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I N A S S E M B L Y

May 24, 2012

Introduced by M. of A. KOLB -- read once and referred to the Committee on Economic Development

AN ACT to amend the economic development law and the tax law, in relation to enacting the BizBoom program act

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

1 Section 1. The economic development law is amended by adding a new
2 article 21 to read as follows:

3 ARTICLE 21

4 BIZBOOM PROGRAM ACT

5 SECTION 450. SHORT TITLE.

6 451. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION.

7 452. DEFINITIONS.

8 453. ELIGIBILITY CRITERIA.

9 454. APPLICATION AND APPROVAL PROCESS.

10 455. POWERS AND DUTIES OF THE COMMISSIONER.

11 S 450. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
12 THE "BIZBOOM PROGRAM ACT".

13 S 451. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION. IT IS HEREBY
14 FOUND AND DECLARED THAT NEW YORK STATE NEEDS, AS A MATTER OF PUBLIC
15 POLICY, TO CREATE COMPETITIVE FINANCIAL INCENTIVES FOR BUSINESSES TO
16 LOCATE AND INVEST IN NEW YORK STATE. THE BIZBOOM PROGRAM ACT IS CREATED
17 TO INCENTIVIZE THE SITING OF NEW BUSINESSES AND THE CREATION OF BUSI-
18 NESSES IN OUR STATE.

19 THIS LEGISLATION CREATES THE BIZBOOM PROGRAM, WHICH PROVIDES A TAX
20 EXEMPT BENEFIT TO NEW BUSINESSES RELOCATING TO OR STARTING UP A NEW
21 BUSINESS IN NEW YORK. THE BIZBOOM TAX EXEMPTION FOR QUALIFYING BUSI-
22 NESSES IS ONE HUNDRED PERCENT THE FIRST YEAR, FIFTY PERCENT OF THE BUSI-
23 NESS TAX LIABILITY IN THE SECOND YEAR, AND A TWENTY-FIVE PERCENT
24 EXEMPTION IN THE THIRD YEAR. THIS EXEMPTION WOULD DISCONTINUE AFTER
25 THREE YEARS AND ANY PARTICIPATING BUSINESS THAT LEAVES THE STATE BEFORE
26 COMPLETING SIX YEARS OF OPERATION WOULD BE LIABLE TO REPAY ALL TAX BENE-
27 FITS RECEIVED UNDER THE PROGRAM. THESE EXEMPTIONS ARE DESIGNED TO
28 PROMOTE BUSINESS EXPANSION AND INCREASE JOBS IN NEW YORK STATE. AT THE

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

LBD15396-01-2

1 SAME TIME, THE PROGRAM PROTECTS STATE TAXPAYERS' DOLLARS BY ENSURING
2 THAT NEW YORK PROVIDES TAX BENEFITS ONLY TO BUSINESSES THAT REPRESENT
3 NEW INVESTMENT IN OUR STATE.

4 S 452. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE: 1. "BIZBOOM
5 BUSINESS" MEANS A BUSINESS ENTITY THAT HAS BEEN DETERMINED TO BE A NEWLY
6 FORMED BUSINESS IN NEW YORK; AS DETERMINED BY THE COMMISSIONER OF TAXA-
7 TION AND FINANCE AND THE DEPARTMENT.

8 2. "CERTIFICATE OF ELIGIBILITY" MEANS THE DOCUMENT ISSUED BY THE
9 DEPARTMENT TO AN APPLICANT THAT HAS COMPLETED AN APPLICATION TO BE
10 ADMITTED INTO THE BIZBOOM PROGRAM AND HAS BEEN ACCEPTED INTO THE PROGRAM
11 BY THE DEPARTMENT. POSSESSION OF A CERTIFICATE OF ELIGIBILITY DOES NOT
12 BY ITSELF GUARANTEE THE ELIGIBILITY TO CLAIM THE TAX EXEMPTION.

13 3. "CERTIFICATE OF TAX EXEMPTION" MEANS THE DOCUMENT ISSUED TO A
14 PARTICIPANT BY THE DEPARTMENT AS AUTHORIZED BY THE DEPARTMENT OF TAXA-
15 TION AND FINANCE, AFTER THE DEPARTMENT HAS VERIFIED THAT THE PARTICIPANT
16 HAS MET ALL APPLICABLE ELIGIBILITY CRITERIA IN THIS ARTICLE.

17 S 453. ELIGIBILITY CRITERIA. 1. TO BE A PARTICIPANT IN THE BIZBOOM
18 PROGRAM, A QUALIFYING BUSINESS ENTITY SHALL HAVE NOT OPERATED OR SHALL
19 NOT HAVE HAD NEXUS IN NEW YORK STATE PRIOR TO THE FIRST YEAR OF THE
20 IMPLEMENTATION OF THIS ACT AND ANY OTHER CRITERIA ESTABLISHED BY THE
21 COMMISSIONER IN REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE. IN
22 PROMULGATING SUCH REGULATIONS THE COMMISSIONER SHALL INCLUDE A REVIEW OF
23 SUCH NEW BUSINESS CREATION CRITERIA.

24 2. FOR THE PURPOSES OF THIS ARTICLE, IN ORDER TO PARTICIPATE IN THE
25 BIZBOOM JOBS PROGRAM A BUSINESS MUST BE IN COMPLIANCE WITH ALL WORKER
26 PROTECTION AND ENVIRONMENTAL LAWS AND REGULATIONS. IN ADDITION, A BUSI-
27 NESS MAY NOT OWE PAST DUE STATE TAXES, LOCAL PROPERTY TAXES OR ANY FINES
28 ISSUED BY THE STATE OR MUNICIPALITY.

29 S 454. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTITY MUST
30 SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER.

31 2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTITY MUST:

32 (A) AGREE TO ALLOW THE DEPARTMENT TO SHARE ITS TAX INFORMATION WITH
33 THE DEPARTMENT OF LABOR AND DEPARTMENT OF TAXATION AND FINANCE. HOWEVER,
34 ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAIL-
35 ABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION
36 LAW.

37 (B) AGREE TO ALLOW THE DEPARTMENT OF LABOR AND DEPARTMENT OF TAXATION
38 AND FINANCE TO SHARE ITS TAX AND EMPLOYER INFORMATION WITH THE DEPART-
39 MENT. HOWEVER, ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT
40 SHALL NOT BE AVAILABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE
41 FREEDOM OF INFORMATION LAW.

42 (C) ALLOW THE DEPARTMENT AND ITS AGENTS ACCESS TO ANY AND ALL BOOKS
43 AND RECORDS THE DEPARTMENT MAY REQUIRE TO MONITOR COMPLIANCE.

44 (D) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT UPON REQUEST:

45 (I) A PLAN OUTLINING THE SCHEDULE FOR JOB CREATION AND INVESTMENTS;

46 (II) UNEMPLOYMENT INSURANCE QUARTERLY RETURNS, REAL PROPERTY TAX BILLS
47 AND AUDITED FINANCIAL STATEMENTS;

48 (III) THE AMOUNT AND DESCRIPTION OF PROJECTED TAX LIABILITY FOR WHICH
49 IT PLANS TO CLAIM THE BIZBOOM TAX EXEMPTIONS; AND

50 (IV) THE EMPLOYER IDENTIFICATION OR SOCIAL SECURITY NUMBERS FOR ALL
51 RELATED PERSONS TO THE APPLICANT, INCLUDING THOSE OF ANY MEMBERS OF A
52 LIMITED LIABILITY COMPANY OR PARTNERS IN A PARTNERSHIP.

53 (E) CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL
54 COMPLIANCE WITH ALL ENVIRONMENTAL, WORKER PROTECTION, AND LOCAL, STATE,
55 AND FEDERAL TAX LAWS.

1 3. AFTER REVIEWING A BUSINESS ENTITY'S COMPLETED APPLICATION AND
2 DETERMINING THAT THE BUSINESS ENTITY WILL MEET THE CONDITIONS SET FORTH
3 IN SECTION FOUR HUNDRED FIFTY-THREE OF THIS ARTICLE, THE DEPARTMENT MAY
4 ADMIT THE APPLICANT INTO THE PROGRAM AND PROVIDE THE APPLICANT WITH A
5 CERTIFICATE OF ELIGIBILITY.

6 4. IN ORDER TO BECOME A PARTICIPANT IN THE PROGRAM, AN APPLICANT MUST
7 SUBMIT EVIDENCE OF BEING A NEWLY FORMED BUSINESS ENTITY IN SUCH FORM AS
8 THE COMMISSIONER MAY PRESCRIBE. AFTER REVIEWING SUCH EVIDENCE AND FIND-
9 ING IT SUFFICIENT, THE DEPARTMENT SHALL CERTIFY THE APPLICANT AS A
10 PARTICIPANT AND ISSUE TO THAT PARTICIPANT A CERTIFICATE OF TAX
11 EXEMPTION.

12 5. A PARTICIPANT MAY CLAIM TAX BENEFITS COMMENCING IN THE FIRST TAXA-
13 BLE YEAR THAT THE BUSINESS ENTITY RECEIVES A CERTIFICATE OF TAX
14 EXEMPTION. A PARTICIPANT MAY CLAIM A TAX EXEMPTION OF ONE HUNDRED
15 PERCENT OF THE TAX LIABILITY IN THE FIRST YEAR OF OPERATION, FIFTY
16 PERCENT EXEMPTION OF THE BUSINESS TAX LIABILITY IN THE SECOND YEAR OF
17 OPERATION, AND A TWENTY-FIVE PERCENT EXEMPTION OF THE BUSINESS TAX
18 LIABILITY IN THE THIRD YEAR OF OPERATION, PROVIDED THAT THE PARTICIPANT
19 DEMONSTRATES TO THE DEPARTMENT THAT IT CONTINUES TO SATISFY THE ELIGI-
20 BILITY CRITERIA SPECIFIED IN SECTION FOUR HUNDRED FIFTY-THREE OF THIS
21 ARTICLE AND SUBDIVISION TWO OF THIS SECTION IN EACH OF THOSE TAXABLE
22 YEARS.

23 S 455. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER
24 SHALL PROMULGATE REGULATIONS ESTABLISHING AN APPLICATION PROCESS AND
25 ELIGIBILITY CRITERIA, THAT WILL BE APPLIED CONSISTENT WITH THE PURPOSES
26 OF THIS ARTICLE.

27 2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF
28 TAXATION AND FINANCE, DEVELOP A CERTIFICATE OF TAX EXEMPTION THAT SHALL
29 BE ISSUED BY THE COMMISSIONER TO PARTICIPANTS. PARTICIPANTS MUST INCLUDE
30 THE CERTIFICATE OF TAX EXEMPTION WITH THEIR TAX RETURN TO RECEIVE ANY
31 TAX BENEFITS UNDER THIS ARTICLE.

32 3. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF
33 TAXATION AND FINANCE AND THE DEPARTMENT OF LABOR, DETERMINE THE ELIGI-
34 BILITY OF ANY APPLICANT APPLYING FOR ENTRY INTO THE PROGRAM AND SHALL
35 REMOVE ANY PARTICIPANT FROM THE PROGRAM FOR FAILING TO MEET ANY OF THE
36 REQUIREMENTS SET FORTH IN SECTION FOUR HUNDRED FIFTY-THREE AND FOUR
37 HUNDRED FIFTY-FOUR OF THIS ARTICLE.

38 S 2. The tax law is amended by adding a new section 37 to read as
39 follows:

40 S 37. BIZBOOM PROGRAM EXEMPTION. (A) GENERAL. A TAXPAYER SUBJECT TO
41 TAX UNDER ARTICLES NINE-A AND TWENTY-TWO OF THIS CHAPTER SHALL BE
42 ALLOWED AN EXEMPTION AGAINST SUCH TAX, ALLOWABLE FOR UP TO THREE CONSEC-
43 UTIVE TAXABLE YEARS, IS PROVIDED AS FOLLOWS:

44 (1) ONE HUNDRED PERCENT EXEMPTION IN YEAR ONE OF OPERATION;

45 (2) FIFTY PERCENT EXEMPTION IN YEAR TWO OF OPERATION; AND

46 (3) TWENTY-FIVE PERCENT EXEMPTION IN YEAR THREE OF OPERATION.

47 (B) TO BE ELIGIBLE FOR THE BIZBOOM PROGRAM EXEMPTION, THE TAXPAYER
48 SHALL HAVE BEEN ISSUED A "CERTIFICATE OF TAX EXEMPTION" BY THE DEPART-
49 MENT OF ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FOUR OF SECTION
50 FOUR HUNDRED FIFTY-FOUR OF THE ECONOMIC DEVELOPMENT LAW, WHICH CERTIF-
51 ICATE SHALL SET FORTH THE AMOUNT OF EACH EXEMPTION COMPONENT THAT MAY BE
52 CLAIMED FOR THE TAXABLE YEAR. A TAXPAYER MAY CLAIM SUCH EXEMPTION FOR
53 THREE CONSECUTIVE TAXABLE YEARS COMMENCING IN THE FIRST TAXABLE YEAR
54 THAT THE TAXPAYER RECEIVES A CERTIFICATE OF TAX EXEMPTION. THE TAXPAYER
55 SHALL BE ALLOWED TO CLAIM ONLY THE PERCENTAGE AMOUNT LISTED ON THE
56 CERTIFICATE OF TAX EXEMPTION FOR THAT TAXABLE YEAR. SUCH CERTIFICATE

1 SHOULD BE ATTACHED TO THE TAXPAYER'S RETURN. NO COST OR EXPENSE PAID OR
2 INCURRED BY THE TAXPAYER SHALL BE THE BASIS FOR MORE THAN ONE COMPONENT
3 OF THIS EXEMPTION OR ANY OTHER TAX EXEMPTION.

4 (C) EXEMPTION RECAPTURE. IF A CERTIFICATE OF ELIGIBILITY OR A CERTIF-
5 ICATE OF TAX EXEMPTION ISSUED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT
6 UNDER ARTICLE TWENTY-ONE OF THE ECONOMIC DEVELOPMENT LAW IS REVOKED BY
7 SUCH DEPARTMENT, THE AMOUNT OF EXEMPTION DESCRIBED IN THIS SECTION AND
8 CLAIMED BY THE TAXPAYER PRIOR TO THAT REVOCATION SHALL BE ADDED BACK TO
9 INCOME IN THE TAXABLE YEAR IN WHICH ANY SUCH REVOCATION BECOMES FINAL.

10 S 3. The tax law is amended by adding a new section 207-c to read as
11 follows:

12 S 207-C. EXEMPTION OF BIZBOOM PROGRAM PARTICIPANTS. THIS ARTICLE SHALL
13 NOT APPLY TO ANY BUSINESS ENTITY WHICH IS A QUALIFIED BIZBOOM PARTIC-
14 IPANT AS PROVIDED BY SECTION THIRTY-SEVEN OF THIS CHAPTER.

15 S 4. Section 210 of the tax law is amended by adding a new subdivision
16 45 to read as follows:

17 45. BIZBOOM PROGRAM EXEMPTION. (A) ALLOWANCE OF EXEMPTION. A TAXPAYER
18 WILL BE ALLOWED AN EXEMPTION, TO BE COMPUTED AS PROVIDED IN SECTION
19 THIRTY-SEVEN OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

20 (B) APPLICATION OF EXEMPTION. THE EXEMPTION ALLOWED UNDER THIS SUBDI-
21 VISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO
22 LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D)
23 OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF EXEMPTION
24 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO
25 SUCH AMOUNT, ANY AMOUNT OF EXEMPTION THUS NOT DEDUCTIBLE IN SUCH TAXABLE
26 YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE EXEMPTED OR REFUNDED
27 IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF
28 THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF
29 SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO
30 INTEREST WILL BE PAID THEREON.

31 S 5. Section 601 of the tax law is amended by adding a new subsection
32 (j) to read as follows:

33 (J) BIZBOOM PROGRAM PARTICIPANTS. A QUALIFYING BUSINESS ENTITY,
34 PARTICIPATING IN THE BIZBOOM PROGRAM PURSUANT TO ARTICLE TWENTY OF THE
35 ECONOMIC DEVELOPMENT LAW, WHICH IS TAXABLE AS A BUSINESS ENTITY FOR
36 FEDERAL INCOME TAX PURPOSES SHALL NOT BE SUBJECT TO TAX UNDER THIS ARTI-
37 CLE; SUBJECT TO THE LIMITATION AS PROVIDED FOR BY SECTION THIRTY-SEVEN
38 OF THIS CHAPTER.

39 S 6. Section 606 of the tax law is amended by adding a new subsection
40 (uu) to read as follows:

41 (UU) BIZBOOM PROGRAM PARTICIPANTS. CREDITS ALLOWABLE UNDER THIS
42 SECTION THAT A TAXPAYER IS ELIGIBLE FOR THAT RELATE TO THE BUSINESS WILL
43 BE REDUCED BY ONE HUNDRED PERCENT IN THE FIRST YEAR OF OPERATION, FIFTY
44 PERCENT IN THE SECOND YEAR OF OPERATION, AND TWENTY-FIVE PERCENT IN THE
45 THIRD YEAR OF OPERATION.

46 S 7. Subsection (c) of section 612 of the tax law is amended by adding
47 a new paragraph 39 to read as follows:

48 (39) BUSINESS INCOME, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR
49 FEDERAL INCOME TAX PURPOSES, IF THE TAXPAYER IS AUTHORIZED UNDER THE
50 BIZBOOM PROGRAM; ONE HUNDRED PERCENT OF BUSINESS INCOME WILL BE
51 SUBTRACTED FROM FEDERALLY ADJUSTED GROSS INCOME IN THE FIRST YEAR, FIFTY
52 PERCENT IN THE SECOND YEAR, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR.

53 S 8. Subsection (c) of section 615 of the tax law is amended by adding
54 a new paragraph 9 to read as follows:

55 (9) THE AMOUNT OF ANY FEDERAL DEDUCTION FOR ANY BUSINESS RELATED
56 EXPENSE FOR A TAXPAYER AUTHORIZED UNDER THE BIZBOOM PROGRAM WILL BE

1 REDUCED BY ONE HUNDRED PERCENT IN THE FIRST YEAR, FIFTY PERCENT IN THE
2 SECOND YEAR, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR.

3 S 9. Notwithstanding any other provision of law, rule or regulation,
4 any and all application fees related to the creation of a business enti-
5 ty shall be reduced by fifty percent.

6 S 10. This act shall take effect January 1, 2013.