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

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I N A S S E M B L Y

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Introduced by M. of A. CHRISTENSEN, MORELLE, PHEFFER, MAGNARELLI, MAGEE, SCHIMMINGER, JAFFEE -- Multi-Sponsored by -- M. of A. ABBATE, COOK, DelMONTE, HYER-SPENCER, JOHN, KOON, V. LOPEZ, ORTIZ, SWEENEY, WEISENBERG -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to a small business job creation wage tax credit

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

Section 1. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. SMALL BUSINESS JOB CREATION WAGE TAX CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED BY PARAGRAPH (D) OF THIS SUBDIVISION.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "SMALL BUSINESS JOB CREATION WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT, OTHER THAN TO GENERAL EXECUTIVE OFFICERS, DURING THE TAXABLE YEAR WHERE SUCH EMPLOYMENT IS IN A NEW JOB AND PERFORMED BY "NEW EMPLOYEES".

(2) "NEW JOB" MEANS A FULL-TIME POSITION THAT DID NOT EXIST IN THE TAXPAYER'S BUSINESS IN THE THREE TAXABLE YEARS PRIOR TO HIRING THE "NEW EMPLOYEES" FOR WHOM THE CREDIT IS CLAIMED.

(3) "NEW EMPLOYEE" MEANS A NEW YORK RESIDENT WHO RECEIVES SMALL BUSINESS JOB CREATION WAGES AND WHO WAS NOT EMPLOYED BY THE TAXPAYER IN THE THREE PRIOR TAXABLE YEARS.

(4) "SMALL BUSINESS" MEANS A NEW YORK TAXPAYER, AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF THIS SECTION WHO HAS FEWER THAN FIFTY EMPLOYEES IN THE INITIAL TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED.

(C) THE CREDIT MAY BE CLAIMED BY THE TAXPAYER IN THE FIRST YEAR THE "NEW EMPLOYEE" IS EMPLOYED BY THE TAXPAYER. PROVIDED, HOWEVER, WHERE A

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

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"NEW EMPLOYEE" IS HIRED IN THE LAST QUARTER OF A TAXABLE YEAR AND IS EMPLOYED BY THE TAXPAYER FOR THE ENTIRE FOLLOWING TAXABLE YEAR, THE TAXPAYER MAY ELECT TO FOREGO THE CREDIT FOR THE TAXABLE YEAR OF THE HIRING AND CLAIM A CREDIT FOR THE FOLLOWING TAXABLE YEAR WHICH REFLECTS WAGES, PAID IN SUCH YEAR.

(D) THE AMOUNT OF THE CREDIT SHALL EQUAL FIFTY PERCENT OF THE PERSONAL INCOME TAX GENERATED BY THE NEW EMPLOYEES (EXCLUDING GENERAL EXECUTIVE OFFICERS) EMPLOYED FULL-TIME BY THE TAXPAYER, WHO:

(1) 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

(2) ARE "NEW EMPLOYEES".

PROVIDED, HOWEVER, THAT THE CREDIT PROVIDED FOR UNDER THIS SUBDIVISION WITH RESPECT TO THE TAXABLE YEAR, AND CARRYOVERS OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE, MAY NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER SECTION TWO HUNDRED NINE OF THIS ARTICLE COMPUTED WITHOUT REGARD TO ANY CREDIT PROVIDED FOR BY THIS ARTICLE.

(E) THE CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT, IN THE AGGREGATE, REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, OR IF ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF THE FINAL SENTENCE OF PARAGRAPH (D) OF THIS SUBDIVISION, 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 TAX FOR SUCH YEAR OR YEARS. IN LIEU OF SUCH CARRYOVER, ANY SUCH TAXPAYER WHICH QUALIFIES AS A NEW BUSINESS UNDER PARAGRAPH (J) OF SUBDIVISION TWELVE OF THIS SECTION MAY ELECT, ON ITS REPORT FOR ITS TAXABLE YEAR WITH RESPECT TO WHICH SUCH CREDIT IS ALLOWED, TO TREAT FIFTY PERCENT OF THE AMOUNT OF SUCH CARRYOVER AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON. IN APPLYING PARAGRAPH (J) OF SUBDIVISION TWELVE OF THIS SECTION, THE REFERENCE TO INVESTMENT TAX CREDIT SHALL BE DEEMED TO BE A REFERENCE TO THE CREDIT PROVIDED FOR UNDER THIS SUBDIVISION.

(F) PROVIDED HOWEVER, THIS CREDIT SHALL NOT BE ALLOWED WHERE SUCH WAGES HAVE BEEN USED AS THE BASIS TO CLAIM THE CREDIT FOR EMPIRE ZONE OR EMPIRE ZONE EQUIVALENT WAGE CREDIT.

(G) FOR THE INTERACTION OF THIS SUBDIVISION AND SUBDIVISION TWELVE-D OF THIS SECTION (EMPLOYMENT INCENTIVE CREDIT), SEE PARAGRAPH (B) OF SUCH SUBDIVISION TWELVE-D.

S 2. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) SMALL BUSINESS JOB CREATION WAGE TAX CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED BY PARAGRAPH THREE OF THIS SUBSECTION.

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

(I) "NEW JOB" MEANS A FULL-TIME POSITION THAT DID NOT EXIST IN THE TAXPAYER'S BUSINESS IN THE THREE TAXABLE YEARS PRIOR TO HIRING THE "NEW EMPLOYEES" FOR WHOM THE CREDIT IS CLAIMED.

(II) "SMALL BUSINESS JOB CREATION WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT, OTHER THAN TO GENERAL EXECUTIVE OFFICERS, DURING THE TAXABLE YEAR WHERE SUCH EMPLOYMENT IS IN A JOB CREATED FOR AND PERFORMED BY "NEW EMPLOYEES".

(III) "NEW EMPLOYEE" MEANS A NEW YORK RESIDENT WHO RECEIVES SMALL BUSINESS JOB CREATION WAGES AND WHO WAS NOT EMPLOYED BY THE TAXPAYER IN THE THREE PRIOR TAXABLE YEARS.

(IV) "SMALL BUSINESS" MEANS A NEW YORK TAXPAYER, AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER WHO HAS FEWER THAN FIFTY EMPLOYEES IN THE INITIAL TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED.

(V) THE CREDIT MAY BE CLAIMED BY THE TAXPAYER IN THE FIRST YEAR THE "NEW EMPLOYEE" IS EMPLOYED BY THE TAXPAYER. PROVIDED, HOWEVER, WHERE A "NEW EMPLOYEE" IS HIRED IN THE LAST QUARTER OF A TAXABLE YEAR AND IS EMPLOYED BY THE TAXPAYER FOR THE ENTIRE FOLLOWING TAXABLE YEAR, THE TAXPAYER MAY ELECT TO FOREGO THE CREDIT FOR THE TAXABLE YEAR OF THE HIRING AND CLAIM A CREDIT FOR THE FOLLOWING TAXABLE YEAR WHICH REFLECTS WAGES PAID IN SUCH YEAR.

(3) THE AMOUNT OF THE CREDIT SHALL EQUAL FIFTY PERCENT OF THE PERSONAL INCOME TAX GENERATED BY THE NEW EMPLOYEES (EXCLUDING GENERAL EXECUTIVE OFFICERS) EMPLOYED FULL-TIME BY THE TAXPAYER, WHO:

(I) 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

(II) ARE "NEW EMPLOYEES".

PROVIDED, HOWEVER, THAT THE CREDIT PROVIDED FOR UNDER THIS SUBSECTION WITH RESPECT TO THE TAXABLE YEAR, AND CARRYOVERS OF SUCH CREDIT TO THE TAXABLE YEAR, DEDUCTED FROM THE TAX OTHERWISE DUE, MAY NOT, IN THE AGGREGATE, EXCEED FIFTY PERCENT OF THE TAX IMPOSED UNDER SECTION TWO HUNDRED NINE OF THIS CHAPTER COMPUTED WITHOUT REGARD TO ANY CREDIT PROVIDED FOR BY THIS ARTICLE.

(4) IF THE AMOUNT OF THE CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS, AS WELL AS ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, WHICH MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF THE FINAL SENTENCE IN PARAGRAPH THREE OF THIS SUBSECTION, MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS. IN LIEU OF CARRYING OVER ANY SUCH EXCESS, A TAXPAYER WHO QUALIFIES AS AN OWNER OF A NEW BUSINESS FOR PURPOSES OF PARAGRAPH TEN OF SUBSECTION (A) OF THIS SECTION MAY, AT HIS OPTION, RECEIVE FIFTY PERCENT OF SUCH EXCESS AS A REFUND. ANY REFUND PAID PURSUANT TO THIS PARAGRAPH SHALL BE DEEMED TO BE A REFUND OF AN OVERPAYMENT OF TAX AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON. IN APPLYING PARAGRAPH TEN OF SUBSECTION (A) OF THIS SECTION, THE REFERENCE TO INVESTMENT TAX CREDIT SHALL BE DEEMED TO BE A REFERENCE TO THE CREDIT PROVIDED FOR UNDER THIS SUBSECTION.

(5) PROVIDED HOWEVER, THIS CREDIT SHALL NOT BE ALLOWED WHERE SUCH WAGES HAVE BEEN USED AS THE BASIS TO CLAIM THE CREDIT FOR EMPIRE ZONE OR EMPIRE ZONE EQUIVALENT WAGE CREDIT.

S 3. This act shall take effect immediately.