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

3052

2009-2010 Regular Sessions

I N  S E N A T E

March 10, 2009

Introduced by Sens. SEWARD, ALESI, BONACIC, DeFRANCISCO, HANNON, O. JOHNSON, LANZA, MAZIARZ, MORAHAN, RANZENHOFER, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to providing a tax credit for the purchase of certain health insurance

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. (A) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (I) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (II) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

(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.

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

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(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-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 2. 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 |
| (VII) Employment incentive credit under subsection (a-1) | Applicable investment credit base under subdivision twelve-D of section two hundred ten |

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| (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 |

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| | 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 |

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| (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) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT UNDER SUBSECTION (QQ) | CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN |

S 3. 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 THE APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN. 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-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 4. Section 1456 of the tax law is amended by adding a new subsection (f-1) to read as follows:

(F-1) SMALL EMPLOYER TAX CREDIT. (1) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

(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-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 5. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

(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-FOUR OF THE PUBLIC HEALTH LAW AND SHALL INCLUDE A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

S 6. Section 606 of the tax law is amended by adding a new subsection (h-1) to read as follows:

(H-1) INDIVIDUAL ENROLLEE HEALTH INSURANCE CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMIUM PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE PURCHASED PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED TWENTY-ONE OR FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THE INSURANCE LAW, INCLUDING POLICIES INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003. THE APPLICABLE PERCENTAGE SHALL BE (1) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND (2) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

S 7. This act shall take effect January 1, 2010; 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 two 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.