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

1739

2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a downtown revitalization zone jobs credit against the franchise tax on business corporations

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

Section 1. The tax law is amended by adding a new section 187-o to read as follows:

S 187-O. DOWNTOWN REVITALIZATION ZONE JOBS CREDIT. 1. ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SECTION, AGAINST THE TAX IMPOSED BY THIS ARTICLE WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED IN SUBDIVISION FOUR OF THIS SECTION.

2. DEFINITIONS. FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "DOWNTOWN REVITALIZATION ZONE WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT, OTHER THAN TO GENERAL EXECUTIVE OFFICERS, DURING THE TAXABLE YEAR IN AN AREA DESIGNATED OR PREVIOUSLY DESIGNATED AS A DOWNTOWN REVITALIZATION ZONE OR ZONE EQUIVALENT AREA PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW WHERE SUCH EMPLOYMENT IS IN A JOB CREATED IN THE AREA (1) DURING THE PERIOD OF ITS DESIGNATION AS A DOWNTOWN REVITALIZATION ZONE OR ZONE EQUIVALENT AREA, (2) WITHIN FOUR YEARS OF THE EXPIRATION OF SUCH DESIGNATION, OR (3) DURING THE TEN YEAR PERIOD IMMEDIATELY FOLLOWING THE DATE OF DESIGNATION AS A ZONE EQUIVALENT AREA, PROVIDED, HOWEVER, THAT IF THE TAXPAYER'S CERTIFICATION UNDER ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW IS REVOKED WITH RESPECT TO THE DESIGNATION AS A DOWNTOWN REVITALIZATION ZONE OR ZONE EQUIVALENT AREA, ANY WAGES PAID BY THE TAXPAYER, ON OR AFTER THE EFFEC-

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

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TIVE DATE OF SUCH DECERTIFICATION, FOR EMPLOYMENT IN SUCH ZONE SHALL NOT CONSTITUTE DOWNTOWN REVITALIZATION ZONE WAGES.

(B) "TARGETED EMPLOYEE" MEANS A RESIDENT OF THE STATE WHO RECEIVES DOWNTOWN REVITALIZATION ZONE WAGES AND WHO IS (1) AN ELIGIBLE INDIVIDUAL UNDER THE PROVISIONS OF THE TARGETED JOBS TAX CREDIT (SECTION FIFTY-ONE OF THE INTERNAL REVENUE CODE), (2) ELIGIBLE FOR BENEFITS UNDER THE PROVISIONS OF THE JOB TRAINING PARTNERSHIP ACT (P.L. 97-300, AS AMENDED), (3) A RECIPIENT OF PUBLIC ASSISTANCE BENEFITS OR (4) AN INDIVIDUAL WHOSE INCOME IS BELOW THE MOST RECENTLY ESTABLISHED POVERTY RATE PROMULGATED BY THE UNITED STATES DEPARTMENT OF COMMERCE, OR A MEMBER OF A FAMILY WHOSE FAMILY INCOME IS BELOW THE MOST RECENTLY ESTABLISHED POVERTY RATE PROMULGATED BY THE APPROPRIATE FEDERAL AGENCY.

AN INDIVIDUAL WHO SATISFIES THE CRITERIA SET FORTH IN SUBPARAGRAPH ONE, TWO OR FOUR OF THIS PARAGRAPH AT THE TIME OF INITIAL EMPLOYMENT IN THE JOB WITH RESPECT TO WHICH THE CREDIT IS CLAIMED, OR WHO SATISFIES THE CRITERION SET FORTH IN SUBPARAGRAPH THREE OF THIS PARAGRAPH AT SUCH TIME OR AT ANY TIME WITHIN THE PREVIOUS TWO YEARS, SHALL BE A TARGETED EMPLOYEE SO LONG AS SUCH INDIVIDUAL CONTINUES TO RECEIVE DOWNTOWN REVITALIZATION ZONE WAGES.

(C) "AVERAGE NUMBER OF INDIVIDUALS, EXCLUDING GENERAL EXECUTIVE OFFICERS, EMPLOYED FULL-TIME" SHALL MEAN THE NUMBER OF SUCH INDIVIDUALS EMPLOYED BY THE TAXPAYER ON THE THIRTY-FIRST DAY OF MARCH, THE THIRTIETH DAY OF JUNE, THE THIRTIETH DAY OF SEPTEMBER AND THE THIRTY-FIRST DAY OF DECEMBER DURING EACH TAXABLE YEAR OR OTHER APPLICABLE PERIOD, BY ADDING TOGETHER THE NUMBER OF SUCH INDIVIDUALS ASCERTAINED ON EACH OF SUCH DATE AND DIVIDING THE SUM SO OBTAINED BY THE NUMBER OF SUCH INDIVIDUALS ASCERTAINED ON EACH OF SUCH DATE AND DIVIDING THE SUM SO OBTAINED BY THE NUMBER OF SUCH DATES OCCURRING WITHIN SUCH TAXABLE YEAR OR OTHER APPLICABLE PERIOD.

3. ELIGIBILITY FOR CREDIT. THE CREDIT PROVIDED FOR IN THIS SECTION SHALL BE ALLOWED ONLY WHERE THE AVERAGE NUMBER OF INDIVIDUALS, EXCLUDING GENERAL EXECUTIVE OFFICERS, EMPLOYED FULL-TIME BY THE TAXPAYER IN THE STATE AND IN THE DOWNTOWN REVITALIZATION ZONE OR ZONE AREA PREVIOUSLY CONSTITUTING SUCH ZONE OR ZONE EQUIVALENT AREA, DURING THE TAXABLE YEAR EXCEEDS THE AVERAGE NUMBER OF SUCH INDIVIDUALS EMPLOYED FULL-TIME BY THE TAXPAYER IN THE STATE AND IN SUCH ZONE OR AREA SUBSEQUENTLY OR PREVIOUSLY CONSTITUTING SUCH ZONE OR SUCH ZONE EQUIVALENT AREA, RESPECTIVELY, DURING THE FOUR YEARS IMMEDIATELY PRECEDING THE FIRST TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED WITH RESPECT TO SUCH ZONE OR AREA. WHERE THE TAXPAYER PROVIDED FULL-TIME EMPLOYMENT WITHIN THE STATE OR IN SUCH ZONE OR AREA DURING ONLY A PORTION OF SUCH FOUR-YEAR PERIOD, THEN FOR PURPOSES OF THIS SUBDIVISION THE TERM "FOUR YEARS" SHALL BE DEEMED TO REFER INSTEAD TO SUCH PORTION, IF ANY.

THE CREDIT SHALL BE ALLOWED ONLY WITH RESPECT TO THE FIRST TAXABLE YEAR DURING WHICH PAYMENTS OF DOWNTOWN REVITALIZATION ZONE WAGES ARE MADE AND THE CONDITIONS SET FORTH IN THIS SUBDIVISION ARE SATISFIED, AND WITH RESPECT TO EACH OF THE FOUR TAXABLE YEARS NEXT FOLLOWING (BUT ONLY, WITH RESPECT TO EACH OF SUCH YEARS, IF SUCH CONDITIONS ARE SATISFIED), IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION. SUBSEQUENT CERTIFICATIONS OF THE TAXPAYER PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, AT THE SAME OR A DIFFERENT LOCATION IN THE SAME DOWNTOWN REVITALIZATION ZONE OR ZONE EQUIVALENT AREA, OR AT A LOCATION IN A DIFFERENT DOWNTOWN REVITALIZATION ZONE OR ZONE EQUIVALENT AREA, SHALL NOT EXTEND THE FIVE TAXABLE YEAR TIME LIMITATION ON THE ALLOWANCE OF THE CREDIT SET FORTH IN THE PRECEDING SENTENCE. PROVIDED, FURTHER, THAT NO CREDIT SHALL BE ALLOWED WITH RESPECT TO ANY TAXABLE YEAR BEGINNING MORE

THAN FOUR YEARS FOLLOWING THE TAXABLE YEAR IN WHICH DESIGNATION AS A DOWNTOWN REVITALIZATION ZONE EXPIRED OR MORE THAN TEN YEARS AFTER THE DESIGNATION AS A ZONE EQUIVALENT AREA.

4. CALCULATION OF CREDIT. (A) THE AMOUNT OF THE CREDIT SHALL EQUAL THE SUM OF:

(1) THE PRODUCT OF THREE THOUSAND DOLLARS AND THE AVERAGE NUMBER OF INDIVIDUALS, EXCLUDING GENERAL EXECUTIVE OFFICERS, EMPLOYED FULL-TIME BY THE TAXPAYER, WHO:

(I) RECEIVED DOWNTOWN REVITALIZATION ZONE WAGES FOR MORE THAN HALF OF THE TAXABLE YEAR,

(II) RECEIVED, WITH RESPECT TO MORE THAN HALF OF THE PERIOD OF EMPLOYMENT BY THE TAXPAYER DURING THE TAXABLE YEAR, AN HOURLY WAGE WHICH WAS AT LEAST ONE HUNDRED THIRTY-FIVE PERCENT OF THE MINIMUM WAGE SPECIFIED IN SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW, AND

(III) ARE TARGETED EMPLOYEES; AND

(2) THE PRODUCT OF FIFTEEN HUNDRED DOLLARS AND THE AVERAGE NUMBER OF INDIVIDUALS, EXCLUDING GENERAL EXECUTIVE OFFICERS AND INDIVIDUALS, EMPLOYED FULL-TIME BY THE TAXPAYER WHO RECEIVED DOWNTOWN REVITALIZATION ZONE WAGES FOR MORE THAN HALF OF THE TAXABLE YEAR.

(B) FOR PURPOSES OF CALCULATING THE AMOUNT OF THE CREDIT, INDIVIDUALS EMPLOYED WITHIN A DOWNTOWN REVITALIZATION ZONE OR ZONE EQUIVALENT AREA WITHIN THE IMMEDIATELY PRECEDING SIXTY MONTHS BY A RELATED PERSON, AS SUCH TERM IS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, SHALL NOT BE INCLUDED IN THE AVERAGE NUMBER OF INDIVIDUALS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, UNLESS SUCH RELATED PERSON WAS NEVER ALLOWED A CREDIT UNDER THIS SUBDIVISION WITH RESPECT TO SUCH EMPLOYEES.

PROVIDED, FURTHER, THAT THE CREDIT PROVIDED FOR IN THIS SECTION WITH RESPECT TO THE TAXABLE YEAR, AND CARRYOVERS OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE, SHALL NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS CHAPTER COMPUTED WITHOUT REGARD TO ANY CREDIT PROVIDED FOR UNDER THIS ARTICLE.

5. CARRYOVERS. THE CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR SHALL NOT, IN THE AGGREGATE, REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS CHAPTER. HOWEVER, IF THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, OR IF ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT SHALL NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to taxable years commencing on or after such effective date.