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

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2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

Introduced by M. of A. HAYES, BACALLES, FINCH, HAWLEY, REILICH, TEDISCO, TOBACCO, WALKER -- Multi-Sponsored by -- M. of A. ALFANO, BARCLAY, BARRA, BURLING, BUTLER, CALHOUN, CONTE, CORWIN, CROUCH, DUPREY, ERRIGO, GIGLIO, JORDAN, KOLB, P. LOPEZ, McDONOUGH, MILLER, MOLINARO, OAKS, O'MARA, QUINN, RAIA, SALADINO, SAYWARD, THIELE, TOWNSEND -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the tax law, in relation to providing a tax credit for the purchase of health insurance by qualified small employers

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

Section 1. The insurance law is amended by adding a new section 215 to read as follows:

S 215. REPORT ON QUALIFIED SMALL EMPLOYER TAX CREDIT. THE SUPERINTENDENT SHALL ORDER A STUDY OF THE IMPACT OF SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THIS CHAPTER, SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OF THE TAX LAW, SUBDIVISION (Y) OF SECTION FIFTEEN HUNDRED ELEVEN OF THE TAX LAW, AND SUBSECTION (F-1) OF SECTION ONE THOUSAND FOUR HUNDRED FIFTY-SIX OF THE TAX LAW. SUCH STUDY SHALL EXAMINE THE NUMBER OF PERSONS COVERED BY GROUP HEALTH INSURANCE OFFERED BY THEIR EMPLOYER PRIOR TO, AND AFTER, IMPLEMENTATION OF SUCH PROVISIONS OF SUCH SECTIONS, AND SHALL DETERMINE THE EFFECT OF SUCH PROVISIONS OF SUCH SECTIONS ON EMPLOYEE HEALTH INSURANCE COVERAGE. THE STUDY SHALL BE COMPLETED AND A REPORT SUBMITTED BY SEPTEMBER FIRST, TWO THOUSAND ELEVEN TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY.

S 2. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. (A) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER, INCLUDING A SMALL EMPLOYER PRINCIPALLY ENGAGED IN FARMING, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO FIFTEEN PERCENT OF THE

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

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PREMIUM PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER.

(B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY YEAR SHALL NOT 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. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT 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.

(C) FOR THE PURPOSES OF THIS SUBDIVISION "QUALIFIED SMALL EMPLOYER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES: WHO IS A "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF THIS SECTION.

(D) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-THREE OF THE PUBLIC HEALTH LAW.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

With respect to the following credit under this section:	The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is:
(I) Investment tax credit under subsection (a)	Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten
(II) Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B of section two hundred ten
(III) Empire zone wage tax credit under subsection (k)	Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six

(IV) Empire zone capital tax credit under subsection (l)	Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six
(V) Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
(VI) Credit for employment of persons with disabilities under subsection (o)	Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six
(VII) Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten
(VIII) Empire zone employment incentive credit under subsection (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
(IX) Alternative fuels credit under subsection (p)	Cost under subdivision twenty-four of section two hundred ten
(X) Qualified emerging technology company employment credit under subsection (q)	Applicable credit base under subdivision twelve-E of section two hundred ten
(XI) Qualified emerging technology company capital tax credit under subsection (r)	Qualified investments under subdivision twelve-F of section two hundred ten
(XII) Credit for purchase of an automated external defibrillator under subsection (s)	Cost of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six
(XIII) Low-income housing credit under subsection (x)	Credit amount under subdivision thirty of section two hundred ten or

	subsection (l) of section fourteen hundred fifty-six
(XIV) Credit for transportation improvement contributions under subsection (z)	Amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six
(XV) QEZE credit for real property taxes under subsection (bb)	Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six
(XVI) QEZE tax reduction credit under subsection (cc)	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen
(XVII) Green building credit under subsection (y)	Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six
(XVIII) Credit for long-term care insurance premiums under subsection (aa)	Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of section fourteen hundred fifty-six
(XIX) Brownfield redevelopment credit under subsection (dd)	Amount of credit under subdivision thirty-three of section two hundred ten or subsection (q) of section fourteen hundred fifty-six
(XX) Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)	Amount of credit under subdivision thirty-four of section two hundred ten or subsection (r) of section fourteen hundred fifty-six

(XXI) Environmental remediation insurance credit under subsection (ff)	Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six
(XXII) Empire state film production credit under subsection (gg)	Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten
(XXIII) Qualified emerging technology company facilities, operations and training credit under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
(XXIV) Security training tax credit under subsection (ii)	Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
(XXV) Credit for qualified fuel cell electric generating equipment expenditures under subsection (g-2)	Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six
(XXVI) Empire state commercial production credit under subsection (jj)	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of section two hundred ten
(XXVII) Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision thirty-eight of section two hundred ten
(XXVIII) Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision thirty-nine of section two hundred ten
(XXIX) Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision forty of [subsection] SECTION two hundred ten
(XXX) Credit for companies who provide transportation to individuals	Amount of credit under subdivision forty of section two hundred ten

with disabilities
under subsection (oo)

(XXXI) SMALL EMPLOYER HEALTH CARE CREDIT UNDER SUBSECTION (GG)	CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

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

(QQ) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO FIFTEEN PERCENT OF THE PREMIUM PAID BY SUCH EMPLOYER FOR HEALTH INSURANCE DURING THE TAXABLE YEAR. PROVIDED, HOWEVER, FOR THOSE QUALIFIED SMALL EMPLOYERS THAT ARE REQUIRED TO FILE SCHEDULE F WITH THEIR ANNUAL RETURNS, SUCH CREDIT SHALL EQUAL FIFTEEN PERCENT OF THE PREMIUM PAID FOR SUCH HEALTH INSURANCE. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(2) FOR THE PURPOSES OF THIS SUBSECTION "QUALIFIED SMALL EMPLOYER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES: WHO IS A "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(3) FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-THREE OF THE PUBLIC HEALTH LAW.

S 5. Section 1456 of the tax law is amended by adding a new subsection (f-1) to read as follows:

(F-1) (1) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO FIFTEEN PERCENT OF THE PREMIUM PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER.

(2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR, AND CARRYOVERS OF SUCH CREDIT, BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINIMUM TAX BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, 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.

(3) FOR THE PURPOSES OF THIS SECTION THE TERM "QUALIFIED SMALL EMPLOYER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES: WHO IS A "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(4) FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND

EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-THREE OF THE PUBLIC HEALTH LAW.

S 6. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO FIFTEEN PERCENT OF THE PREMIUM PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER.

(2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE MINIMUM FIXED BY SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT 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.

(3) FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "QUALIFIED SMALL EMPLOYER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES: WHO IS A "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(4) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE" MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-THREE OF THE PUBLIC HEALTH LAW.

S 7. This act shall take effect July 1, 2010 and shall apply to taxable years commencing on and after such date; provided, however that the empire state film production credit under subsection (gg), the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to individuals with disabilities under subsection (oo) of section 606 of the tax law contained in section three of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, as amended, and section 5 of chapter 522 of the laws of 2006, as amended, respectively.