RECEIVED A CREDIT IS NOT COMPLYING WITH THE REQUIREMENTS OF THE TAX CREDIT AGREEMENT OR ANY PROVISION OF THIS PART, THE COMMISSIONER SHALL, AFTER GIVING THE TAXPAYER AN OPPORTUNITY TO REMEDY THE NONCOMPLIANCE, IMPOSE AN ASSESSMENT. THE COMMISSIONER SHALL STATE THE AMOUNT OF THE ASSESSMENT, WHICH MAY NOT EXCEED THE SUM OF ANY PREVIOUSLY ALLOWED CREDITS UNDER THIS PART.

S 11-292 ANNUAL REPORT. THE COMMISSIONER SHALL SUBMIT AN ANNUAL REPORT TO THE COUNCIL, ON APRIL FIRST OF EACH YEAR, BEGINNING APRIL FIRST, TWO THOUSAND TEN, CONCERNING THE STATUS OF THE PROGRAM ESTABLISHED HEREIN AND ITS EFFECTS IN THE CITY, INCLUDING INFORMATION ON CREDITS ISSUED AND JOBS CREATED. THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION ON THE NUMBER OF AGREEMENTS THAT WERE ENTERED INTO DURING THE PRECEDING CALENDAR YEAR AND A DESCRIPTION OF THE PROJECT THAT IS THE SUBJECT OF EACH AGREEMENT.

S 3. This act shall take effect on the thirtieth day after it shall have become a law.