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

4156

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a credit for employers for wages associated with information technology security employees, and providing a deduction for businesses for the expenses of certain other security-related measures

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

Section 1. The tax law is amended by adding a new section 35 to read as follows:

S 35. INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH IS SUBJECT TO TAX UNDER ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO, OR THIRTY-THREE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (E) OF THIS SECTION, TO BE COMPUTED AS PROVIDED IN SUBDIVISION (D) OF THIS SECTION.

(B) QUALIFIED EMPLOYEE. THE TERM "QUALIFIED EMPLOYEE" SHALL MEAN A PERSON HIRED AND EMPLOYED FOR THE SOLE PURPOSE OF PROVIDING INFORMATION TECHNOLOGY SECURITY.

(C) QUALIFIED INFORMATION SECURITY WAGES. THE TERM "QUALIFIED INFORMATION SECURITY WAGES" SHALL MEAN THE TOTAL AMOUNT OF THE SALARIES OR WAGES PAID TO QUALIFIED EMPLOYEES DURING A TAXABLE YEAR.

(D) AMOUNT OF CREDIT. THE AMOUNT OF THE CREDIT SHALL EQUAL FIFTY PERCENT OF THE TOTAL AMOUNT OF QUALIFIED INFORMATION SECURITY WAGES PAID TO QUALIFIED EMPLOYEES.

(E) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) SUBDIVISION FORTY-THREE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER;

(2) SUBSECTION (SS) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER;

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

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(3) SUBSECTION (X) OF SECTION FOURTEEN HUNDRED FIFTY-SIX OF THIS CHAPTER;

(4) SUBDIVISION (AA) OF SECTION FIFTEEN HUNDRED ELEVEN OF THIS CHAPTER.

S 2. Paragraph (a) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 18 to read as follows:

(18) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF THIS SUBDIVISION.

S 3. Subdivision 9 of section 208 of the tax law is amended by adding a new paragraph (r) to read as follows:

(R) (A) FOR THE PURPOSES OF THIS PARAGRAPH THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING DEFINITIONS:

(I) "BUSINESS" MEANS BOTH PRIVATE AND NOT-FOR-PROFIT BUSINESSES.

(II) "INFORMATION TECHNOLOGY SECURITY SOFTWARE OR HARDWARE" MEANS COMPUTER SOFTWARE OR HARDWARE THAT IS USED TO PROTECT AGAINST COMPUTER VIRUSES, WORMS OR DELETERIOUS INSTRUCTIONS AND SOFTWARE OR PRODUCTS THAT PROTECT AGAINST COMPUTER HACKING OR COMPUTER WORMS OR VIRUSES.

(B) ANY BUSINESS THAT PURCHASES AND INSTALLS INFORMATION TECHNOLOGY SOFTWARE OR HARDWARE MAY DEDUCT FIFTY PERCENT OF THE FULL AMOUNT OF THE EXPENSES RELATED TO THE PURCHASE AND INSTALLATION OF SUCH SOFTWARE OR HARDWARE WITHIN THE APPLICABLE TAXABLE YEAR.

(C) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS DEEMED NECESSARY TO CARRY OUT THE PROVISIONS OF THIS PARAGRAPH BY JANUARY FIRST, TWO THOUSAND TWELVE.

(D) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO TAXABLE YEARS BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND TWELVE.

S 4. Section 210 of the tax law is amended by adding a new subdivision 43 to read as follows:

43. INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE 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. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED 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.

S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxii) to read as follows:

(XXXII) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT UNDER SUBSECTION (SS)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-THREE OF SECTION TWO HUNDRED TEN OR SUBSECTION (X) OF SECTION FOURTEEN HUNDRED FIFTY-SIX

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

(SS) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

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

(39) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER.

S 8. Subsection (e) of section 1453 of the tax law is amended by adding a new paragraph 19 to read as follows:

(19) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER.

S 9. Section 1456 of the tax law is amended by adding a new subsection (x) to read as follows:

(X) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED 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.

S 10. Paragraph 3 of subdivision (b) of section 1503 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(3) In determining entire net income, there shall be subtracted, to the extent not deductible in determining federal taxable income:

(A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this article but exempt from federal income tax;

(B) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this article but exempt from federal income tax; [and]

(C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax; AND

(D) THE AMOUNT DEDUCTIBLE PURSUANT TO PARAGRAPH (R) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER.

S 11. Section 1511 of the tax law is amended by adding a new subdivision (aa) to read as follows:

(AA) INFORMATION TECHNOLOGY SECURITY WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED

IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM FIXED BY PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED 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.

S 12. This act shall take effect immediately.