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

1697

2009-2010 Regular Sessions

I N  S E N A T E

February 5, 2009

Introduced by Sens. LARKIN, DIAZ, O. JOHNSON, MORAHAN, SEWARD, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the tax law, in relation to establishing business corporation franchise tax and personal income tax credits for the donation of food and food products, having a value of five hundred dollars or more, to a food bank by a food producer or processor

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

Section 1. Section 16 of the agriculture and markets law is amended by adding a new subdivision 44 to read as follows:

44. ADVISE AND COOPERATE WITH THE COMMISSIONER OF TAXATION AND FINANCE IN THE PROMULGATION OF RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE DONATION TO FOOD BANKS CREDIT ESTABLISHED PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THE TAX LAW. IN PARTICULAR, THE DEPARTMENT SHALL ON A REGULAR BASIS ESTABLISH RULES DEFINING WHICH FOODS AND FOOD PRODUCTS ARE NON-PERISHABLE, WHICH PERSONS ARE FOOD PRODUCERS, AND THE STANDARD FOR DETERMINING THE VALUE OF CERTAIN QUANTITIES OF FOOD AND FOOD PRODUCTS.

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

41. DONATIONS TO FOOD BANKS CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A FOOD PRODUCER OR FOOD PROCESSING ESTABLISHMENT, AS DEFINED IN ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW, SHALL BE ALLOWED A CREDIT OF SEVENTY-FIVE DOLLARS AGAINST THE TAX IMPOSED BY THIS ARTICLE, IF SUCH TAXPAYER DONATES DURING ANY TAXABLE YEAR FOOD AND FOOD PRODUCTS, WHICH ARE NON-PERISHABLE, PRODUCED FROM FOOD GROWN IN THIS STATE AND HAVING A VALUE OF FIVE HUNDRED DOLLARS OR MORE, TO BONA FIDE LOCAL FOOD BANK ORGANIZATIONS AND REGIONAL FOOD BANKS.

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

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(B) DEFINITION. FOR THE PURPOSES OF THIS SUBDIVISION, "FOOD AND FOOD PRODUCTS" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH PHRASE BY ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW.

(C) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR THE EXCESS SHALL BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(D) REGULATIONS. THE COMMISSIONER, IN CONSULTATION AND COOPERATION WITH THE DEPARTMENT OF AGRICULTURE AND MARKETS, SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THIS SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, DEFINITIONS OF TERMS AND PROOF OF DONATIONS MADE TO FOOD BANKS.

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: |
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| (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 |

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| (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 |

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| (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 |

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| (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 with disabilities under subsection (oo) | Amount of credit under subdivision forty of section two hundred ten |
| (XXXI) DONATIONS TO FOOD BANKS CREDIT UNDER SUBSECTION (QQ) | AMOUNT OF 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) DONATIONS TO FOOD BANKS CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS A FOOD PRODUCER OR FOOD PROCESSING ESTABLISHMENT, AS DEFINED IN ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW, SHALL BE ALLOWED A CREDIT OF SEVENTY-FIVE DOLLARS AGAINST THE TAX IMPOSED BY THIS ARTICLE, IF SUCH TAXPAYER DONATES DURING ANY TAXABLE YEAR FOOD AND FOOD PRODUCTS, WHICH ARE NON-PERISHABLE, PRODUCED FROM FOOD GROWN IN THIS STATE AND HAVING A VALUE OF FIVE HUNDRED DOLLARS OR MORE, TO BONA FIDE LOCAL FOOD BANK ORGANIZATIONS AND REGIONAL FOOD BANKS.

(2) DEFINITION. FOR THE PURPOSES OF THIS SUBSECTION, "FOOD AND FOOD PRODUCTS" SHALL HAVE THE SAME MEANING AS ASCRIBED TO SUCH PHRASE BY ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW.

(3) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR THE EXCESS SHALL BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(4) REGULATIONS. THE COMMISSIONER, IN CONSULTATION AND COOPERATION WITH THE DEPARTMENT OF AGRICULTURE AND MARKETS, SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THIS SUBSECTION, INCLUDING, BUT NOT LIMITED TO, DEFINITIONS OF TERMS AND PROOF OF DONATIONS MADE TO FOOD BANKS.

S 5. This act shall take effect immediately, and shall apply to taxable years commencing on or 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.